

DEFINITIONS AND NEW YORK STATE PENAL LAWS ON SEX OFFENSES

What are common sex offenses?

Forcible Rape: The carnal knowledge of a person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity or because of his or her youth.

Forcible Sodomy: Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Sexual Assault with an Object: Is the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental or physical incapacity.

Forcible Fondling: The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her youth or because of his or her temporary or permanent mental incapacity. Forcible fondling includes "indecent liberties" and "child molesting." Nonforcible sex offenses are incidents of unlawful, nonforcible sexual intercourse.

Incest: Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

Statutory Rape: Nonforcible sexual intercourse with a person who is under the statutory age of consent.

DEFINITIONS

Offense means conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.

Misdemeanor means an offense, other than a "traffic infraction," for which a sentence to a term of imprisonment in excess of fifteen days may be imposed, but for which a sentence to a term of imprisonment in excess of one year cannot be imposed.

Felony means an offense for which a sentence to a term of imprisonment in excess of one year may be imposed.

Crime means a misdemeanor or a felony.

What are the punishments imposed for a sex offense?

Sexual misconduct: A person is guilty of sexual misconduct when:

1) He or she engages in sexual intercourse with another person without such person's consent; or

2) He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or

3) He or she engages in sexual conduct with an animal or a dead human body.

Sexual misconduct is a class A misdemeanor.

Rape in the third degree: A person is guilty of rape in the third degree when:

1) He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;

2) Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or

3) He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

Rape in the second degree: A person is guilty of rape in the second degree when:

1) being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or

2) he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

Rape in the first degree: A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:

1) By forcible compulsion; or

2) Who is incapable of consent by reason of being physically helpless; or

3) Who is less than eleven years old; or

4) Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

Criminal sexual act in the third degree: A person is guilty of criminal sexual act in the third degree when:

1) He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old.

2) Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or

3) He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

Criminal sexual act in the second degree: A person is guilty of criminal sexual act in the second degree when:

1) being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or

2) he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3) It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Criminal sexual act in the second degree is a class D felony.

Criminal sexual act in the first degree: A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

- 1) By forcible compulsion; or
- 2) Who is incapable of consent by means of being physically helpless; or
- 3) Who is less than eleven years old; or
- 4) Who is less than thirteen years old and the actor is eighteen years old or more.

Criminal sexual act in the first degree is a class B felony.

Forcible touching: A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

Sexual abuse in the third degree: A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that:

- 1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and
- 2) such other person was more than fourteen years old, and
- 3) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

Sexual abuse in the second degree: A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

- 1) Incapable of consent by reason of some factor other than being less than seventeen years old; or
- 2) Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

Sexual abuse in the first degree: A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

- 1) By forcible compulsion; or
- 2) When the other person is incapable of consent by reason of being physically helpless; or
- 3) When the other person is less than eleven years old.

Sexual abuse in the first degree is a class D felony.

Aggravated sexual abuse in the fourth degree: A person is guilty of aggravated sexual abuse in the fourth degree when:

- 1) He or she inserts a foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or
- 2) He or she inserts a finger in the vagina, urethra, penis or rectum of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.

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

Aggravated sexual abuse in the fourth degree is a class E felony.

Aggravated sexual abuse in the third degree: A person is guilty of aggravated sexual abuse in the third degree when he inserts a foreign object in the vagina, urethra, penis or rectum of another person:

- 1) By forcible compulsion; or
- 2) When the other person is incapable of consent by reason of being physically helpless; or
- 3) When the other person is less than eleven years old.

A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

Aggravated sexual abuse in the second degree: A person is guilty of aggravated sexual abuse in the second degree when he inserts a finger in the vagina, urethra, penis or rectum of another person causing physical injury to such person:

- 1) By forcible compulsion; or
- 2) When the other person is incapable of consent by reason of being physically helpless; or
- 3) When the other person is less than eleven years old.

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

Aggravated sexual abuse in the second degree is a class C felony.

Aggravated sexual abuse in the first degree: A person is guilty of aggravated sexual abuse in the first degree when he inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person:

- 1) By forcible compulsion; or
- 2) When the other person is incapable of consent by reason of being physically helpless; or
- 3) When the other person is less than eleven years old.

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

Aggravated sexual abuse in the first degree is a class B felony.

Course of sexual conduct against a child in the first degree: A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration:

- 1) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or
- 2) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.

A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the first degree is a class B felony.

Course of sexual conduct against a child in the second degree: A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration:

- 1) he or she engages in two or more acts of sexual conduct with a child less than eleven years old; or
- 2) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old.

A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the second degree is a class D felony.

Female genital mutilation: A person is guilty of female genital mutilation when:

- 1) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or
- 2) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or infibulation of whole or part of such child's labia majora or labia minora or clitoris.

Such circumcision, excision, or infibulation is not a violation of this section if such act is:

- a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or
- b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual.

Female genital mutilation is a class E felony.

Facilitating a sex offense with a controlled substance: A person is guilty of facilitating a sex offense with a controlled substance when he or she:

- 1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and
- 2) commits or attempts to commit such conduct constituting a felony defined in this article.

Facilitating a sex offense with a controlled substance is a class D felony.

Possible Penalties for Sexual Assault Offenses

The New York State Penal Law provides for the following possible penalties for the various classifications of sexual assault offenses:

Class B Felony - Imprisonment for 5 to 25 years

Class C Felony - Imprisonment for 3 1/2 to 15 years

Class D Felony - Imprisonment for 2 to 7 years

Class E Felony - Imprisonment for 1 1/2 to 4 years

Class A Misdemeanor - Imprisonment for up to 1 year

Class B Misdemeanor - Imprisonment for up to 3 months

NYS PENAL LAWS ON STALKING

Stalking in the fourth degree: A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- 1) is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted;
- 2) causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
- 3) is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

Stalking in the third degree: A person is guilty of stalking in the third degree when he or she:

- 1) Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
- 2) Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
- 3) With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person`s immediate family; or
- 4) Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

Stalking in the second degree: A person is guilty of stalking in the second degree when he or she:

- 1) Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane, sword, billy, blackjack, bludgeon, metal knuckles, chukka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or
- 2) Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
- 3) Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or
- 4) Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death.

Stalking in the second degree is a class E felony.

Stalking in the first degree: A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

- 1) intentionally or recklessly causes physical injury to the victim of such crime; or
- 2) commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.