

AGGRAVATED SEXUAL ABUSE IN THE THIRD DEGREE
(Object or Finger - Complainant Less Than 13)
Penal Law § 130.66 (1) (d)
(Committed on or after Jan 22, 2023)

The (specify) count is Aggravated Sexual Abuse in the Third Degree.

Under our law, a person is guilty of Aggravated Sexual Abuse in the Third Degree when that person, inserts a

Select appropriate alternative(s):

foreign object
[or] a finger

in the

Select appropriate alternative(s):

vagina
[or] urethra
[or] penis
[or] rectum
[or] anus

of another person when that person is less than thirteen (13) years old and the actor is eighteen years of age or older.

Under our law, it is also an element of this offense that the insertion take place without consent.¹ Such insertion takes place without a person's consent when that person is deemed incapable of consent. A person is deemed incapable of consent when he or she is less than thirteen (13) years old.² Thus, the law deems such insertion to be without that person's consent, even if in fact that person did consent.

It is not a defense to this charge that the actor did not know that the person with whom the actor had contact was less than thirteen (13) years old, or that the actor believed that such

¹ Penal Law § 130.05 (1).

² See Penal Law § 130.05 (3) (a).

person was thirteen (13) years old or more on the date of the crime.³

Conduct performed for a valid medical purpose does not violate the provisions of this law.⁴

The following terms used in that definition have a special meaning:

[FOREIGN OBJECT means any instrument or article which, when inserted in the (specify), is capable of causing physical injury.⁵]

PHYSICAL INJURY means impairment of physical condition or substantial pain.⁶

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case beyond a reasonable doubt, each of the following three elements:

1. That on or about (date) , in the county of (County), the defendant, (name of defendant), without a valid medical purpose, inserted a

Select appropriate alternative(s):

foreign object
[or] a finger

in the (specify) of (complainant's name); and

2. That (complainant's name) was less than thirteen (13) years old, and

³ See Penal Law § 15.20 (3).

⁴ Penal Law § 130.65-a (2).

⁵ Penal Law § 130.00 (9).

⁶ Penal Law § 10.00 (9); See *People v Chiddick*, 8 NY3d 445 (2007).

3. That the defendant was eighteen (18) years of age or older.

If you find the People have proven beyond a reasonable doubt each of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or more of those elements, you must find the defendant not guilty of this crime.