

11.65E
Definition Of Sexual Penetration

The term “sexual penetration” means any
[1] contact, however slight, between the sex organ or anus of one person and [(an object) (the [(sex organ) (mouth) (anus)] of another person)].

[or]

[2] intrusion, however slight, of any part of [(the body of one person) (any animal) (any object)] into the [(sex organ) (anus)] of another person[, including but not limited to [(cunnilingus) (fellatio) (anal penetration)]]. [Evidence of emission of semen is not required to prove sexual penetration.]

Committee Note

720 ILCS 5/12-12(f) (West 1992) (formerly Ill.Rev.Stat. ch. 38, §12-12(f) (1991)), amended by P.A. 88-167, effective January 1, 1994.

The statutory definition of sexual penetration, unlike that of sexual conduct upon which most of the sexual abuse offenses are based, does not contain a mental state. Therefore, under *People v. Terrell*, 132 Ill.2d 178, 547 N.E.2d 145, 138 Ill.Dec. 176 (1989), the mental states of knowledge, intention, and recklessness are assigned to the offenses based on sexual penetration and, accordingly, those mental states are set out in the appropriate definitional and issues instructions. *See also* *People v. Williams*, 191 Ill.App.3d 269, 547 N.E.2d 608, 138 Ill.Dec. 441 (4th Dist.1989); *see also* 720 ILCS 5/4-3 through 4-6 (formerly Ill.Rev.Stat. ch. 38, §§4-3 through 4-6 (1991)), and the Committee Notes to Instructions 5.01A and 5.01B.

P.A. 88-167, effective January 1, 1994, amended 720 ILCS 5/12-12(f), defining “sexual penetration”, by adding kinds of “contact”, as described in bracketed paragraph [1] of this instruction.

A victim's finger can be an “object” within the statutory definition of sexual penetration. *People v. Scott*, 271 Ill.App.3d 307, 313, 648 N.E.2d 86, 89, 207 Ill.Dec. 630, 633 (1st Dist.1994).

People v. Scott also held that when only the defendant and the victim are involved in offenses based on sexual penetration, the defendant cannot be held liable under an accountability theory. *Scott*, 271 Ill.App.3d at 314, 648 N.E.2d at 90, 207 Ill.Dec. at 634.

Use applicable bracketed material.