

---

## Federal and State Laws: Sexual Assault – New York

### Sex Offenses

Under New York law, **rape** is sexual intercourse (including slight penetration) and **criminal sexual acts** are oral or anal sex with a person who:

- cannot consent
- is forced, threatened, or in fear

It is criminal **sexual misconduct** to engage in sexual intercourse or anal or oral sex without the other person's consent.

**Predatory sexual assault** is defined as rape or criminal sexual acts involving serious injury, weapons, or multiple victims, and is a class A-II felony.

### Other Sex Offenses

Under New York law, other sex offenses include:

- **Sexual contact**, defined as touching someone's intimate body parts (clothed or unclothed) forcibly or without the other person's consent
- **Aggravated sexual abuse**, defined as inserting a foreign object or a finger in the intimate parts of another person without their consent
- **Facilitating or attempting** to commit a sex offense using a controlled substance

### Statutes

#### New York Law

#### Sex Offenses Statutes

#### New York Consolidated Laws

#### CHAPTER 40 OF THE CONSOLIDATED LAWS – PENAL LAW

#### PART THREE. SPECIFIC OFFENSES

#### TITLE H. OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT, RESTRAINT AND INTIMIDATION

#### ARTICLE 130 SEX OFFENSES

§ 130.00 Penal. Sex offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.

The information contained in this program may not be reproduced in whole or in part, by any means, without permission. © Vector Solutions. All rights reserved.

2.

(a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.

(b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.

4. For the purposes of this article "married" means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim.

5. "Mentally disabled" means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.

6. "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.

7. "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

8. "Forcible compulsion" means to compel by either:

a. use of physical force; or

b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.

10. "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.

.... *[Content omitted for clarity]*

§ 130.20 Penal. 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.

§ 130.25 Penal. 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.

§ 130.30 Penal. 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.

§ 130.35 Penal. 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.

§ 130.40 Penal. 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.

§ 130.45 Penal. 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.

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.

§ 130.50 Penal. 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 reason of being physically helpless;

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.

§ 130.95 Penal. Predatory sexual assault.

A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree,

or course of sexual conduct against a child in the first degree, as defined in this article, and when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:

(a) Causes serious physical injury to the victim of such crime; or

(b) Uses or threatens the immediate use of a dangerous instrument; or

2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or

3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter.

Predatory sexual assault is a class A-II felony.

New York Law  
Other Sex Offenses Statutes

New York Consolidated Laws  
CHAPTER 40 OF THE CONSOLIDATED LAWS – PENAL LAW  
PART THREE. SPECIFIC OFFENSES  
TITLE H. OFFENSES AGAINST THE PERSON INVOLVING PHYSICAL INJURY, SEXUAL CONDUCT,  
RESTRAINT AND INTIMIDATION  
ARTICLE 130 SEX OFFENSES

§ 130.00 Penal. Sex offenses; definitions of terms.  
The following definitions are applicable to this article:

.... *[Content omitted for clarity]*

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.

.... *[Content omitted for clarity]*

8. "Forcible compulsion" means to compel by either:

- a. use of physical force; or
- b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury.

.... *[Content omitted for clarity]*

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus of a child, thereby causing physical injury to such child.

.... *[Content omitted for clarity]*

§ 130.52 Penal. Forcible touching.

A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose:

1. 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; or
2. subjects another person to sexual contact for the purpose of gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is a passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching is a class A misdemeanor.

The information contained in this program may not be reproduced in whole or in part, by any means, without permission. © Vector Solutions. All rights reserved.

§ 130.55 Penal. 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 (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

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

§ 130.60 Penal. 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.

§ 130.65 Penal. 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; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

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

§ 130.65-a Penal. Aggravated sexual abuse in the fourth degree.

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



(a) He or she inserts a foreign object in the vagina, urethra, penis, rectum or anus 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

(b) He or she inserts a finger in the vagina, urethra, penis, rectum or anus 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.

2. 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.

§ 130.66 Penal. Aggravated sexual abuse in the third degree.

1. 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, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. 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, rectum or anus 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.

3. 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.

§ 130.67 Penal. Aggravated sexual abuse in the second degree.

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

- (a) By forcible compulsion; or
- (b) When the other person is incapable of consent by reason of being physically helpless; or
- (c) When the other person is less than eleven years old.

2. 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.

§ 130.70 Penal. Aggravated sexual abuse in the first degree.

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

- (a) By forcible compulsion; or
- (b) When the other person is incapable of consent by reason of being physically helpless; or
- (c) When the other person is less than eleven years old.

2. 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.

§ 130.90 Penal. 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.