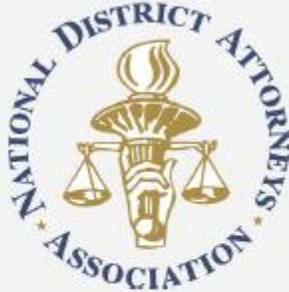


Sexual Assault Statutes Compilation



The National Center for Prosecution of Violence Against Women

Last Updated (August 2016)

Summary of Content

This document is a compilation of U.S. State Sexual Assault and Sexual Assault related statutes. It was last updated August 3, 2016. Please note that we recommend checking both case law and current legislation for later modifications to the statutes listed below.

For further assistance, consult the National District Attorneys Association's National Center for Prosecution of Violence Against Women 703.549.9222, or via the free online prosecution assistance service http://www.ndaa.org/ta_form.php

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National Center for Prosecution of Violence Against Women

National District Attorney Association

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ALABAMA

ALA. CODE § 13A-6-60 (2016). Definitions

- (1). Sexual intercourse. — Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.
- (2). Deviate sexual intercourse. — Any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another.
- (3). Sexual contact. — Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.
- (4). Female. — Any female person.
- (5). Mentally defective. — Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.
- (6). Mentally incapacitated. — Such term 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 incapacitating act committed upon him without his consent.
- (7). Physically helpless. — Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (8). Forcible compulsion. — Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.

CREDIT(S)

Acts 1977, No. 77-607; Acts 1979, No. 79-776; Acts 1988, No. 88-339.

ALA. CODE § 13A-6-61 (2016). Rape; first degree

(a) A person commits the crime of rape in the first degree if:

- (1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or
- (2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being physically helpless or mentally incapacitated; or
- (3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.

(b) Rape in the first degree is a Class A felony.

CREDIT(S)

Acts 1977, No. 77-607; Acts 2000, No. 00-726.

Ala. Code § 13A-6-62 (2016). Rape; second degree

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a) A person commits the crime of rape in the second degree if:

(1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.

(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.

(b) Rape in the second degree is a Class B felony.

CREDIT(S)

Acts 1977, No. 77-607; Acts 1979, No. 79-471; Acts 1987, No. 87-607; Acts 2000, No. 00-726.

Ala. Code § 13A-6-63 (2016). Sodomy; first degree

(a) A person commits the crime of sodomy in the first degree if:

(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

(b) Sodomy in the first degree is a Class A felony.

CREDIT(S)

Acts 1977, No. 77-607.

Ala. Code § 13A-6-64 (2016). Sodomy; second degree

(a) A person commits the crime of sodomy in the second degree if:

(1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.

(b) Sodomy in the second degree is a Class B felony.

CREDIT(S)

Acts 1977, No. 77-607; Acts 1979, No. 79-471; Acts 1987, No. 87-607.

ALA. CODE § 13A-6-60 (2015/6). SEXUAL MISCONDUCT

(a) A person commits the crime of sexual misconduct if:

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- (1) Being a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by [Sections 13A-6-61](#) and [13A-6-62](#); or with her consent where consent was obtained by the use of any fraud or artifice; or
- (2) Being a female, she engages in sexual intercourse with a male without his consent; or
- (3) He or she engages in deviate sexual intercourse with another person under circumstances other than those covered by [Sections 13A-6-63](#) and [13A-6-64](#). Consent is no defense to a prosecution under this subdivision.

(b) Sexual misconduct is a Class A misdemeanor.

CREDIT(S)

Acts 1977, No. 77-607.

Ala. Code § 13A-6-65.1 (2016). Sexual torture

(a) A person commits the crime of sexual torture:

- (1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.
- (2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.
- (3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.

(b) The crime of sexual torture is a Class A felony.

CREDIT(S)

Acts 1993, No. 93-606.

ALA. CODE § 13A-6-66 (2016). SEXUAL ABUSE; FIRST DEGREE

(a) A person commits the crime of sexual abuse in the first degree if:

- (1) He subjects another person to sexual contact by forcible compulsion; or
- (2) He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated.

(b) Sexual abuse in the first degree is a Class C felony.

CREDIT(S)

Acts 1977, No. 77-607; Acts 1979, No. 79-776; Acts 2006, No. 06-575.

ALA. CODE § 13A-6-67 (2016). SEXUAL ABUSE; SECOND DEGREE

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(a) A person commits the crime of sexual abuse in the second degree if:

- (1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or
- (2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

(b) Sexual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony

CREDIT(S)

Acts 1977, No. 77-607; Acts 2000, No. 00-728.

Ala. Code § 13A-6-70 (2016). Consent of victim

(a) Whether or not specifically stated, it is an element of every offense defined in this article, with the exception of subdivision (a)(3) of Section 13A-6-65, that the sexual act was committed without consent of the victim.

(b) Lack of consent results from:

- (1) Forcible compulsion; or
- (2) Incapacity to consent; or
- (3) If the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent if he is:

- (1) Less than 16 years old; or
- (2) Mentally defective; or
- (3) Mentally incapacitated; or
- (4) Physically helpless.

CREDIT(S)

Acts 1977, No. 77-607.

ALASKA

ALASKA STAT. § 11.41.410 (2015). Sexual assault in the first degree

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(a) An offender commits the crime of sexual assault in the first degree if

- (1) the offender engages in sexual penetration with another person without consent of that person;
- (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;
- (3) the offender engages in sexual penetration with another person
 - (A) who the offender knows is mentally incapable; and
 - (B) who is in the offender's care
 - (i) by authority of law; or
 - (ii) in a facility or program that is required by law to be licensed by the state; or
- (4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

CREDIT(S)

Acts 1977, No. 77-607.

ALASKA STAT. § 11.41.420 (2015). Sexual assault in the second degree

(a) An offender commits the crime of sexual assault in the second degree if

- (1) the offender engages in sexual contact with another person without consent of that person;
- (2) the offender engages in sexual contact with a person
 - (A) who the offender knows is mentally incapable; and
 - (B) who is in the offender's care
 - (i) by authority of law; or
 - (ii) in a facility or program that is required by law to be licensed by the state;
- (3) the offender engages in sexual penetration with a person who the offender knows is
 - (A) mentally incapable;
 - (B) incapacitated; or
 - (C) unaware that a sexual act is being committed; or
- (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and
 - (A) the offender is a health care worker; and
 - (B) the offense takes place during the course of professional treatment of the victim.

(b) Sexual assault in the second degree is a class B felony.

CREDIT(S)

(§ 3 ch 166 SLA 1978; am § 1 ch 78 SLA 1983; am § 2 ch 96 SLA 1988; am § 8 ch 4 SLA 1990; am § 6 ch 79 SLA 1992; am § 4 ch 30 SLA 1996; am § 2 ch 61 SLA 1996)

ALASKA STAT. § 11.41.425 (2015). Sexual assault in the third degree

(a) An offender commits the crime of sexual assault in the third degree if the offender

(1) engages in sexual contact with a person who the offender knows is

(A) mentally incapable;

(B) incapacitated; or

(C) unaware that a sexual act is being committed;

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment;

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under [AS 47.10](#) or [AS 47.12](#) and the offender is the legal guardian of the person;

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;

(5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or

(6) while employed as a juvenile probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.

(b) In this section,

(1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility;

(2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services;

(3) "parole officer" has the meaning given in [AS 18.65.290](#);

(4) "peace officer" has the meaning given in [AS 01.10.060](#);

(5) "probation officer" includes a

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- (A) probation officer as defined in AS 18.65.290; or
- (B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.
- (c) Sexual assault in the third degree is a class C felony.

CREDIT(S)

(§ 3 ch 96 SLA 1988; am § 9 ch 4 SLA 1990; am § 7 ch 79 SLA 1992; am § 1 ch 33 SLA 2000; am §§ 3, 4 ch 20 SLA 2011; am §§ 3, 4 ch 43 SLA 2013)

ARKANSAS

ARK. CODE ANN. § 5-14-101 (2016). DEFINITIONS

As used in this chapter:

- (1) "Deviate sexual activity" means any act of sexual gratification involving:
 - (A) The penetration, however slight, of the anus or mouth of a person by the penis of another person; or
 - (B) The penetration, however slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person;
- (2) "Forcible compulsion" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person;
- (3) "Guardian" means a parent, stepparent, legal guardian, legal custodian, foster parent, or any person who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor;
- (4) (A) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person:
 - (i) Incapable of understanding the nature and consequences of a sexual act; or
 - (ii) Unaware a sexual act is occurring.
- (B) A determination that a person is mentally defective shall not be based solely on the person's intelligence quotient;
- (5) "Mentally incapacitated" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:
 - (A) Administered to the person without the person's consent; or
 - (B) That renders the person unaware a sexual act is occurring;

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- (6) "Minor" means a person who is less than eighteen (18) years of age;
- (7) "Physically helpless" means that a person is:
 - (A) Unconscious;
 - (B) Physically unable to communicate a lack of consent; or
 - (C) Rendered unaware a sexual act is occurring;
- (8) "Public place" means a publicly or privately owned place to which the public or a substantial number of people have access;
- (9) "Public view" means observable or likely to be observed by a person in a public place;
- (10) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female; and
- (11) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis.

CREDIT(S)

Acts 1975, No. 280, § 1801; 1985, No. 327, § 1; 1985, No. 563, § 1; A.S.A. 1947, § 41-1801; Acts 1995, No. 525, § 1; 2001, No. 1724, § 1; 2009, No. 748, § 7.

ARK. CODE ANN. § 5-14-102 (2016). In general

- (a) The definition of an offense that excludes conduct with a spouse shall not be construed to preclude accomplice liability of a spouse.
- (b) When the criminality of conduct depends on a child's being below fourteen (14) years of age and the actor is twenty (20) years of age or older, it is no defense that the actor:
 - (1) Did not know the age of the child; or
 - (2) Reasonably believed the child to be fourteen (14) years of age or older.
- (c)
 - (1) When criminality of conduct depends on a child's being below fourteen (14) years of age and the actor is under twenty (20) years of age, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.
 - (2) However, the actor may be guilty of the lesser offense defined by the age that the actor reasonably believed the child to be.
- (d)
 - (1) When criminality of conduct depends on a child's being below a critical age older than fourteen (14) years, it is an affirmative defense that the actor reasonably believed the child to be of the critical age or above.
 - (2) However, the actor may be guilty of the lesser offense defined by the age that the actor reasonably believed the child to be.
- (e) When criminality of conduct depends on a victim's being incapable of consent because he or she is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent.

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CREDIT(S)

Acts 1975, No. 280, § 1802; 1985, No. 281, § 1; 1985, No. 870, § 4; 1985, No. 919, § 1; A.S.A. 1947, § 41-1802; Acts 2003, No. 1323, § 2.

ARK. CODE ANN. § 5-14-103 (2016). RAPE

(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:

(1) By forcible compulsion;

(2) Who is incapable of consent because he or she is:

(A) Physically helpless;

(B) Mentally defective; or

(C) Mentally incapacitated;

(3)

(A) Who is less than fourteen (14) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or

(4) (A) Who is a minor and the actor is the victim's:

(i) Guardian;

(ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;

(iii) Brother or sister of the whole or half blood or by adoption; or

(iv) Nephew, niece, or first cousin.

(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under subdivisions (a)(3) or (4) of this section that the victim consented to the conduct.

(c)

(1) Rape is a Class Y felony.

(2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.

(d) (1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted.

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(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(e) A person convicted of rape is subject to § 9-10-121.

CREDIT(S)

Acts 1975, No. 280, § 1803; 1981, No. 620, § 12; 1985, No. 281, § 2; 1985, No. 919, § 2; A.S.A. 1947, § 41-1803; Acts 1993, No. 935, § 1; 1997, No. 831, § 1; 2001, No. 299, § 1; 2001, No. 1738, § 1; 2003, No. 1469, § 3; 2006 (1st Ex. Sess.), No. 5, § 2; 2009, No. 748, § 8; 2013, No. 210, § 2.

ARK. CODE ANN. § 5-14-124 (2016). Sexual assault in the first degree

(a) A person commits sexual assault in the first degree if:

(1) The person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county jail or juvenile detention facility, or their contractors or agents;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(C) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim; or

(2) The person is a teacher, principal, athletic coach, or counselor in a public or private school in kindergarten through grade twelve (K-12) and the actor:

(A) Engages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is:

(i) Less than twenty-one (21) years of age; and

(ii) A student enrolled in the public or private school employing the actor; and

(B) Is in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) It is an affirmative defense to a prosecution under subdivision (a)(1)(C) of this section that the actor was not more than three (3) years older than the victim.

(d) Sexual assault in the first degree is a Class A felony.

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Acts 2001, No. 1738, § 2; 2003, No. 1391, § 1; 2003, No. 1469, § 2; 2009, No. 748, § 10; 2009, No. 758, § 2; 2013, No. 1044, § 1.

ARK. CODE ANN. § 5-14-125 (2016). Sexual assault in the second degree

A person commits sexual assault in the second degree if the person:

- (1) Engages in sexual contact with another person by forcible compulsion;
- (2) Engages in sexual contact with another person who is incapable of consent because he or she is:
 - (A) Physically helpless;
 - (B) Mentally defective; or
 - (C) Mentally incapacitated;
- (3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:
 - (A) Less than fourteen (14) years of age; and
 - (B) Not the person's spouse;
- (4) (A) Engages in sexual contact with a minor and the actor is:
 - (i) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;
 - (ii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or
 - (iii) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.
- (B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;
- (5) (A) Being a minor, engages in sexual contact with another person who is:
 - (i) Less than fourteen (14) years of age; and
 - (ii) Not the person's spouse.
- (B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:
 - (i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or
 - (ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older; or
- (6) Is a teacher, principal, athletic coach, or counselor in a public or private school in a grade kindergarten through twelve (K-12), in a position of trust or authority, and uses his or her position of trust or authority over the victim to engage in sexual contact with a victim who is:
 - (A) A student enrolled in the public or private school; and
 - (B) Less than twenty-one (21) years of age.

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(b)

(1) Sexual assault in the second degree is a Class B felony.

(2) Sexual assault in the second degree is a Class D felony if committed by a minor with another person who is:

(A) Less than fourteen (14) years of age; and

(B) Not the person's spouse.

CREDIT(S)

Acts 2001, No. 1738, § 3; 2003, No. 1323, § 1; 2003, No. 1720, § 2; 2009, No. 748, §§ 11-13; 2009, No. 758, § 3; 2011, No. 1129, § 1; 2013, No. 1086, § 2.

ARK. CODE ANN. § 5-14-126 (2016). Sexual assault in the third degree

(a) A person commits sexual assault in the third degree if the person:

(1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail;

(B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or

(C) A mandated reporter under § 12-18-402(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(2) (A) Being a minor, engages in sexual intercourse or deviate sexual activity with another person who is:

(i) Less than fourteen (14) years of age; and

(ii) Not the person's spouse.

(B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) Sexual assault in the third degree is a Class C felony.

CREDIT(S)

Acts 2001, No. 1738, § 4; 2003, No. 1324, § 1; 2007, No. 363, § 1; 2009, No. 748, § 14; 2009, No. 758, § 4.

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ARIZONA

Ariz. Rev. Stat. § 13-1401 (2016). Definitions; factors

A. In this chapter, unless the context otherwise requires:

1. "Oral sexual contact" means oral contact with the penis, vulva or anus.
2. "Position of trust" means a person who is or was any of the following:
 - (a) The minor's parent, stepparent, adoptive parent, legal guardian or foster parent.
 - (b) The minor's teacher.
 - (c) The minor's coach or instructor, whether the coach or instructor is an employee or volunteer.
 - (d) The minor's clergyman or priest.
 - (e) Engaged in a sexual or romantic relationship with the minor's parent, adoptive parent, legal guardian, foster parent or stepparent.
3. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
4. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.
5. "Spouse" means a person who is legally married and cohabiting.
6. "Teacher" means a certificated teacher as defined in section 15-501 or any other person who provides instruction to pupils in any school district, charter school or accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.
7. "Without consent" includes any of the following:
 - (a) The victim is coerced by the immediate use or threatened use of force against a person or property.
 - (b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For the purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.
 - (c) The victim is intentionally deceived as to the nature of the act.
 - (d) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.

B. The following factors may be considered in determining whether a relationship is currently or was previously a sexual or romantic relationship pursuant to subsection A, paragraph 2, subdivision (e) of this section:

1. The type of relationship.
2. The length of the relationship.

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3. The frequency of the interaction between the two persons.
4. If the relationship has terminated, the length of time since the termination.

CREDIT(S)

Laws 1998, Ch. 281, § 2; Laws 2015, Reg. Sess., Ch. 209, § 2.

Ariz. Rev. Stat. § 13-1404 (2016). Sexual abuse; classification

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. It is not a defense to a prosecution for a violation of this section that the other person consented if the other person was fifteen, sixteen or seventeen years of age and the defendant was in a position of trust.

C. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-705.

CREDIT(S)

Laws 2008, Ch. 301, § 57; Laws 2015, Reg. Sess., Ch. 209, § 3.

Ariz. Rev. Stat. § 13-1406 (2016). Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim’s knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

Minimum	Presumptive	Maximum
5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum	Presumptive	Maximum
7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum	Presumptive	Maximum
14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding [section 13-703](#), [section 13-704](#), [section 13-705](#), [section 13-706](#), subsection A and [section 13-708](#), subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to [section 13-705](#).

CREDIT(S)

Laws 1998, Ch. 281, § 3; Laws 1999, Ch. 92, § 1; Laws 2008, Ch. 301, § 59.

CALIFORNIA

CAL. PENAL CODE § 243.4 (2016). SEXUAL BATTERY; SERIOUSLY DISABLED OR MEDICALLY INCAPACITATED VICTIMS

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

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(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(e)

(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars (\$2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount

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over two thousand dollars (\$2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars (\$10,000).

CREDIT(S)

Added Stats 1982 ch 1111 § 1. Amended Stats 1984 ch 1418 § 1, ch 1495 § 1; Stats 1985 ch 782 § 1, ch 1257 § 1.1; Stats 1987 ch 828 § 12.5; Stats 1989 ch 1034 § 1; Stats 1991 ch 149 § 1 (AB 180); Stats 1992 ch 1219 § 1 (AB 3388); Stats 1996 ch 917 § 1 (AB 2127); Stats 1997 ch 821 § 2 (AB 290), effective October 6, 1997; Stats 2002 ch 302 § 1 (SB 1421).

CAL. PENAL CODE § 261 (2016). RAPE; "DURESS"; "MENACE"

(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:

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(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.

(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets any one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(5) Where a person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.

(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(b) As used in this section, "duress" means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act

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which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.

(c) As used in this section, "menace" means any threat, declaration, or act which shows an intention to inflict an injury upon another.

CREDIT(S)

Enacted 1872. Amended Stats 1889 ch 191 § 1; Stats 1897 ch 139 § 1; Stats 1913 ch 122 § 1; Stats 1970 ch 1301 § 1; Stats 1979 ch 994 § 1; Stats 1980 ch 587 § 1; Stats 1981 ch 849 § 1; Stats 1983 ch 949 § 1; Stats 1984 ch 1634 § 1, ch 1635 § 79.5. Amended Stats 1985 ch 283 § 1; Stats 1986 ch 1299 § 1; Stats 1990 ch 630 § 1 (SB 2586); Stats 1993 ch 595 § 1 (AB 187); Stats 1st Ex Sess 1993-94 ch 40 § 1 (AB 85 X), effective November 30, 1994; Stats 2002 ch 302 § 2 (SB 1421); Stats 2013 ch 259 § 1 (AB 65), effective September 9, 2013.

CAL. PENAL CODE § 261.6 (2016). "CONSENT"; EFFECT OF CURRENT OR PREVIOUS RELATIONSHIP

In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, "consent" shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.

A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 288a, or 289.

Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.

CREDIT(S)

Added Stats 1982 ch 1111 § 3. Amended Stats 1990 ch 271 § 1 (AB 2631); Stats 1994 ch 1188 § 1 (SB 59).

CAL. PENAL CODE § 261.7(2016). "CONSENT"; COMMUNICATION TO USE CONDOM OR OTHER BIRTH CONTROL DEVICE

In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, evidence that the victim suggested, requested, or otherwise communicated to the defendant that the defendant use a condom or other birth control device, without additional evidence of consent, is not sufficient to constitute consent.

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CREDIT(S)

Added Stats 1994 ch 907 § 1 (SB 1351). Amended Stats 1995 ch 177 § 1 (SB 208).

CAL. PENAL CODE § 263(2016). PENETRATION

The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, however slight, is sufficient to complete the crime.

CREDIT(S)

Enacted 1872. Amended Stats 1979 ch 994 § 3.

CAL. PENAL CODE § 264 (2016). PUNISHMENT FOR RAPE; AIDS EDUCATION FINE; PUNISHMENT FOR RAPE OF CHILD OR OTHER MINOR

(a) Except as provided in subdivision (c), rape, as defined in Section 261 or 262, is punishable by imprisonment in the state prison for three, six, or eight years.

(b) In addition to any punishment imposed under this section the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates Section 261 or 262 with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

(c)

(1) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a child who is under 14 years of age shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(2) Any person who commits rape in violation of paragraph (2) of subdivision (a) of Section 261 upon a minor who is 14 years of age or older shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

CREDIT(S)

Enacted 1872. Amended Stats 1913 ch 123 § 1; Stats 1923 ch 130 § 1; Stats 1st Ex Sess 1952 ch 23 § 1; Stats 1967 ch 151 § 1; Stats 1970 ch 1301 § 3; Stats 1976 ch 1139 § 154, operative July 1, 1977; Stats 1978 ch 579 § 14; Stats 1979 ch 944 § 4, ch 994 § 4; Stats 1981 ch 110 § 2; Stats 1988

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ch 1243 § 5; Stats 1993 ch 595 § 3 (AB 187); Stats 1999 ch 853 § 11 (SB 832); Stats 2010 ch 219 § 4 (AB 1844), effective September 9, 2010.

CAL. PENAL CODE § 264.1 (2016). PUNISHMENT FOR AIDING OR ABETTING RAPE

(a) The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.

(b)

(1) If the victim of an offense described in subdivision (a) is a child who is under 14 years of age, the defendant shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(2) If the victim of an offense described in subdivision (a) is a minor who is 14 years of age or older, the defendant shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(3) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

CREDIT(S)

Added Stats 1967 ch 1551 § 1. Amended Stats 1976 ch 1139 § 155, operative July 1, 1977; Stats 1978 ch 579 § 15; Stats 1982 ch 1111 § 4; Stats 1994 ch 1188 § 2 (SB 59); Stats 2010 ch 219 § 5 (AB 1844), effective September 9, 2010.

CAL. PENAL CODE § 266C(2016). INDUCING CONSENT TO SEXUAL ACT BY FRAUD OR FEAR

Every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person's free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years.

As used in this section, "fear" means the fear of physical injury or death to the person or to any relative of the person or member of the person's family.

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CREDIT(S)

Added Stats 1985 ch 1506 § 1. Amended Stats 1986 ch 1299 § 2; Stats 1992 ch 224 § 2 (SB 1960); Stats 1994 ch 1188 § 3 (SB 59); Stats 2000 ch 287 § 4 (SB 1955).

CAL. PENAL CODE § 286(2016). SODOMY

(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b)

(1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over 21 years of age who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c)

(1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2)

(A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a

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reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d)

(1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

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(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years.

Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

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As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

CREDIT(S)

Enacted 1872. Amended Stats 1921 ch 90 § 1; Stats Ex Sess 1949 ch 15 § 1; Stats 1st Ex Sess 1952 ch 23 § 2; Stats 1975 ch 71 § 7, ch 877 § 1; Stats 1976 ch 1139 § 175, operative July 1, 1977; Stats 1977 ch 490 § 1; Stats 1978 ch 579 § 16; Stats 1979 ch 944 § 6; Stats 1980 ch 915 § 1; Stats 1981 ch 896 § 1; Stats 1983 ch 949 § 2. Amended Stats 1985 ch 929 § 1, ch 1063 § 1, ch 1085 § 2; Stats 1986 ch 1299 § 3; Stats 1988 ch 1243 § 6; Stats 1991 ch 144 § 1 (AB 419); Stats 1993 ch 595 § 4 (AB 187); Stats 1st Ex Sess 1993-94 ch 40 § 2 (AB 85 X), effective November 30, 1994; Stats 1998 ch 936 § 4 (AB 105), effective September 28, 1998; Stats 2002 ch 302 § 3 (SB 1421); Stats 2010 ch 219 § 6 (AB 1844), effective September 9, 2010; Stats 2013 ch 259 § 2 (AB 65), effective September 9, 2013.

CAL. PENAL CODE § 289 (2016). PENETRATION BY FOREIGN OBJECT

(a)

(1)

(A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

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- (D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.
- (2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.
- (b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.
- (c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.
- (d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:
- (1) Was unconscious or asleep.
 - (2) Was not aware, knowing, perceiving, or cognizant that the act occurred.
 - (3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in a county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over 21 years of age who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

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(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

CREDIT(S)

Added Stats 1978 ch 1313 § 1. Amended Stats 1980 ch 409 § 1, ch 915 § 3; Stats 1981 ch 896 § 3; Stats 1982 ch 1111 § 6. Amended Stats 1985 ch 929 § 3, ch 945 § 1; Stats 1986 ch 1299 § 6; Stats 1988 ch 404 § 1; Stats 1993 ch 595 § 6 (AB 187); Stats 1st Ex Sess 1993-94 ch 39 § 1 (AB 114 X), effective November 30, 1994, ch 40 § 4.5 (AB 85 X), effective November 30, 1994; Stats 1998 ch 936 § 6 (AB 105), effective September 28, 1998; Stats 1999 ch 706 § 5 (AB 1236), effective October 10, 1999; Stats 2002 ch 302 § 5 (SB 1421) (ch 302 prevails), ch 787 § 9 (SB 1798); Stats 2010 ch 219 § 9 (AB 1844), effective September 9, 2010; Stats 2013 ch 282 § 2 (SB 59), effective September 9, 2013.

COLORADO

COLO. REV. STAT. § 18-3-401 (2015). Definitions

As used in this part 4, unless the context otherwise requires:

(1) "Actor" means the person accused of a sexual offense pursuant to this part 4.

(1.5) "Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent under the provisions of this part 4. Submission under the influence of fear shall not constitute consent. Nothing in this definition shall be construed to affect the admissibility of evidence or the burden of proof in regard to the issue of consent under this part 4.

(1.7) "Diagnostic test" means a human immunodeficiency virus (HIV) screening test followed by a supplemental HIV test for confirmation in those instances when the HIV screening test is repeatedly reactive.

(2) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.

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(2.4) "Medical-reporting victim" means a victim who seeks medical treatment services following a sexual assault but who elects not to participate in the criminal justice system at the time the victim receives medical services.

(2.5) "Pattern of sexual abuse" means the commission of two or more incidents of sexual contact involving a child when such offenses are committed by an actor upon the same victim.

(3) "Physically helpless" means unconscious, asleep, or otherwise unable to indicate willingness to act.

(3.5) One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.

(4) "Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.

(5) "Sexual intrusion" means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

(6) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anilingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.

(7) "Victim" means the person alleging to have been subjected to a criminal sexual assault.

CREDIT(S)

L. 75: Entire part R&RE, p. 627, § 1, effective July 1.L. 83: (4) amended, p. 697, § 1, effective March 3; (3.5) added, p. 693, § 1, effective June 15.L. 86: (3.5) amended, p. 770, § 6 effective July 1.L. 88: (2) amended, p. 712, § 17, effective July 1.L. 89: (2.5) added, p. 903, § 1, effective June 1.L. 90: (3.5) amended, p. 1028, § 15, effective July 1.L. 92: (1.5) added, p. 322, § 3, effective July 1.L. 93: (2) and (4) amended, p. 1731, § 15, effective July 1.L. 2000: (1.7) added, p. 452, § 5, effective April 24.L. 2003: (1) amended, p. 1432, § 22, effective April 29.L. 2013: (2.4) added, (HB 13-1163), ch. 215, p. 895, § 1, effective May 13.

COLO. REV. STAT. § 18-3-402 (2015). Sexual Assault

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- (1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:
- (a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or
 - (b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
 - (c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or
 - (d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or
 - (e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or
 - (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or
 - (g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or
 - (h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.
- (2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.
- (3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).
- (3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.
- (4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:
- (a) The actor causes submission of the victim through the actual application of physical force or physical violence; or
 - (b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or
 - (c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this

threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.

(e) (Deleted by amendment, L. 2002, p. 1578, § 2, effective July 1, 2002.)

(5) (a) Sexual assault is a class 2 felony if any one or more of the following circumstances exist:

(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons; or

(II) The victim suffers serious bodily injury; or

(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.

(b)

(I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401 (8) (e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406 (2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.

(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.

(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

(7) A person who is convicted on or after July 1, 2013, of a sexual assault under this section, upon conviction, shall be advised by the court that the person has no right:

(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;

(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;

(c) Of inheritance from a child conceived as a result of the commission of that offense; and

(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.

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L. 75: Entire part R&RE, p. 628, § 1, effective July 1.L. 77: (1) amended, p. 962, § 15, effective July 1.L. 83: IP(1) amended, p. 698, § 1, effective July 1.L. 85: (2) R&RE and (3) and (4) amended, pp. 666, 667, § § 1, 2, effective July 1.L. 95: (4) amended, p. 1252, § 9, effective July 1.L. 98: (4) amended, p. 1293, § 13, effective November 1.L. 2000: Entire section R&RE, p. 698, § 18, effective July 1.L. 2002: (1)(g), (2), and (4)(e) amended and (1)(h) and (3.5) added, p. 1578, § § 1, 2, effective July 1; (5)(b)(l) and (6) amended, p. 1512, § 189, effective October 1.L. 2004: (3) and (6) amended, p. 635, § 5, effective August 4.L. 2013: (7) added, (SB 13-227), ch. 353, p. 2060, § 6, effective July 1.

COLO. REV. STAT. § 18-3-404 (2015). Unlawful Sexual Contact

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

- (a) The actor knows that the victim does not consent; or
- (b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- (c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
- (d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or
- (e) Repealed.
- (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- (g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Repealed.

(2) (a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

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(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.

(4) A person who is convicted on or after July 1, 2013, of unlawful sexual contact under this section, upon conviction, shall be advised by the court that the person has no right:

(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that offense;

(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;

(c) Of inheritance from a child conceived as a result of the commission of that offense; and

(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.

CREDIT(S)

L. 75: Entire part R&RE, p. 629, § 1, effective July 1.L. 77: IP(1) amended, p. 962, § 17, effective July 1.L. 86: (3) added, p. 777, § 6, effective July 1.L. 89: (1.5) added and (2) and (3) amended, p. 830, § 41, effective July 1.L. 90: (1)(e) repealed, p. 1033, § 25, effective July 1.L. 91: (3) amended, p. 1912, § 21, effective June 1.L. 92: (1.5) amended and (1.7) added, p. 404, § 15, effective June 3.L. 94: (1.5) and (1.7) amended, p. 1717, § 9, effective July 1.L. 95: (3) amended, p. 1252, § 10, effective July 1.L. 96: (1.7) amended, p. 1581, § 4, effective July 1.L. 2000: IP(1), (1.5), (1.7), (2), and (3) amended, p. 700, § 20, effective July 1.L. 2002: (3) amended, p. 1513, § 190, effective October 1.L. 2004: (2) and (3) amended, p. 635, § 6, effective August 4.L. 2010: (1.7)(b) added by revision, (SB 10-128), ch. 415, pp. 2045, 2049, § 1, 12.L. 2013: (4) added, (SB 13-227), ch. 353, p. 2060, § 7, effective July 1.

CONNECTICUT

CONN. GEN. STAT. § 53A-65 (2016). DEFINITIONS

As used in this part, except section 53a-70b, the following terms have the following meanings:

(1) “Actor” means a person accused of sexual assault.

(2) “Sexual intercourse” means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or

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fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body.

(3) "Sexual contact" means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.

(4) "Impaired because of mental disability or disease" means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct.

(5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.

(6) "Physically helpless" means that a person is (A) unconscious, or (B) for any other reason, is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact.

(7) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.

(8) "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.

(9) "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.

(10) "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.

(11) "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by or sexual intercourse with the psychotherapist.

(12) "Therapeutic deception" means a representation by a psychotherapist that sexual contact by or sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.

(13) "School employee" means: (A) A teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private

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elementary, middle or high school or working in a public or private elementary, middle or high school; or (B) any other person who, in the performance of his or her duties, has regular contact with students and who provides services to or on behalf of students enrolled in (i) a public elementary, middle or high school, pursuant to a contract with the local or regional board of education, or (ii) a private elementary, middle or high school, pursuant to a contract with the supervisory agent of such private school.

CREDIT(S)

1969, P.A. 828, S. 66; P.A. 75-619, S. 1; P.A. 81-27, S. 2; P.A. 85-341, S. 1; P.A. 87-259; P.A. 92-260, S. 32; P.A. 93-340, S. 1; P.A. 94-221, S. 17; P.A. 06-11, S. 1; 06-107, S. 1; 06-187, S. 45; P.A. 09-242, S. 1; P.A. 13-47, S. 3, eff. Oct. 1, 2013.

CONN. GEN. STAT. § 53A-70 (2016). SEXUAL ASSAULT IN THE FIRST DEGREE: CLASS B OR A FELONY.

(a) A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person, or (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person, or (3) commits sexual assault in the second degree as provided in section 53a-71 and in the commission of such offense is aided by two or more other persons actually present, or (4) engages in sexual intercourse with another person and such other person is mentally incapacitated to the extent that such other person is unable to consent to such sexual intercourse.

(b)

(1) Except as provided in subdivision (2) of this subsection, sexual assault in the first degree is a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court or, if the victim of the offense is under ten years of age, for which ten years of the sentence imposed may not be suspended or reduced by the court.

(2) Sexual assault in the first degree is a class A felony if the offense is a violation of subdivision (1) of subsection (a) of this section and the victim of the offense is under sixteen years of age or the offense is a violation of subdivision (2) of subsection (a) of this section. Any person found guilty under said subdivision (1) or (2) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim is under ten years of age or of which five years of the sentence imposed may not be suspended or reduced by the court if the victim is under sixteen years of age.

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(3) Any person found guilty under this section shall be sentenced to a term of imprisonment of at least ten years, a portion of which may be suspended, except as provided in subdivisions (1) and (2) of this subsection, or a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of at least ten years. Notwithstanding the provisions of subsection (a) of section 53a-29 and except as otherwise provided in this subsection, a court may suspend a portion of a sentence imposed under this subsection and impose a period of supervised probation pursuant to subsection (f) of section 53a-29.

CREDIT(S)

1969, P.A. 828, S. 71; 1971, P.A. 871, S. 19; 1972, P.A. 127, S. 78; P.A. 75-619, S. 3; P.A. 82-428, S. 2; P.A. 89-359; P.A. 92-87, S. 3; P.A. 93-340, S. 14; P.A. 95-142, S. 13; June Sp. Sess. P.A. 99-2, S. 49; P.A. 00-161, S. 1; P.A. 02-138, S. 5; P.A. 15-211, S. 16, eff. Oct. 1, 2015.

CONN. GEN. STAT. § 53A-70A (2016). AGGRAVATED SEXUAL ASSAULT IN THE FIRST DEGREE: CLASS B OR A FELONY

(a) A person is guilty of aggravated sexual assault in the first degree when such person commits sexual assault in the first degree as provided in section 53a-70, and in the commission of such offense (1) such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a deadly weapon, (2) with intent to disfigure the victim seriously and permanently, or to destroy, amputate or disable permanently a member or organ of the victim's body, such person causes such injury to such victim, (3) under circumstances evincing an extreme indifference to human life such person recklessly engages in conduct which creates a risk of death to the victim, and thereby causes serious physical injury to such victim, or (4) such person is aided by two or more other persons actually present. No person shall be convicted of sexual assault in the first degree and aggravated sexual assault in the first degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b)

(1) Except as provided in subdivision (2) of this subsection, aggravated sexual assault in the first degree is a class B felony. Any person found guilty under this section of a class B felony shall be sentenced to a term of imprisonment of at least ten years, five years of which may not be suspended or reduced by the court.

(2) Aggravated sexual assault in the first degree is a class A felony if the victim of the offense is under sixteen years of age. Any person found guilty under this section of a class A felony shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court, except that, if such person committed sexual assault in the

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first degree by violating subdivision (1) of subsection (a) of section 53a-70, and the victim of the offense is under sixteen years of age, twenty years of the sentence imposed may not be suspended or reduced by the court. Notwithstanding the provisions of subsection (a) of section 53a-29 and except as otherwise provided in this subsection, a court may suspend a portion of a sentence imposed under this subdivision and impose a period of probation pursuant to subsection (f) of section 53a-29, or may impose a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28.

CREDIT(S)

P.A. 75-619, S. 9; P.A. 80-442, S. 20, 28; P.A. 87-246; P.A. 92-87, S. 2; June Sp. Sess. P.A. 99-2, S. 50; P.A. 02-138, S. 6; P.A. 15-211, S. 17, eff. Oct. 1, 2015.

CONN. GEN. STAT. § 53A-71 (2016). SEXUAL ASSAULT IN THE SECOND DEGREE: CLASS C OR B FELONY

(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual intercourse; or (3) such other person is physically helpless; or (4) such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (6) the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or (7) the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or (8) the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (9) the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (10) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation

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in a program or activity, and such other person is under eighteen years of age; or (11) such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the second degree is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which nine months of the sentence imposed may not be suspended or reduced by the court.

CREDIT(S)

1969, P.A. 828, S. 72; P.A. 75-619, S. 4; P.A. 82-428, S. 3; P.A. 83-326, S. 1; P.A. 85-341, S. 2; P.A. 93-340, S. 2; P.A. 94-221, S. 18; P.A. 00-161, S. 2; P.A. 02-106, S. 1; 02-138, S. 7; P.A. 04-130, S. 1; P.A. 07-143, S. 1; P.A. 11-113, S. 1; P.A. 13-47, S. 1, eff. Oct. 1, 2013.

CONN. GEN. STAT. § 53A-72A (2016). SEXUAL ASSAULT IN THE THIRD DEGREE: CLASS D OR C FELONY

(a) A person is guilty of sexual assault in the third degree when such person (1) compels another person to submit to sexual contact (A) by the use of force against such other person or a third person, or (B) by the threat of use of force against such other person or against a third person, which reasonably causes such other person to fear physical injury to himself or herself or a third person, or (2) engages in sexual intercourse with another person whom the actor knows to be related to him or her within any of the degrees of kindred specified in [section 46b-21](#).

(b) Sexual assault in the third degree is a class D felony or, if the victim of the offense is under sixteen years of age, a class C felony.

CREDIT(S)

P.A. 75-619, S. 5; P.A. 80-346, S. 1; P.A. 92-260, S. 33; P.A. 02-138, S. 8.

CONN. GEN. STAT. § 53A-72B (2016). SEXUAL ASSAULT IN THE THIRD DEGREE WITH A FIREARM: CLASS C OR B FELONY

(a) A person is guilty of sexual assault in the third degree with a firearm when such person commits sexual assault in the third degree as provided in [section 53a-72a](#), and in the commission of such offense, such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a pistol, revolver,

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machine gun, rifle, shotgun or other firearm. No person shall be convicted of sexual assault in the third degree and sexual assault in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b) Sexual assault in the third degree with a firearm is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of ten years.

CREDIT(S)

P.A. 75-619, S. 10; June Sp. Sess. P.A. 99-2, S. 51; P.A. 02-138, S. 9.

CONN. GEN. STAT. § 53A-73A (2016). SEXUAL ASSAULT IN THE FOURTH DEGREE: CLASS A MISDEMEANOR OR CLASS D FELONY

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) mentally incapacitated or impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual contact, or (D) physically helpless, or (E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which

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employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age; or (9) such person subjects another person to sexual contact who is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.

CREDIT(S)

P.A. 75-619, S. 6; P.A. 83-326, S. 2; P.A. 93-340, S. 3; P.A. 94-221, S. 19; P.A. 02-106, S. 2; 02-138, S. 10; P.A. 04-130, S. 2; P.A. 07-143, S. 2; P.A. 11-113, S. 2; P.A. 13-28, S. 1, eff. Oct. 1, 2013; P.A. 13-47, S. 2, eff. Oct. 1, 2013.

DELAWARE

DEL. CODE ANN. TIT.11, § 761 (2016). DEFINITIONS GENERALLY APPLICABLE TO SEXUAL OFFENSES

- (a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.
- (b) "Cunnilingus" means any oral contact with the female genitalia.
- (c) "Fellatio" means any oral contact with the male genitalia.
- (d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

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- (e) "Position of trust, authority or supervision over a child" includes, but is not limited to:
- (1) Familial, guardianship or custodial authority or supervision; or
 - (2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or
 - (3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or
 - (4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or
 - (5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or
 - (6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or
 - (7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.
- (f) "Sexual contact" means:
- (1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or
 - (2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia; or
 - (3) Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks or genitalia
- which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. "Sexual contact" shall also include touching when covered by clothing.
- (g) "Sexual intercourse" means:
- (1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(h) "Sexual offense" means any offense defined by §§ 763 through 780, 783(4), 783(6), 783A(4), 783A(6), 787(b)(3), 787(b)(4), 1100A, 1108 through 1112B, 1335(a)(6), 1335(a)(7), 1352(2), and 1353(2), and 1361(b) of this title.

(i) "Sexual penetration" means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(j) "Without consent" means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or

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(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(k) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.

CREDIT(S)

11 Del. C. 1953, § 773; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 416, § 1; 61 Del. Laws, c. 56; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, §§ 27, 28; 69 Del. Laws, c. 44, § 1; 69 Del. Laws, c. 440, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 3-7; 71 Del. Laws, c. 467, § 6; 72 Del. Laws, c. 109, § 1; 74 Del. Laws, c. 345, § 2; 75 Del. Laws, c. 392, § 2; 76 Del. Laws, c. 66, § 1; 77 Del. Laws, c. 150, §§ 1-3; 77 Del. Laws, c. 318, § 1; 80 Del. Laws, c. 175, § 2.

DEL. CODE ANN. TIT. 11, § 767 (2016). UNLAWFUL SEXUAL CONTACT IN THE THIRD DEGREE; CLASS A MISDEMEANOR

A person is guilty of unlawful sexual contact in the third degree when the person has sexual contact with another person or causes the victim to have sexual contact with the person or a third person and the person knows that the contact is either offensive to the victim or occurs without the victim's consent.

Unlawful sexual contact in the third degree is a class A misdemeanor.

CREDIT(S)

11 Del. C. 1953, § 761; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 19; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.

DEL. CODE ANN. TIT. 11, § 768 (2016). UNLAWFUL SEXUAL CONTACT IN THE SECOND DEGREE; CLASS F FELONY

A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person.

Unlawful sexual contact in the second degree is a class F felony.

CREDIT(S)

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11 Del. C. 1953, §§ 761, 762; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 20; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 364, § 1; 77 Del. Laws, c. 148, § 33.

DEL. CODE ANN. TIT. 11, § 769 (2016). UNLAWFUL SEXUAL CONTACT IN THE FIRST DEGREE; CLASS D FELONY

(a) A person is guilty of unlawful sexual contact in the first degree when:

(1) In the course of committing unlawful sexual contact in the third degree or in the course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

(2) [Repealed.]

(3) The person intentionally has sexual contact with another person who is less than 13 years of age or causes the victim to have sexual contact with the person or a third person.

(b) Unlawful sexual contact in the first degree is a class D felony.

CREDIT(S)

11 Del. C. 1953, § 767; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 56, § 2; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 21; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 75 Del. Laws, c. 392, § 1; 76 Del. Laws, c. 364, § 2; 77 Del. Laws, c. 148, § 34; 77 Del. Laws, c. 318, § 7.

DEL. CODE ANN. TIT. 11, § 770 (XXXX). RAPE IN THE FOURTH DEGREE; CLASS C FELONY

(a) A person is guilty of rape in the fourth degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or

(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or

(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent; or

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b. The victim has not reached that victim's sixteenth birthday.

(4) [Repealed.]

(b) Paragraph (a)(3) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

Rape in the fourth degree is a class C felony.

CREDIT(S)

71 Del. Laws, c. 285, § 10; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 318, §§ 7, 9.

DEL. CODE ANN. TIT. 11, § 771 (2016). RAPE IN THE THIRD DEGREE; CLASS B FELONY

(a) A person is guilty of rape in the third degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached that victim's sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached that victim's fourteenth birthday and the person has reached that person's nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

b. The victim has not reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.

(3) [Repealed.]

(b) Paragraph (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian or guardians, the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.

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(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Rape in the third degree is a class B felony.

CREDIT(S)

71 Del. Laws, c. 285, § 11; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 271, §§ 4-6; 77 Del. Laws, c. 318, §§ 7, 8.

DEL. CODE ANN. TIT. 11, § 772 (2016). RAPE IN THE SECOND DEGREE; CLASS B FELONY

(a) A person is guilty of rape in the second degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:

1. Any felony; or

2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or

c. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

e. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

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f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

g. The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

h. [Repealed.]

(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.

Rape in the second degree is a class B felony.

CREDIT(S)

71 Del. Laws, c. 285, § 12; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.

DEL. CODE ANN. TIT. 11, § 773 (2016). RAPE IN THE FIRST DEGREE; CLASS A FELONY

(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:

a. Any felony; or

b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or

(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

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(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

(5) The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

(6) [Repealed.]

(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

(1) The victim had not yet reached that victim's sixteenth birthday at the time of the offense and the person inflicts serious physical injury on the victim; or

(2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

(3) The person is convicted of rape against 3 or more separate victims; or

(4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

Rape in the first degree is a class A felony.

CREDIT(S)

71 Del. Laws, c. 285, § 13; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.

DISTRICT OF COLUMBIA

D.C. Code § 22-3001 (2016). Definitions

For the purposes of this chapter:

(1) "Actor" means a person accused of any offense proscribed under this chapter.

(2) "Bodily injury" means injury involving loss or impairment of the function of a bodily member, organ, or mental faculty, or physical disfigurement, disease, sickness, or injury involving significant pain.

(3) "Child" means a person who has not yet attained the age of 16 years.

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- (4) "Consent" means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.
- (4A) "Domestic partner" shall have the same meaning as provided in § 32-701(3).
- (4B) "Domestic partnership" shall have the same meaning as provided in § 32-701(4).
- (5) "Force" means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.
- (5A) "Minor" means a person who has not yet attained the age of 18 years.
- (6) "Official custody" means:
- (A) Detention following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion;
- (B) Custody for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; or
- (C) Probation or parole.
- (7) "Serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.
- (8) "Sexual act" means:
- (A) The penetration, however slight, of the anus or vulva of another by a penis;
- (B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
- (C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.
- (9) "Sexual contact" means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (10) "Significant relationship" includes:
- (A) A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;

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- (B) A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;
- (C) The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and
- (D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor.
- (11) "Victim" means a person who is alleged to have been subject to any offense set forth in subchapter II of this chapter.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 101, 42 DCR 53; Apr. 24, 2007, D.C. Law 16-306, § 216(a), 53 DCR 8610; Dec. 10, 2009, D.C. Law 18-88, § 404(a), 56 DCR 7413.)

D.C. Code § 22-3002 (2016). First Degree Sexual Abuse

- (a) A person shall be imprisoned for any term of years or for life, and in addition, may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:
- (1) By using force against that other person;
 - (2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;
 - (3) After rendering that other person unconscious; or
 - (4) After administering to that other person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.
- (b) The court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 201, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(a), 44 DCR 1408; June 8, 2001, D.C. Law 13-302, § 7(a), 47 DCR 7249; June 11, 2013, D.C. Law 19-317, § 232(a), 60 DCR 2064.)

D.C. Code § 22-3003 (2016). Second Degree Sexual Abuse

A person shall be imprisoned for not more than 20 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes another person to engage in or submit to a sexual act in the following manner:

- (1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or
- (2) Where the person knows or has reason to know that the other person is:
 - (A) Incapable of appraising the nature of the conduct;
 - (B) Incapable of declining participation in that sexual act; or
 - (C) Incapable of communicating unwillingness to engage in that sexual act.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 202, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(b), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(b), 60 DCR 2064.)

D.C. Code § 22-3004 (2016). Third Degree Sexual Abuse

A person shall be imprisoned for not more than 10 years and may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

- (1) By using force against that other person;
- (2) By threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping;
- (3) After rendering that person unconscious; or
- (4) After administering to that person by force or threat of force, or without the knowledge or permission of that other person, a drug, intoxicant, or similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 203, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(c), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(c), 60 DCR 2064.)

D.C. Code § 22-3005 (2016). Fourth Degree Sexual Abuse

A person shall be imprisoned for not more than 5 years and, in addition, may be fined not more than the amount set forth in § 22-3571.01, if that person engages in or causes sexual contact with or by another person in the following manner:

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- (1) By threatening or placing that other person in reasonable fear (other than by threatening or placing that other person in reasonable fear that any person will be subjected to death, bodily injury, or kidnapping); or
- (2) Where the person knows or has reason to know that the other person is:
 - (A) Incapable of appraising the nature of the conduct;
 - (B) Incapable of declining participation in that sexual contact; or
 - (C) Incapable of communicating unwillingness to engage in that sexual contact.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 204, 42 DCR 53; June 3, 1997, D.C. Law 11-275, § 13(d), 44 DCR 1408; June 11, 2013, D.C. Law 19-317, § 232(d), 60 DCR 2064.)

D.C. Code § 22-3006 (2016). Misdemeanor Sexual Abuse

Whoever engages in a sexual act or sexual contact with another person and who should have knowledge or reason to know that the act was committed without that other person's permission, shall be imprisoned for not more than 180 days and, in addition, may be fined in an amount not more than the amount set forth in § 22-3571.01.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 205, 42 DCR 53; June 11, 2013, D.C. Law 19-317, § 232(e), 60 DCR 2064.)

D.C. Code § 22-3023 (2016). Prompt Reporting

Evidence of delay in reporting an offense under subchapter II of this chapter to a public authority shall not raise any presumption concerning the credibility or veracity of a charge under subchapter II of this chapter.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 303, 42 DCR 53.)

D.C. Code § 22-3101 (2016). Definitions

For the purposes of this chapter, the term:

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- (1) "Knowingly" means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry, or both.
- (2) "Minor" means any person under 18 years of age.
- (3) "Performance" means any play, motion picture, photograph, electronic representation, dance, or any other visual presentation or exhibition.
- (4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same.
- (5) "Sexual conduct" means:
 - (A) Actual or simulated sexual intercourse:
 - (i) Between the penis and the vulva, anus, or mouth;
 - (ii) Between the mouth and the vulva or anus; or
 - (iii) Between an artificial sexual organ or other object or instrument used in the manner of an artificial sexual organ and the anus or vulva;
 - (B) Masturbation;
 - (C) Sexual bestiality;
 - (D) Sadomasochistic sexual activity for the purpose of sexual stimulation; or
 - (E) Lewd exhibition of the genitals.
- (6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a person under 18 years of age.

CREDIT(S)

(Mar. 9, 1983, D.C. Law 4-173, § 2, 29 DCR 5749; Oct. 23, 2010, D.C. Law 18-239, § 205(a), 57 DCR 5405.)

FLORIDA

FLA. STAT. ANN. § 775.082 (2016). PENALTIES; APPLICABILITY OF SENTENCING STRUCTURES; MANDATORY MINIMUM SENTENCES FOR CERTAIN REOFFENDERS PREVIOUSLY RELEASED FROM PRISON. [EFFECTIVE OCTOBER 1, 2016]

- (1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results

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in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.

(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.

(3) A person who has been convicted of any other designated felony may be punished as follows:

(a)

1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.

2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.

3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

4.

a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:

(I) A term of imprisonment for life; or

(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).

b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.

(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.

(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.

(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.

(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:

(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;

(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.

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(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.

(6) Nothing in this section shall be construed to alter the operation of any statute of this state authorizing a trial court, in its discretion, to impose a sentence of imprisonment for an indeterminate period within minimum and maximum limits as provided by law, except as provided in subsection (1).

(7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.

(8)

(a) The sentencing guidelines that were effective October 1, 1983, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1983, and before January 1, 1994, and to all felonies, except capital felonies and life felonies, committed before October 1, 1983, when the defendant affirmatively selects to be sentenced pursuant to such provisions.

(b) The 1994 sentencing guidelines, that were effective January 1, 1994, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after January 1, 1994, and before October 1, 1995.

(c) The 1995 sentencing guidelines that were effective October 1, 1995, and any revisions thereto, apply to all felonies, except capital felonies, committed on or after October 1, 1995, and before October 1, 1998.

(d) The Criminal Punishment Code applies to all felonies, except capital felonies, committed on or after October 1, 1998. Any revision to the Criminal Punishment Code applies to sentencing for all felonies, except capital felonies, committed on or after the effective date of the revision.

(e) Felonies, except capital felonies, with continuing dates of enterprise shall be sentenced under the sentencing guidelines or the Criminal Punishment Code in effect on the beginning date of the criminal activity.

(9)

(a)

1. "Prison releasee reoffender" means any defendant who commits, or attempts to commit:

- a. Treason;
- b. Murder;
- c. Manslaughter;
- d. Sexual battery;
- e. Carjacking;
- f. Home-invasion robbery;
- g. Robbery;

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- h. Arson;
 - i. Kidnapping;
 - j. Aggravated assault with a deadly weapon;
 - k. Aggravated battery;
 - l. Aggravated stalking;
 - m. Aircraft piracy;
 - n. Unlawful throwing, placing, or discharging of a destructive device or bomb;
 - o. Any felony that involves the use or threat of physical force or violence against an individual;
 - p. Armed burglary;
 - q. Burglary of a dwelling or burglary of an occupied structure; or
 - r. Any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5); within 3 years after being released from a state correctional facility operated by the Department of Corrections or a private vendor or within 3 years after being released from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.
2. "Prison releasee reoffender" also means any defendant who commits or attempts to commit any offense listed in sub-subparagraphs (a)1.a.-r. while the defendant was serving a prison sentence or on escape status from a state correctional facility operated by the Department of Corrections or a private vendor or while the defendant was on escape status from a correctional institution of another state, the District of Columbia, the United States, any possession or territory of the United States, or any foreign jurisdiction, following incarceration for an offense for which the sentence is punishable by more than 1 year in this state.
3. If the state attorney determines that a defendant is a prison releasee reoffender as defined in subparagraph 1., the state attorney may seek to have the court sentence the defendant as a prison releasee reoffender. Upon proof from the state attorney that establishes by a preponderance of the evidence that a defendant is a prison releasee reoffender as defined in this section, such defendant is not eligible for sentencing under the sentencing guidelines and must be sentenced as follows:
- a. For a felony punishable by life, by a term of imprisonment for life;
 - b. For a felony of the first degree, by a term of imprisonment of 30 years;
 - c. For a felony of the second degree, by a term of imprisonment of 15 years; and
 - d. For a felony of the third degree, by a term of imprisonment of 5 years.
- (b) A person sentenced under paragraph (a) shall be released only by expiration of sentence and shall not be eligible for parole, control release, or any form of early release. Any person sentenced under paragraph (a) must serve 100 percent of the court-imposed sentence.

(c) Nothing in this subsection shall prevent a court from imposing a greater sentence of incarceration as authorized by law, pursuant to s. 775.084 or any other provision of law.

(d)

1. It is the intent of the Legislature that offenders previously released from prison who meet the criteria in paragraph (a) be punished to the fullest extent of the law and as provided in this subsection, unless the state attorney determines that extenuating circumstances exist which preclude the just prosecution of the offender, including whether the victim recommends that the offender not be sentenced as provided in this subsection.

2. For every case in which the offender meets the criteria in paragraph (a) and does not receive the mandatory minimum prison sentence, the state attorney must explain the sentencing deviation in writing and place such explanation in the case file maintained by the state attorney.

(10) If a defendant is sentenced for an offense committed on or after July 1, 2009, which is a third degree felony but not a forcible felony as defined in s. 776.08, and excluding any third degree felony violation under chapter 810, and if the total sentence points pursuant to s. 921.0024 are 22 points or fewer, the court must sentence the offender to a nonstate prison sanction. However, if the court makes written findings that a nonstate prison sanction could present a danger to the public, the court may sentence the offender to a state correctional facility pursuant to this section.

(11) The purpose of this section is to provide uniform punishment for those crimes made punishable under this section and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

We find no difficulty with a continuation of the sentencing for these former "capital offenses" under § 775.082(1) as automatically life imprisonment upon conviction, inasmuch as that is the only offense left in the statute. (This was not the case when we had before us the earlier case of *Barlow v. Taylor*, 249 So.2d 437 (Fla.1971).) *HN4* The elimination of the death penalty from the statute does not of course destroy the entire statute. We have steadfastly ruled that the remaining consistent portions of statutes shall be held constitutional if there is any reasonable basis for doing so and of course this clearly exists [503] in these circumstances. The comprehensive opinion by Mr. Justice Roberts (now Chief Justice) in *Small v. Sun Oil Co.*, 222 So.2d 196 (Fla.1969), skillfully analyzes this rule of severability. This position is consistent with the Legislature's express intent in this area. At their 1972 Session, the Legislature foresaw the possibility of the current situation and provided:

HN5 "775.082 *Penalties for felonies and misdemeanors* - (2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, a person who has been convicted of a capital felony shall be punished by life imprisonment."

The Florida Supreme Court has held that burglary of an unoccupied dwelling does not qualify a defendant for classification as a prison releasee reoffender under former Fla. Stat. ch. 775.082. In

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response, the Florida Legislature has amended ch. 775.082 and added burglary of an unoccupied dwelling to the list of qualifying offenses, thus, effective July 1, 2001, making both burglary of an occupied dwelling and burglary of an unoccupied dwelling qualifying offenses.

In three consolidated cases, appellant challenged the constitutionality of the Prison Releasee Reoffender Act (Act), Fla. Stat. ch. 775.082(8) (1997). The court found the Act constitutional in the face of a separation of powers challenge. The court affirmed the sentence for the offense committed on June 30, 1997, after the May 30, 1997, effective date of the Act. The court concluded that application of the Act to appellant's release from prison on January 5, 1996, and to his other two offenses, committed May 5, 1997, would be a violation of the ex post facto clause because the qualifying events for purposes of the statute occurred before the Act became effective. The court concluded that where both the prison release date and the new offenses occurred before the Act's effective date, application was an improper retrospective ex post facto violation. Sentence vacated in the cases that occurred before Act's effective date

First-degree murder is a capital felony in Florida. See Fla. Stat. §782.04(1)(a) (2010). Under state law, the maximum sentence a capital felon may receive on the basis of the conviction alone is life imprisonment. §775.082(1). "A person who has been convicted of a capital felony shall be punished by death" only if an additional sentencing proceeding "results in findings by the court that such person shall be punished by death." Ibid. "[O]therwise such person shall be punished by life imprisonment and shall be ineligible for parole." Ibid.

CREDIT(S)

S. 3, ch. 71-136; ss. 1, 2, ch. 72-118; s. 2, ch. 72-724; s. 5, ch. 74-383; s. 1, ch. 77-174; s. 1, ch. 83-87; s. 1, ch. 94-228; s. 16, ch. 95-184; s. 4, ch. 95-294; s. 2, ch. 97-239; s. 2, ch. 98-3; s. 10, ch. 98-204; s. 2, ch. 99-188; s. 3, ch. 2000-246; s. 1, ch. 2001-239; s. 2, ch. 2002-70; ss. 1, 2, ch. 2002-211; s. 4, ch. 2005-28; s. 13, ch. 2008-172, eff. Oct. 1, 2008; s. 1, ch. 2008-182, eff. July 1, 2008; s. 1, ch. 2009-63, eff. July 1, 2009; s. 2, ch. 2011-200, eff. July 1, 2011; s. 8, ch. 2014-160, eff. Oct. 1, 2014; s. 1, ch. 2014-220, eff. July 1, 2014; s. 1, ch. 2016-13, eff. Mar. 7, 2016; s. 19, ch. 2016-24, eff. Oct. 1, 2016.

Donaldson v. Sack, 265 So. 2d 499, 502-503 (Fla. 1972)

Hanna v. State, 898 So. 2d 1200, 1200 (Fla. Dist. Ct. App. 5th Dist. 2005)

Williams v. State, 743 So. 2d 1154, 1154 (Fla. Dist. Ct. App. 2d Dist. 1999)

Hurst v. Florida, 136 S. Ct. 616, 620 (U.S. 2016)

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FLA. STAT. ANN. § 775.083 (2016). FINES

(1) A person who has been convicted of an offense other than a capital felony may be sentenced to pay a fine in addition to any punishment described in s. 775.082; when specifically authorized by statute, he or she may be sentenced to pay a fine in lieu of any punishment described in s. 775.082. A person who has been convicted of a noncriminal violation may be sentenced to pay a fine. Fines for designated crimes and for noncriminal violations shall not exceed:

- (a) \$15,000, when the conviction is of a life felony.
- (b) \$10,000, when the conviction is of a felony of the first or second degree.
- (c) \$5,000, when the conviction is of a felony of the third degree.
- (d) \$1,000, when the conviction is of a misdemeanor of the first degree.
- (e) \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation.
- (f) Any higher amount equal to double the pecuniary gain derived from the offense by the offender or double the pecuniary loss suffered by the victim.
- (g) Any higher amount specifically authorized by statute.

Fines imposed in this subsection shall be deposited by the clerk of the court in the fine and forfeiture fund established pursuant to s. 142.01, except that the clerk shall remit fines imposed when adjudication is withheld to the Department of Revenue for deposit in the General Revenue Fund. If a defendant is unable to pay a fine, the court may defer payment of the fine to a date certain. As used in this subsection, the term "convicted" or "conviction" means a determination of guilt which is the result of a trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld.

(2) In addition to the fines set forth in subsection (1), court costs shall be assessed and collected in each instance a defendant pleads nolo contendere to, or is convicted of, or adjudicated delinquent for, a felony, a misdemeanor, or a criminal traffic offense under state law, or a violation of any municipal or county ordinance if the violation constitutes a misdemeanor under state law. The court costs imposed by this section shall be \$50 for a felony and \$20 for any other offense and shall be deposited by the clerk of the court into an appropriate county account for disbursement for the purposes provided in this subsection. A county shall account for the funds separately from other county funds as crime prevention funds. The county, in consultation with the sheriff, must expend such funds for crime prevention programs in the county, including safe neighborhood programs under ss. 163.501-163.523.

(3) The purpose of this section is to provide uniform penalty authorization for criminal offenses and, to this end, a reference to this section constitutes a general reference under the doctrine of incorporation by reference.

CREDIT(S)

S. 4, ch. 71-136; s. 6, ch. 74-383; s. 1, ch. 77-97; s. 1, ch. 77-174; s. 1, ch. 96-408; s. 1810, ch. 97-102; s. 117, ch. 2003-402; s. 5, ch. 2009-6, eff. Feb. 1, 2009; s. 29, ch. 2010-162, eff. July 1, 2010.

FLA. STAT. ANN. § 794.011 (2016). SEXUAL BATTERY

(1) As used in this chapter:

- (a) “Consent” means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.
- (b) “Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (c) “Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.
- (d) “Offender” means a person accused of a sexual offense in violation of a provision of this chapter.
- (e) “Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
- (f) “Retaliation” includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.
- (g) “Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.
- (h) “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
- (i) “Victim” means a person who has been the object of a sexual offense.
- (j) “Physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)

(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person’s consent, and in the process thereof uses or threatens to use a deadly weapon or uses

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actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4)

(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);
2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Section 800.04;
5. Section 825.1025;
6. Section 847.0135(5); or
7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)-(d):

1. The victim is physically helpless to resist.
2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

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4. The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.
5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.
6. The victim is physically incapacitated.
7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5)

(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);
2. Section 787.01(3)(a)2. or 3.;
3. Section 787.02(3)(a)2. or 3.;
4. Section 800.04;
5. Section 825.1025;

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6. Section 847.0135(5); or
7. This chapter, excluding subsection (10) of this section.
- (6)
- (a) The offenses described in paragraphs (5)(a)-(c) are included in any sexual battery offense charged under subsection (3).
- (b) The offense described in paragraph (5)(a) is included in an offense charged under paragraph (4)(a).
- (c) The offense described in paragraph (5)(b) is included in an offense charged under paragraph (4)(b).
- (d) The offense described in paragraph (5)(c) is included in an offense charged under paragraph (4)(c).
- (e) The offense described in paragraph (5)(d) is included in an offense charged under paragraph (4)(d).
- (7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the “Junny Rios-Martinez, Jr. Act of 1992.”
- (8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:
- (a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).
- (9) For prosecution under paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an offense committed under any of the circumstances listed in subparagraph (4)(e)7., acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

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(10) A person who falsely accuses a person listed in subparagraph (4)(e)7. or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

S. 2, ch. 74-121; s. 17, ch. 75-298; s. 1, ch. 84-86; s. 1, ch. 89-216; s. 3, ch. 92-135; s. 1, ch. 92-310; s. 3, ch. 93-156; s. 2, ch. 95-348; s. 99, ch. 99-3; s. 8, ch. 99-188; s. 1, ch. 2002-211; s. 3, ch. 2014-4, eff. Oct. 1, 2014.

GEORGIA

GA. CODE ANN. § 16-6-1 (2015). RAPE

(a) A person commits the offense of rape when he has carnal knowledge of:

- (1) A female forcibly and against her will; or
- (2) A female who is less than ten years of age.

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

The State's current capital rape statute, by contrast, is explicit that the rape of "[a] female who is less than ten years of age" is punishable "by death." §§ 16-6-1(a)(2), (b). Based on a recent statement by the Supreme Court of Georgia it must be assumed that this law is still in force: "Neither the United States Supreme Court, nor this Court, has yet addressed whether the death penalty is unconstitutionally disproportionate for the crime of raping a child."

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CREDIT(S)

Laws 1833, Cobb's 1851 Digest, p. 787; Code 1863, §§ 4248, 4249; Ga. L. 1866, p. 151, § 1; Code 1868, §§ 4283, 4284; Code 1873, §§ 4349, 4350; Code 1882, §§ 4349, 4350; Penal Code 1895, §§ 93, 94; Penal Code 1910, §§ 93, 94; Code 1933, §§ 26-1301, 26-1302; Ga. L. 1960, p. 266, § 1; Code 1933, § 26-2001, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1978, p. 3, § 1; Ga. L. 1994, p. 1959, § 5; Ga. L. 1996, p. 1115, § 1; Ga. L. 1997, p. 6, § 2; Ga. L. 1999, p. 666, § 1; Ga. L. 2006, p. 379, § 8/HB 1059; Ga. L. 2011, p. 214, § 1/HB 503.

Kennedy v. Louisiana, 554 U.S. 407, 424 (U.S. 2008)

GA. CODE ANN. § 16-6-22.1 (2015). SEXUAL BATTERY

- (a) For the purposes of this Code section, the term "intimate parts" means the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.
- (b) A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.
- (c) Except as otherwise provided in this Code section, a person convicted of the offense of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.
- (d) A person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.
- (e) Upon a second or subsequent conviction under subsection (b) of this Code section, a person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years and, in addition, shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

CREDIT(S)

Code 1981, § 16-6-22.1, enacted by Ga. L. 1990, p. 1003, § 2; Ga. L. 2003, p. 573, § 1.1; Ga. L. 2006, p. 379, § 15/HB 1059.

GA. CODE ANN. § 16-6-22.2 (2015). AGGRAVATED SEXUAL BATTERY

- (a) For the purposes of this Code section, the term "foreign object" means any article or instrument other than the sexual organ of a person.
- (b) A person commits the offense of aggravated sexual battery when he or she intentionally penetrates with a foreign object the sexual organ or anus of another person without the consent of that person.

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(c) A person convicted of the offense of aggravated sexual battery shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

CREDIT(S)

Code 1981, § 16-6-22.2, enacted by Ga. L. 1990, p. 1003, § 2; Ga. L. 1994, p. 1959, § 8; Ga. L. 2006, p. 379, § 16/HB 1059.

HAWAII

HAW. REV. STAT. ANN. § 702-223 (2016). CONSENT; GENERAL

In any prosecution, the victim's consent to the conduct alleged, or to the result thereof, is a defense if the consent negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law defining the offense.

CREDIT(S)

L 1972, c 9, pt of § 1.

HAW. REV. STAT. ANN. § 702-234 (2016). CONSENT TO BODILY INJURY

In any prosecution involving conduct which causes or threatens bodily injury, consent to such conduct or to the infliction of such injury is a defense if:

- (1) The conduct and the injury are reasonably foreseeable hazards of joint participation in a lawful athletic event or competitive sport; or
- (2) The consent establishes a justification for the conduct under chapter 703.

CREDIT(S)

L 1972, c 9, pt of § 1.

HAW. REV. STAT. ANN. § 702-235 (2016). INEFFECTIVE CONSENT

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Unless otherwise provided by this Code or by the law defining the offense, consent does not constitute a defense if:

- (1) It is given by a person who is legally incompetent to authorize the conduct alleged;
- (2) It is given by a person who by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct alleged;
- (3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or
- (4) It is induced by force, duress or deception.

CREDIT(S)

L 1972, c 9, pt of § 1.

HAW. REV. STAT. ANN. § 702-236 (2016). DE MINIMIS INFRACTIONS

(1) The court may dismiss a prosecution if, having regard to the nature of the conduct alleged and the nature of the attendant circumstances, it finds that the defendant's conduct:

- (a) Was within a customary license or tolerance, which was not expressly refused by the person whose interest was infringed and which is not inconsistent with the purpose of the law defining the offense; or
- (b) Did not actually cause or threaten the harm or evil sought to be prevented by the law defining the offense or did so only to an extent too trivial to warrant the condemnation of conviction; or
- (c) Presents such other extenuations that it cannot reasonably be regarded as envisaged by the legislature in forbidding the offense.

(2) The court shall not dismiss a prosecution under subsection (1)(c) of this section without filing a written statement of its reasons.

CREDIT(S)

L 1972, c 9, pt of § 1.

HAW. REV. STAT. ANN. § 707-700 (2016). DEFINITIONS OF TERMS IN THIS CHAPTER

In this chapter, unless a different meaning plainly is required:

"Bodily injury" means physical pain, illness, or any impairment of physical condition.

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“Compulsion” means absence of consent, or a threat, express or implied, that places a person in fear of public humiliation, property damage, or financial loss.

“Dangerous instrument” means any firearm, whether loaded or not, and whether operable or not, or other weapon, device, instrument, material, or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

“Deviate sexual intercourse” means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other.

“Emergency worker” means any:

(1) Law enforcement officer, including any police officer, public safety officer, parole or probation officer, or any other officer of any county, state, federal, or military agency authorized to exercise law enforcement or police powers;

(2) Firefighter, emergency medical services personnel, emergency medical technician, ambulance crewmember, or any other emergency response personnel;

(3) Member of the Hawaii National Guard on any duty or service done under or in pursuance of an order or call of the governor or the President of the United States or any proper authority;

(4) Member of the United States Army, Air Force, Navy, Marine Corps, or Coast Guard on any duty or service performed under or in pursuance of an order or call of the President of the United States or any proper authority;

(5) Member of the National Guard from any other state ordered into service by any proper authority; or

(6) Person engaged in emergency management functions as authorized by the director of Hawaii emergency management or the administrator or director of the county emergency management agency or as otherwise authorized under chapter 127A.

“Labor” means work of economic or financial value.

“Married” includes persons legally married, and a male and female living together as husband and wife regardless of their legal status, but does not include spouses living apart.

“Mentally defective” means a person suffering from a disease, disorder, or defect which renders the person incapable of appraising the nature of the person’s conduct.

“Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct as a result of the influence of a substance administered to the person without the person’s consent.

“Person” means a human being who has been born and is alive.

“Physically helpless” means a person who is unconscious or for any other reason physically unable to communicate unwillingness to an act.

“Public highway” shall have the same meaning as in section 264-1.

“Relative” means parent, ancestor, brother, sister, uncle, aunt, or legal guardian.

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“Restrain” means to restrict a person’s movement in such a manner as to interfere substantially with the person’s liberty:

- (1) By means of force, threat, or deception; or
- (2) If the person is under the age of eighteen or incompetent, without the consent of the relative, person, or institution having lawful custody of the person.

“Serious bodily injury” means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

“Services” means a relationship between a person and the actor in which the person performs activities under the supervision of or for the benefit of the actor. Prostitution-related and obscenity-related activities as set forth in chapter 712 are forms of “services” under this section. Nothing in this chapter shall be construed to legitimize or legalize prostitution.

“Sexual contact” means any touching, other than acts of “sexual penetration”, of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.

“Sexual penetration” means:

- (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. As used in this definition, “genital opening” includes the anterior surface of the vulva or labia majora; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.

“Street” shall have the same meaning as in section 291C-1.

“Strong compulsion” means the use of or attempt to use one or more of the following to overcome a person:

- (1) A threat, express or implied, that places a person in fear of bodily injury to the individual or another person, or in fear that the person or another person will be kidnapped;
- (2) A dangerous instrument; or
- (3) Physical force.

“Substantial bodily injury” means bodily injury which causes:

- (1) A major avulsion, laceration, or penetration of the skin;
- (2) A burn of at least second degree severity;
- (3) A bone fracture;
- (4) A serious concussion; or
- (5) A tearing, rupture, or corrosive damage to the esophagus, viscera, or other internal organs.

“Vehicle” has the same meaning as in section 291E-1.

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“Vulnerable user” means:

- (1) A pedestrian legally within a street or public highway;
- (2) A roadway worker actually engaged in work upon a street or public highway or in work upon utility facilities along a street or public highway, or engaged in the provision of emergency services within a street or public highway, including but not limited to:
 - (a) Construction and maintenance workers; and
 - (b) Police, fire, and other emergency responders; or
- (3) A person legally operating any of the following within the street or public highway:
 - (a) A bicycle;
 - (b) A moped;
 - (c) An electric personal assistive mobility device; or
 - (d) A wheelchair conveyance or other personal mobility device.

CREDIT(S)

L 1972, c 9, pt of § 1; am L 1973, c 136, § 6; am L 1980, c 223, § 1; am L 1981, c 213, § 1; am L 1986, c 314, § 48; am L 1987, c 181, § 7; gen ch 1993; am L 2001, c 30, § 1; am L 2004, c 61, § 3; am L 2006, c 116, § 4; am L 2006, c 230, § 26; am L 2008, c 147, § 1, effective June 6, 2008; am L 2012, c 21, § 1, effective April 17, 2012; am L 2012, c 316, § 1, effective July 10, 2012; am L 2014, c 111, § 15, effective July 1, 2014; am L 2015, c 35, § 23, effective May 5, 2015.

HAW. REV. STAT. ANN. § 707-730 (2016). SEXUAL ASSAULT IN THE FIRST DEGREE

- (1) A person commits the offense of sexual assault in the first degree if:
 - (a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;
 - (b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;
 - (c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor;
 - (d) The person knowingly subjects to sexual penetration another person who is mentally defective;or
 - (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

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Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices.

(2) Sexual assault in the first degree is a class A felony.

CREDIT(S)

L 1986, c 314, pt of § 57; am L 1987, c 181, § 9; am L Sp 2001 2nd, c 1, §§ 1,7; am L 2002, c 36, § 3; am L 2003, c 62, § 1; am L 2004, c 10, § 15; am L 2006, c 230, § 32; am L 2009, c 11, § 72, effective April 3, 2008.

HAW. REV. STAT. ANN. § 707-731 (2016). SEXUAL ASSAULT IN THE SECOND DEGREE

(1) A person commits the offense of sexual assault in the second degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or

(c) The person, while employed:

(i) In a state correctional facility;

(ii) By a private company providing services at a correctional facility;

(iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;

(iv) By a private correctional facility operating in the State of Hawaii; or

(v) As a law enforcement officer as defined in section [710-1000],

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(2) Sexual assault in the second degree is a class B felony.

CREDIT(S)

L 1986, c 314, pt of § 57; am L 1987, c 181, § 10; am L 1997, c 366, § 1; am L 2002, c 36, § 1; am L 2004, c 61, § 4; am L 2006, c 230, § 33; am L 2009, c 11, § 73, effective April 3, 2008.

Haw. Rev. Stat. Ann. § 707-732 (2016). Sexual assault in the third degree

(1) A person commits the offense of sexual assault in the third degree if:

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- (a) The person recklessly subjects another person to an act of sexual penetration by compulsion;
- (b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;
- (c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:
 - (i) The person is not less than five years older than the minor; and
 - (ii) The person is not legally married to the minor;
- (d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;
- (e) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section [710-1000], knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or
- (f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

(2) Sexual assault in the third degree is a class C felony.

CREDIT(S)

L 1986, c 314, pt of § 57; am L 1987, c 181, § 11; am L Sp 2001 2nd, c 1, § 2; am L 2002, c 36, § 2; am L 2003, c 62, § 1; am L 2004, c 10, § 15; am L 2004, c 61, § 5; am L 2009, c 11, § 74, effective April 3, 2008.

Haw. Rev. Stat. Ann. § 707-733 (2016). Sexual assault in the fourth degree

- (1) A person commits the offense of sexual assault in the fourth degree if:
 - (a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;
 - (b) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or
 - (c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.
- (2) Sexual assault in the fourth degree is a misdemeanor.
- (3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination pursuant to section 706-603.

CREDIT(S)

L 1986, c 314, pt of § 57; am L 1991, c 214, § 1.

IDAHO

IDAHO CODE ANN. § 18-6101 (2016). Rape Defined

Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one (1) of the following circumstances:

- (1) Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.
- (2) Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the victim.
- (3) Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability, whether temporary or permanent, of giving legal consent.
- (4) Where the victim resists but the resistance is overcome by force or violence.
- (5) Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.

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(6) Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.

(7) Where the victim is at the time unconscious of the nature of the act. As used in this section, "unconscious of the nature of the act" means incapable of resisting because the victim meets one (1) of the following conditions:

(a) Was unconscious or asleep;

(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(8) Where the victim submits under the belief that the person committing the act is the victim's spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

(9) Where the victim submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief.

(10) Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.

The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.

Males and females are both capable of committing the crime of rape as defined in this section.

CREDIT(S)

[I.C., § 18-6101](#), as added by 1972, ch. 336, § 1, p. 844; am. 1977, ch. 208, § 1, p. 573; [am. 1994, ch. 83, § 1](#), p. 197; [am. 1994, ch. 135, § 1](#), p. 307; [am. 2000, ch. 218, § 1](#), p. 606; [am. 2003, ch. 280, § 1](#), p. 756; [am. 2010, ch. 235, § 7](#), p. 542; [am. 2010, ch. 352, § 1](#), p. 920; [am. 2011, ch. 27, § 1](#), p. 67; [am. 2016, ch. 296, § 1](#), p. 828.

IDAHO CODE ANN. § 18-6103 (2015). Penetration

The essential guilt of rape consists in the outrage to the person and feelings of the female. Any sexual penetration, however slight, is sufficient to complete the crime.

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CREDIT(S)

I.C., § 18-6103, as added by 1972, ch. 336, § 1, p. 844.

IDAHO CODE ANN. § 18-6104 (2015). Punishment for Rape

Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence.

CREDIT(S)

I.C., § 18-6104, as added by 1972, ch. 336, § 1, p. 844.

IDAHO CODE ANN. § 18-6108 (2016). Male Rape

That Section 18-6108, Idaho Code, be, and the same is hereby repealed.

CREDIT(S)

I.C., § 18-6108, as added by 1990, ch. 291, § 2, p. 811; am. 1993, ch. 263, § 1, p. 895; am. 1994, ch. 135, § 2, p. 307; am. 2010, ch. 352, § 3, p. 920.

2016 Ida. ALS 296, 2016 Idaho Sess. Laws 296, 2016 Ida. Ch. 296, 2016 Ida. HB 580

IDAHO CODE ANN. § 18-6109 (2016). Punishment for Male Rape

That Section 18-6109, Idaho Code, be, and the same is hereby repealed.

CREDIT(S)

2016 Ida. ALS 296, 2016 Idaho Sess. Laws 296, 2016 Ida. Ch. 296, 2016 Ida. HB 580

ILLINOIS

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720 ILL. COMP. STAT. § 5/11-1.20 (2016). CRIMINAL SEXUAL ASSAULT

(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:

- (1) uses force or threat of force;
- (2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;
- (3) is a family member of the victim, and the victim is under 18 years of age; or
- (4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.

(b) Sentence.

(1) Criminal sexual assault is a Class 1 felony, except that:

(A) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of criminal sexual assault or the offense of exploitation of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault or to the offense of exploitation of a child, commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 30 years and not more than 60 years, except that if the person is under the age of 18 years at the time of the offense, he or she shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections [730 ILCS 5/5-4.5-105]. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (A) to apply.

(B) A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (B) to apply. An offender under the age of 18 years at the time of the commission of the offense covered by this subparagraph (B) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

(C) A second or subsequent conviction for a violation of paragraph (a)(3) or (a)(4) or under any similar statute of this State or any other state for any offense involving criminal sexual assault that

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is substantially equivalent to or more serious than the sexual assault prohibited under paragraph (a)(3) or (a)(4) is a Class X felony.

CREDIT(S)

P.A. 85-1440; 90-396, § 5; 95-640, § 10; 96-1551, § 5; 99-69, § 5.

720 ILL. COMP. STAT. § 5/11-1.30 (2016). AGGRAVATED CRIMINAL SEXUAL ASSAULT

(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

(1) the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

(2) the person causes bodily harm to the victim, except as provided in paragraph (10);

(3) the person acts in a manner that threatens or endangers the life of the victim or any other person;

(4) the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony;

(5) the victim is 60 years of age or older;

(6) the victim is a person with a physical disability;

(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes;

(8) the person is armed with a firearm;

(9) the person personally discharges a firearm during the commission of the offense; or

(10) the person personally discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) A person commits aggravated criminal sexual assault if that person is under 17 years of age and: (i) commits an act of sexual penetration with a victim who is under 9 years of age; or (ii) commits an act of sexual penetration with a victim who is at least 9 years of age but under 13 years of age and the person uses force or threat of force to commit the act.

(c) A person commits aggravated criminal sexual assault if that person commits an act of sexual penetration with a victim who is a person with a severe or profound intellectual disability.

(d) Sentence.

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(1) Aggravated criminal sexual assault in violation of paragraph (2), (3), (4), (5), (6), or (7) of subsection (a) or in violation of subsection (b) or (c) is a Class X felony. A violation of subsection (a)(1) is a Class X felony for which 10 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(9) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(10) is a Class X felony for which 25 years or up to a term of natural life imprisonment shall be added to the term of imprisonment imposed by the court. An offender under the age of 18 years at the time of the commission of aggravated criminal sexual assault in violation of paragraphs (1) through (10) of subsection (a) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections [730 ILCS 5/5-4.5-105].

(2) A person who has attained the age of 18 years at the time of the commission of the offense and who is convicted of a second or subsequent offense of aggravated criminal sexual assault, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted of the offense of criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted under the laws of this or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault, the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply. An offender under the age of 18 years at the time of the commission of the offense covered by this paragraph (2) shall be sentenced under Section 5-4.5-105 of the Unified Code of Corrections.

CREDIT(S)

P.A. 85-1392; 89-428, § 260; 89-462, § 260; 90-396, § 5; 90-735, § 5; 91-404, § 5; 92-434, § 5; 92-502, § 10; 92-721, § 5; 96-1551, § 5; 97-227, § 135; 97-1109, § 15-55; 99-69, § 5; 99-143, § 880.

720 ILL. COMP. STAT. § 5/11-1.60 (2016). AGGRAVATED CRIMINAL SEXUAL ABUSE

(a) A person commits aggravated criminal sexual abuse if that person commits criminal sexual abuse and any of the following aggravating circumstances exist (i) during the commission of the offense or (ii) for purposes of paragraph (7), as part of the same course of conduct as the commission of the offense:

(1) the person displays, threatens to use, or uses a dangerous weapon or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

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- (2) the person causes bodily harm to the victim;
 - (3) the victim is 60 years of age or older;
 - (4) the victim is a person with a physical disability;
 - (5) the person acts in a manner that threatens or endangers the life of the victim or any other person;
 - (6) the person commits the criminal sexual abuse during the course of committing or attempting to commit any other felony; or
 - (7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim for other than medical purposes without the victim's consent or by threat or deception.
- (b) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is under 18 years of age and the person is a family member.
- (c) A person commits aggravated criminal sexual abuse if:
- (1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person uses force or threat of force to commit the act; or
 - (2) that person is under 17 years of age and: (i) commits an act of sexual conduct with a victim who is under 9 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 9 years of age but under 17 years of age and the person uses force or threat of force to commit the act.
- (d) A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim.
- (e) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is a person with a severe or profound intellectual disability.
- (f) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim.
- (g) Sentence. Aggravated criminal sexual abuse is a Class 2 felony.

CREDIT(S)

P.A. 85-1440; 88-99, § 5; 89-586, § 5; 90-735, § 5; 92-434, § 5; 96-1551, § 5; 97-227, § 135; 97-1109, § 15-55; 99-143, § 880.

720 ILL. COMP. STAT. § 5/11-1.70 (2016). DEFENSES WITH RESPECT TO OFFENSES DESCRIBED IN SECTIONS 11-1.20 THROUGH 11-1.60

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(a) It shall be a defense to any offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code [[720 ILCS 5/11-1.20](#), [720 ILCS 5/11-1.30](#), [720 ILCS 5/11-1.40](#), [720 ILCS 5/11-1.50](#) or [720 ILCS 5/11-1.60](#)] where force or threat of force is an element of the offense that the victim consented. "Consent" means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent.

(b) It shall be a defense under subsection (b) and subsection (c) of Section 11-1.50 and subsection (d) of Section 11-1.60 of this Code that the accused reasonably believed the person to be 17 years of age or over.

(c) A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.

CREDIT(S)

P.A. 87-438; 87-457; 87-895; 93-389, § 5; 96-1551, § 5.

720 ILL. COMP. STAT. § 5/11-1. 10(2016). GENERAL PROVISIONS CONCERNING OFFENSES DESCRIBED IN SECTIONS 11-1.20 THROUGH 11-1.60

(a) No person accused of violating Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code [[720 ILCS 5/11-1.20](#), [720 ILCS 5/11-1.30](#), [720 ILCS 5/11-1.40](#), [720 ILCS 5/11-1.50](#) or [720 ILCS 5/11-1.60](#)] shall be presumed to be incapable of committing an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code because of age, physical condition or relationship to the victim. Nothing in this Section shall be construed to modify or abrogate the affirmative defense of infancy under Section 6-1 of this Code [[720 ILCS 5/6-1](#)] or the provisions of Section 5-805 of the Juvenile Court Act of 1987 [[705 ILCS 405/5-805](#)].

(b) Any medical examination or procedure which is conducted by a physician, nurse, medical or hospital personnel, parent, or caretaker for purposes and in a manner consistent with reasonable medical standards is not an offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code.

(c) (Blank).

(d) (Blank).

(e) The prosecuting State's Attorney shall seek an order from the court to compel the accused to be tested for any sexually transmissible disease, including a test for infection with human immunodeficiency virus (HIV), within 48 hours:

(1) after a finding at a preliminary hearing that there is probable cause to believe that an accused has committed a violation of Section 11-1.20, 11-1.30, or 11-1.40 of this Code, or

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(2) after an indictment is returned charging an accused with a violation of Section 11-1.20, 11-1.30, or 11-1.40 of this Code, or

(3) after a finding that a defendant charged with a violation of Section 11-1.20, 11-1.30, or 11-1.40 of this Code is unfit to stand trial pursuant to Section 104-16 of the Code of Criminal Procedure of 1963 [725 ILCS 5/104-16] where the finding is made prior to the preliminary hearing, or

(4) after the request of the victim of the violation of Section 11-1.20, 11-1.30, or 11-1.40.

The medical tests shall be performed only by appropriately licensed medical practitioners. The testing shall consist of a test approved by the Illinois Department of Public Health to determine the presence of HIV infection, based upon recommendations of the United States Centers for Disease Control and Prevention; in the event of a positive result, a reliable supplemental test based upon recommendations of the United States Centers for Disease Control and Prevention shall be administered. The results of the tests and any follow-up tests shall be kept strictly confidential by all medical personnel involved in the testing and must be personally delivered in a sealed envelope to the victim, to the defendant, to the State's Attorney, and to the judge who entered the order, for the judge's inspection in camera. The judge shall provide to the victim a referral to the Illinois Department of Public Health HIV/AIDS toll-free hotline for counseling and information in connection with the test result. Acting in accordance with the best interests of the victim and the public, the judge shall have the discretion to determine to whom, if anyone, the result of the testing may be revealed; however, in no case shall the identity of the victim be disclosed. The court shall order that the cost of the tests shall be paid by the county, and shall be taxed as costs against the accused if convicted.

(f) Whenever any law enforcement officer has reasonable cause to believe that a person has been delivered a controlled substance without his or her consent, the law enforcement officer shall advise the victim about seeking medical treatment and preserving evidence.

(g) Every hospital providing emergency hospital services to an alleged sexual assault survivor, when there is reasonable cause to believe that a person has been delivered a controlled substance without his or her consent, shall designate personnel to provide:

(1) An explanation to the victim about the nature and effects of commonly used controlled substances and how such controlled substances are administered.

(2) An offer to the victim of testing for the presence of such controlled substances.

(3) A disclosure to the victim that all controlled substances or alcohol ingested by the victim will be disclosed by the test.

(4) A statement that the test is completely voluntary.

(5) A form for written authorization for sample analysis of all controlled substances and alcohol ingested by the victim.

A physician licensed to practice medicine in all its branches may agree to be a designated person under this subsection.

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No sample analysis may be performed unless the victim returns a signed written authorization within 30 days after the sample was collected.

Any medical treatment or care under this subsection shall be only in accordance with the order of a physician licensed to practice medicine in all of its branches. Any testing under this subsection shall be only in accordance with the order of a licensed individual authorized to order the testing.

CREDIT(S)

P.A. 86-770; 87-763; 88-421, § 5; 89-428, § 260; 89-462, § 260; 90-590, § 2001-20; 90-735, § 5; 91-271, § 5; 91-357, § 237; 92-81, § 5; 93-958, § 5; 94-397, § 5; 95-926, § 5; 96-1551, § 5; 97-244, § 15; 97-1109, § 15-55; 98-761, § 5.

INDIANA

IND. CODE ANN. § 35-42-4-1 (2016). RAPE

(a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with another person or knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when:

- (1) the other person is compelled by force or imminent threat of force;
 - (2) the other person is unaware that the sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) is occurring; or
 - (3) the other person is so mentally disabled or deficient that consent to sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) cannot be given;
- commits rape, a Level 3 felony.

(b) An offense described in subsection (a) is a Level 1 felony if:

- (1) it is committed by using or threatening the use of deadly force;
- (2) it is committed while armed with a deadly weapon;
- (3) it results in serious bodily injury to a person other than a defendant; or
- (4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

CREDIT(S)

IC 35-42-4-1, as added by Acts 1976, P.L.1948, § 2; 1977, P.L.340, § 36; P.L.320-1983, § 23; P.L.16-1984, § 19; P.L.297-1989, § 1; P.L.31-1998, § 3; P.L.158-2013, § 437, eff. July 1, 2014; P.L.214-2013, § 36, eff. July 1, 2014; P.L.168-2014, § 67, eff. July 1, 2014.

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IND. CODE ANN. § 35-42-4-8 (2016). SEXUAL BATTERY

(a) A person who, with intent to arouse or satisfy the person's own sexual desires or the sexual desires of another person:

(1) touches another person when that person is:

(A) compelled to submit to the touching by force or the imminent threat of force; or

(B) so mentally disabled or deficient that consent to the touching cannot be given; or

(2) touches another person's genitals, pubic area, buttocks, or female breast when that person is unaware that the touching is occurring;

commits sexual battery, a Level 6 felony.

(b) An offense described in subsection (a) is a Level 4 felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

CREDIT(S)

P.L.322-1987, § 2; P.L.31-1998, § 7; P.L.72-2012, § 4, eff. July 1, 2012; P.L.158-2013, § 444, eff. July 1, 2014.

IOWA

IOWA CODE § 709.1 (2016). SEXUAL ABUSE DEFINED

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. Such other person is a child.

CREDIT(S)

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C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § 12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.1; 84 Acts, ch 1188, § 1; 99 Acts, ch 159, § 1.

IOWA CODE § 709.1A (2016). INCAPACITATION

As used in this chapter, “incapacitated” means a person is disabled or deprived of ability, as follows:

1. “Mentally incapacitated” means that a person is temporarily incapable of apprising or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance.
2. “Physically helpless” means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.
3. “Physically incapacitated” means that a person has a bodily impairment or handicap that substantially limits the person’s ability to resist or flee.

CREDIT(S)

99 Acts, ch 159, § 2.

IOWA CODE § 709.2 (2016). SEXUAL ABUSE IN THE FIRST DEGREE

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class “A” felony.

CREDIT(S)

C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § 12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1; C79, 81, § 709.2.

IOWA CODE § 709.3 (2016). SEXUAL ABUSE IN THE SECOND DEGREE

1. A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

- a. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.
- b. The other person is under the age of twelve.
- c. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

2. Sexual abuse in the second degree is a class “B” felony.

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C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § 12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1; C79, 81, § 709.3; 84 Acts, ch 1188, § 2; 99 Acts, ch 159, § 3; 2013 Acts, ch 90, § 228.

IOWA CODE § 709.4 (2016). SEXUAL ABUSE IN THE THIRD DEGREE

1. A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

a. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.

b. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

(1) The other person is suffering from a mental defect or incapacity which precludes giving consent.

(2) The other person is twelve or thirteen years of age.

(3) The other person is fourteen or fifteen years of age and any of the following are true:

(a) The person is a member of the same household as the other person.

(b) The person is related to the other person by blood or affinity to the fourth degree.

(c) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.

(d) The person is four or more years older than the other person.

c. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

(1) The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

(2) The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

d. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

2. Sexual abuse in the third degree is a class "C" felony.

Defendant was charged with sexual abuse, violation of Iowa Code Ann. § 709.4 (1977), arising out of sexual intercourse with a retarded woman. The trial court sustained defendant's motion to dismiss. On the state's appeal, the court remanded for the limited purpose of obtaining a supplemental order. On remand, the trial court ruled that the "right and wrong of conduct" clause of § 709.4(2) was unconstitutional. On review, the court affirmed in part and reversed in part. First, the court held that the "right and wrong of conduct" test was an unfit tool in determining the mental competency of a person to consent to a sex act. Thus, the court struck that provision from

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§ 709.4(2) as unconstitutionally vague. However, the court held that defendant's charges should not have been dismissed. The remaining portion of § 709.4(2) protected mentally incompetent persons who were unable to understand the nature and consequences of the sex act. The crime did not require defendant's knowledge or intent; rather, his erroneous judgment could still subject him to criminal sanction if the woman in fact did not possess the requisite mental capacity. Thus, the case was remanded.

CREDIT(S)

C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § 12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.4; 89 Acts, ch 138, § 3; 94 Acts, ch 1128, § 1; 97 Acts, ch 78, § 1; 99 Acts, ch 159, § 4; 2013 Acts, ch 30, § 201.

State v. Sullivan, 298 N.W.2d 267, 269 (Iowa 1980)

IOWA CODE § 709.5 (2016). RESISTANCE TO SEXUAL ABUSE

Under the provisions of this chapter it shall not be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person. However, the circumstances surrounding the commission of the act may be considered in determining whether or not the act was done by force or against the will of the other.

CREDIT(S)

C79, 81, § 709.5; 99 Acts, ch 159, § 5.

KANSAS

KAN. STAT. ANN. § 21-5503 (2016). Rape

(a) Rape is:

- (1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:
 - (A) When the victim is overcome by force or fear; or
 - (B) when the victim is unconscious or physically powerless;
- (2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent

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because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) sexual intercourse with a child who is under 14 years of age;

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b) (1) Rape as defined in:

(A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

(B) subsection (a)(3) is a severity level 1, person felony, except as provided in subsection (b)(2); and

(C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(2) Rape as defined in subsection (a)(3) or attempt, conspiracy or criminal solicitation to commit rape as defined in subsection (a)(3) is an off-grid person felony, when the offender is 18 years of age or older.

(c) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 2013 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as defined in subsection (a)(3);

(2) subsection (c) of K.S.A. 2013 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as defined in subsection (a)(3); and

(3) subsection (d) of K.S.A. 2013 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as defined in subsection (a)(3).

(d) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

CREDIT(S)

L. 2010, ch. 136, § 67; L. 2011, ch. 30, § 29; July 1.

KAN. STAT. ANN. § 21-5504 (2016). Criminal Sodomy; Aggravated Criminal Sodomy

(a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex;

(2) sodomy between a person and an animal;

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- (3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or
 - (4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.
- (b) Aggravated criminal sodomy is:
- (1) Sodomy with a child who is under 14 years of age;
 - (2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or
 - (3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:
 - (A) When the victim is overcome by force or fear;
 - (B) when the victim is unconscious or physically powerless; or
 - (C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.
- (c) (1) Criminal sodomy as defined in:
- (A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and
 - (B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.
- (2) Aggravated criminal sodomy as defined in:
- (A) Subsection (b)(3) is a severity level 1, person felony; and
 - (B) subsection (b)(1) or (b)(2) is a severity level 1, person felony, except as provided in subsection (c) (3).
- (3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) or attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.
- (d) If the offender is 18 years of age or older, the provisions of:
- (1) Subsection (c) of K.S.A. 2013 Supp. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);
 - (2) subsection (c) of K.S.A. 2013 Supp. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and
 - (3) subsection (d) of K.S.A. 2013 Supp. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2).

(e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

The United States Supreme Court is the final arbiter when it comes to interpreting and applying the United States Constitution. Other courts—state and federal alike—are bound by stare decisis to abide by that precedent. See *State v. Ruggles*, 297 Kan. 675, 685, 304 P.3d 338 (2013) (recognizing United States Supreme Court decisions to be controlling as to Eighth Amendment challenge to sentence in criminal case); *State v. Daniel*, 291 Kan. 490, 498, 242 P.3d 1186 (2010) (Kansas Supreme Court bound by United States Supreme Court authority applying Fourth Amendment). Based on *Lawrence*, we, therefore, hold **HN6** K.S.A. 21-3505 and its recodification in K.S.A. 2013 Supp. 21-5504(a) to be unconstitutional and, thus, unenforceable with respect to the conduct Franco contended he and T.W.K. engaged in—anal intercourse between consenting adults of the same sex conducted in private. The *Lawrence* decision also precludes criminalizing oral-genital contact between consenting adults of the same sex. 539 U.S. at 578-59. So K.S.A. 2013 Supp. 21-5504(a) would be unconstitutional if it were enforced that way, as well.

CREDIT(S)

L. 2010, ch. 136, § 68; L. 2011, ch. 30, § 30; July 1.

State v. Franco, 49 Kan. App. 2d 924, 933 (Kan. Ct. App. 2014)

KAN. STAT. ANN. § 21-5505 (2016). Sexual Battery; Aggravated Sexual Battery

(a) Sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.

(b) Aggravated sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another and under any of the following circumstances:

- (1) When the victim is overcome by force or fear;
- (2) when the victim is unconscious or physically powerless; or
- (3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

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(c)

(1) Sexual battery is a class A person misdemeanor.

(2) Aggravated sexual battery is a severity level 5, person felony.

(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

CREDIT(S)

L. 2010, ch. 136, § 69; July 1, 2011.

KENTUCKY

KY. REV. STAT. ANN. § 510.010 (2016). DEFINITIONS FOR CHAPTER

The following definitions apply in this chapter unless the context otherwise requires:

(1) “Deviate sexual intercourse” means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by a foreign object manipulated by another person. “Deviate sexual intercourse” does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health-care practices;

(2) “Forcible compulsion” means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;

(3) “Mental illness” means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;

(4) “Individual with an intellectual disability” means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;

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- (5) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;
- (6) “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. “Physically helpless” also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;
- (7) “Sexual contact” means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party;
- (8) “Sexual intercourse” means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. “Sexual intercourse” does not include penetration of the sex organ by a foreign object in the course of the performance of generally recognized health-care practices; and
- (9) “Foreign object” means anything used in commission of a sexual act other than the person of the actor.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 81, effective January 1, 1975; 1986, ch. 486, § 1, effective July 15, 1986; 1988, ch. 78, § 1, effective July 15, 1988; 1988, ch. 283, § 9, effective July 15, 1988; 1990, ch. 448, § 1, effective July 13, 1990; 1992, ch. 355, § 1, effective July 14, 1992; 1996, ch. 300, § 2, effective July 15, 1996; 2000, ch. 401, § 4, effective July 14, 2000; 2002, ch. 259, § 6, effective July 15, 2002; 2012, ch. 146, § 123, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.020 (2016). LACK OF CONSENT

- (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- (2) Lack of consent results from:
- (a) Forcible compulsion;
 - (b) Incapacity to consent; or
 - (c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct.
- (3) A person is deemed incapable of consent when he or she is:
- (a) Less than sixteen (16) years old;
 - (b) An individual with an intellectual disability or an individual that suffers from a mental illness;
 - (c) Mentally incapacitated;
 - (d) Physically helpless; or

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(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.

(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 82, effective January 1, 1975; 1988, ch. 283, § 10, effective July 15, 1988; 2006, ch. 182, § 30, effective July 12, 2006; 2012, ch. 146, § 124, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.030 (2016). DEFENSES TO PROSECUTION BASED ON VICTIM'S LACK OF CONSENT

In any prosecution under this chapter in which the victim's lack of consent is based solely on his incapacity to consent because he was less than sixteen (16) years old, an individual with an intellectual disability, mentally incapacitated, or physically helpless, the defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense he did not know of the facts or conditions responsible for such incapacity to consent.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 83, effective January 1, 1975; 1988, ch. 283, § 11, effective July 15, 1988; 2012, ch. 146, § 125, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.040 (2016). RAPE IN THE FIRST DEGREE

(1) A person is guilty of rape in the first degree when:

- (a) He engages in sexual intercourse with another person by forcible compulsion; or
- (b) He engages in sexual intercourse with another person who is incapable of consent because he:
 - 1. Is physically helpless; or
 - 2. Is less than twelve (12) years old.

(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 84, effective January 1, 1975.

KY. REV. STAT. ANN. § 510.050 (2016). RAPE IN THE SECOND DEGREE

(1) A person is guilty of rape in the second degree when:

- (a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or
- (b) He engages in sexual intercourse with another person who is mentally incapacitated.

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(2) Rape in the second degree is a Class C felony.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 85, effective January 1, 1975; 2002, ch. 259, § 3, effective July 15, 2002.

KY. REV. STAT. ANN. § 510.060 (2016). RAPE IN THE THIRD DEGREE

(1) A person is guilty of rape in the third degree when:

- (a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
- (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;
- (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;
- (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
- (e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.

(2) Rape in the third degree is a Class D felony.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 86, effective January 1, 1975; 1988, ch. 283, § 12, effective July 15, 1988; 2002, ch. 259, § 7, effective July 15, 2002; 2002, ch. 282, § 1, effective July 15, 2002; 2006, ch. 182, § 31, effective July 12, 2006; 2010, ch. 26, § 1, effective July 15, 2010; 2012, ch. 146, § 127, effective July 12, 2012; 2012, ch. 148, § 2, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.070 (2016). SODOMY IN THE FIRST DEGREE

(1) A person is guilty of sodomy in the first degree when:

- (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or
- (b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or

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2. Is less than twelve (12) years old.

(2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 87, effective January 1, 1975.

KY. REV. STAT. ANN. § 510.080 (2016). SODOMY IN THE SECOND DEGREE

(1) A person is guilty of sodomy in the second degree when:

(a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; or

(b) He engages in deviate sexual intercourse with another person who is mentally incapacitated.

(2) Sodomy in the second degree is a Class C felony.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 88, effective January 1, 1975; 2002, ch. 259, § 4, effective July 15, 2002.

KY. REV. STAT. ANN. § 510.090 (2016). SODOMY IN THE THIRD DEGREE

(1) A person is guilty of sodomy in the third degree when:

(a) He or she engages in deviate sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;

(b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or

(c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in [KRS 600.020](#);

(d) Being a person in a position of authority or position of special trust, as defined in [KRS 532.045](#), he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; or

(e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in [KRS 520.010](#), or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.

(2) Sodomy in the third degree is a Class D felony.

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CREDIT(S)

Enact. Acts 1974, ch. 406, § 89, effective January 1, 1975; 1988, ch. 283, § 13, effective July 15, 1988; 2002, ch. 259, § 8, effective July 15, 2002; 2002, ch. 282, § 2, effective July 15, 2002; 2006, ch. 182, § 32, effective July 12, 2006; 2010, ch. 26, § 2, effective July 15, 2010; 2012, ch. 143, § 128, effective July 12, 2012; 2012, ch. 148, § 3, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.110 (2016). SEXUAL ABUSE IN THE FIRST DEGREE

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;
2. Is less than twelve (12) years old; or
3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;
2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

(2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

CREDIT(S)

Enacts. Acts 1974, ch. 406, § 91, effective January 1, 1975; 2002, ch. 259, § 5, effective July 15, 2002; 2006, ch. 182, § 33, effective April 18, 2006; 2008, ch. 72, § 1, effective July 15, 2008.

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KY. REV. STAT. ANN. § 510.120 (2016). SEXUAL ABUSE IN THE SECOND DEGREE

(1) A person is guilty of sexual abuse in the second degree when:

(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;

(b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or

(c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than five (5) years older than the other person.

(3) Sexual abuse in the second degree is a Class A misdemeanor.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 92, effective January 1, 1975; 1988, ch. 283, § 14, effective July 15, 1988; 2000, ch. 345, § 8, effective July 14, 2000; 2002, ch. 259, § 9, effective July 15, 2002; 2002, ch. 282, § 3, effective July 15, 2002; 2006, ch. 182, § 34, effective April 18, 2006; 2008, ch. 72, § 2, effective July 15, 2008; 2010, ch. 26, § 3, effective July 15, 2010; 2012, ch. 146, § 129, effective July 12, 2012.

KY. REV. STAT. ANN. § 510.130 (2016). SEXUAL ABUSE IN THE THIRD DEGREE

(1) 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.

(2) In any prosecution under this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

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- (c) The actor was less than eighteen (18) years old.
- (3) Sexual abuse in the third degree is a Class B misdemeanor.

CREDIT(S)

Enact. Acts 1974, ch. 406, § 93, effective January 1, 1975; 2008, ch. 72, § 3, effective July 15, 2008.

LOUISIANA

LA. REV. STAT. ANN. § 14:41 (2016). RAPE; DEFINED

- A. Rape is the act of anal, oral, or vaginal sexual intercourse with a male or female person committed without the person's lawful consent.
- B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal or anal intercourse, however slight, is sufficient to complete the crime.
- C. For purposes of this Subpart, "oral sexual intercourse" means the intentional engaging in any of the following acts with another person:
 - (1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender.
 - (2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.

CREDIT(S)

Acts 1978, No. 239, § 1; Acts 1985, No. 587, § 1; Acts 1990, No. 722, §§ 1, 2; Acts 2001, No. 301, § 1.

LA. REV. STAT. ANN. § 14:42 (2016). FIRST DEGREE RAPE

- A. First degree rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:
 - (1) When the victim resists the act to the utmost, but whose resistance is overcome by force.
 - (2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.
 - (3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

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(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

(5) When two or more offenders participated in the act.

(6) When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance.

B. For purposes of Paragraph (5), "participate" shall mean:

(1) Commit the act of rape.

(2) Physically assist in the commission of such act.

C. For purposes of this Section, the following words have the following meanings:

(1) "Physical infirmity" means a person who is a quadriplegic or paraplegic.

(2) "Mental infirmity" means a person with an intelligence quotient of seventy or lower.

D.

(1) Whoever commits the crime of first degree rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

(2) However, if the victim was under the age of thirteen years, as provided by Paragraph A(4) of this Section:

(a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of Code of Criminal Procedure Article 782 relative to cases in which punishment may be capital shall apply.

(b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of Code of Criminal Procedure Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

E. For all purposes, "aggravated rape" and "first degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of aggravated rape is the same as a reference to the crime of first degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "first degree rape".

We find that the invalidity of the death penalty provision of **La.R.S. 14:42 (1975)** does not render invalid that entire statute and La.Code Crim.P. arts. 905, Et seq., as applied to the instant aggravated rape case.

The Supreme Court of Louisiana rejected petitioner's argument that the death penalty for the rape of a child under 12 years was disproportionate, and it upheld the constitutionality of **La. Rev. Stat. Ann. § 14:42** under the Eighth Amendment. The Court, however, held that U.S. Const. amend. VIII barred respondent, the State of Louisiana, from imposing the death penalty on petitioner. Based both on consensus and its own independent judgment, the Court held that a death sentence for

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one who raped but did not kill a child, and who did not intend to assist another in killing the child, was unconstitutional under U.S. Const. amends. VIII and XIV. After reviewing the history of the death penalty for the crime of child rape, current state statutes and new enactments, and the number of executions since 1964, the Court concluded that there was a national consensus against capital punishment for the crime of child rape. The Court also concluded in its independent judgment that the death penalty was not a proportional punishment for the crime of child rape. The Court found that its decision was consistent with the justifications offered for the death penalty: retribution and deterrence

CREDIT(S)

Added by Acts 1978, No. 239, § 1; Amended by Acts 1981, No. 707, § 1; Acts 1984, No. 579, § 1; Acts 1993, No. 630, § 1; Acts 1995, No. 397, § 1; Acts 1997, No. 757, § 1, eff. Aug. 15, 1997; Acts 1997, No. 898, § 1, eff. Aug. 15, 1997; Acts 2001, No. 301, § 1, eff. Aug. 15, 2001; Acts 2003, No. 795, § 1, eff. Aug. 15, 2003; Acts 2006, No. 178, § 1, eff. Aug. 15, 2006; Acts 2015, No. 184, § 1, eff. Aug. 1, 2015; Acts 2015, No. 256, § 1, eff. Aug. 1, 2015.

State v. Drew, 360 So. 2d 500, 507 (La. 1978)

Kennedy v. Louisiana, 554 U.S. 407, 412 (U.S. 2008)

LA. REV. STAT. ANN. § 14:42.1 (2016). SECOND DEGREE RAPE

A. Second degree rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:

(1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.

(2) When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.

B. Whoever commits the crime of second degree rape shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of probation, parole, or suspension of sentence.

C. For all purposes, “forcible rape” and “second degree rape” mean the offense defined by the provisions of this Section and any reference to the crime of forcible rape is the same as a reference to the crime of second degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as “second degree rape”.

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CREDIT(S)

Acts 1978, No. 239, § 1; Acts 1984, No. 569, § 1; Acts 1997, No. 862, § 1, eff. Aug. 15, 1997; Acts 2001, No. 301, § 1; Acts 2015, No. 184, § 1, eff. Aug. 1, 2015; Acts 2015, No. 256, § 1, eff. Aug. 1, 2015.

LA. REV. STAT. ANN. § 14:43 (2016). THIRD DEGREE RAPE

A. Third degree rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances:

(1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity.

(2) When the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity.

(3) When the victim submits under the belief that the person committing the act is someone known to the victim, other than the offender, and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.

(4) When the offender acts without the consent of the victim.

B. Whoever commits the crime of third degree rape shall be imprisoned at hard labor, without benefit of parole, probation, or suspension of sentence, for not more than twenty-five years.

C. For all purposes, "simple rape" and "third degree rape" mean the offense defined by the provisions of this Section and any reference to the crime of simple rape is the same as a reference to the crime of third degree rape. Any act in violation of the provisions of this Section committed on or after August 1, 2015, shall be referred to as "third degree rape".

CREDIT(S)

Acts 1978, No. 239, § 1; Acts 1990, No. 722, § 1; Acts 1995, No. 946, § 2; Acts 1997, No. 862, § 1, eff. Aug. 15, 1997; Acts 2001, No. 131, § 1, eff. Aug. 15, 2001; Acts 2001, No. 301, § 1, eff. Aug. 15, 2001; Acts 2003, No. 232, § 1, eff. Aug. 15, 2003; Acts 2003, No. 759, § 1, eff. Aug. 15, 2003; Acts 2010, No. 359, § 1, eff. Aug. 15, 2010; Acts 2015, No. 184, § 1, eff. Aug. 1, 2015; Acts 2015, No. 256, § 1, eff. Aug. 1, 2015.

LA. REV. STAT. ANN. § 14:43.1 (2016). SEXUAL BATTERY

A. Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, directly or through clothing, or

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the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, directly or through clothing, when any of the following occur:

- (1) The offender acts without the consent of the victim.
- (2) The victim has not yet attained fifteen years of age and is at least three years younger than the offender.
- (3) The offender is seventeen years of age or older and any of the following exist:
 - (a) The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:
 - (i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.
 - (ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.
 - (b) The act is without consent of the victim, and the victim is sixty-five years of age or older.

B. Lack of knowledge of the victim's age shall not be a defense. However, normal medical treatment or normal sanitary care shall not be construed as an offense under the provisions of this Section.

C.

- (1) Whoever commits the crime of sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years.
- (2) Whoever commits the crime of sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
- (3) Whoever commits the crime of sexual battery by violating the provisions of Paragraph (A)(3) of this Section shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.
- (4) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (2) and (3) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.
- (5) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

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(6) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(7) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

CREDIT(S)

Added by Acts 1978, No. 239, § 1; Amended by Acts 1981, No. 624, § 1, eff. July 20, 1981; Acts 1984, No. 924, § 1; Acts 1991, No. 654, § 1; Acts 1995, No. 946, § 2; Acts 2003, No. 232, § 1, eff. Aug. 15, 2003; Acts 2006, No. 103, § 1, eff. Aug. 15, 2006; Acts 2008, No. 33, § 1, eff. Aug. 15, 2008; Acts 2011, No. 67, § 1, eff. Aug. 15, 2011; Acts 2015, No. 256, § 1, eff. Aug. 1, 2015.

LA. REV. STAT. ANN. § 14:43.2 (2016). SECOND DEGREE SEXUAL BATTERY

A. Second degree sexual battery is the intentional engaging in any of the following acts with another person when the offender intentionally inflicts serious bodily injury on the victim:

- (1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or
- (2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

B. For the purposes of this Section, serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

C.

- (1) Whoever commits the crime of second degree sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than fifteen years.
- (2) Whoever commits the crime of second degree sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

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(3) Any person who is seventeen years of age or older who commits the crime of second degree sexual battery shall be punished by imprisonment at hard labor for not less than twenty-five nor more than ninety-nine years, at least twenty-five years of the sentence imposed being served without benefit of parole, probation, or suspension of sentence, when any of the following conditions exist:

(a) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.

(b) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

(c) The victim is sixty-five years of age or older.

(4) to (6) Repealed by Acts 2011, No. 67, § 2, effective August 15, 2011.

D.

(1) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (C)(2) and (3) of this Section, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(2) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(3) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(4) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

CREDIT(S)

Added by Acts 1983, No. 78, § 1; Amended by Acts 1984, No. 568, § 1; Acts 1995, No. 946, § 2; Acts 2004, No. 676, § 1, eff. Aug. 15, 2004; Acts 2006, No. 103, § 1, eff. Aug. 15, 2006; Acts 2008, No. 33, § 1, eff. Aug. 15, 2008; Acts 2011, No. 67, §§ 1, 2, eff. Aug. 15, 2011.

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MAINE

ME. REV. STAT. ANN. tit. 17-A, § 251 (2016). Definitions and General Provisions

1. In this chapter the following definitions apply.

A. "Spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation.

B. Repealed. Laws 1989, c. 401, § A, 2.

C. "Sexual act" means:

1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

A sexual act may be proved without allegation or proof of penetration.

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.

"Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor.

F. "Safe children zone" means on or within 1,000 feet of the real property comprising a public or private elementary or secondary school or on or within 1,000 feet of the real property comprising a day care center licensed pursuant to [Title 22, section 8301-A](#).

G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.

CREDIT(S)

17-A M.R.S. § 251

ME. REV. STAT. ANN. tit. 17-A, § 253 (2016). Gross Sexual Assault

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1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:
 - A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime;
 - B. The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or
 - C. The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.
2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:
 - A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, as defined in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime;
 - B. The actor compels or induces the other person to engage in the sexual act by any threat. Violation of this paragraph is a Class B crime;
 - C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent. Violation of this paragraph is a Class B crime;
 - D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. Violation of this paragraph is a Class B crime;
 - E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime;
 - F. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class C crime;
 - G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed under Title 22, section 2495 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;

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H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime;

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class C crime;

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

K. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class C crime; or

L. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime.

3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when:

A. The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or

B. The other person is in fact 14 or 15 years of age.

4. Repealed. Laws 2001, c. 383, § 18, eff. Jan. 31, 2003.

5. Repealed. Laws 2001, c. 383, § 19, eff. Jan. 31, 2003.

6. In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the 2nd

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step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor.

A. When the sentencing class for a prior conviction under this section is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.

B. When the sentencing class for a prior conviction under this section is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.

C. When the sentencing class for a prior conviction under this section is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.

In arriving at the final sentence as the 3rd step in the sentencing process, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.

7. If the State pleads and proves that a violation of subsection 1 or subsection 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.

CREDIT(S)

2016 ch. 509, § 1 (AMD)

ME. REV. STAT. ANN. tit. 17-A, § 255-A (2016). Unlawful Sexual Contact

1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:

A. The other person has not expressly or impliedly acquiesced in the sexual contact. Violation of this paragraph is a Class D crime;

B. The other person has not expressly or impliedly acquiesced in the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

C. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. Violation of this paragraph is a Class D crime;

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

E. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class C crime;

E-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class B crime;

F. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

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F-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class A crime;

F-2. The other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime;

G. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime;

H. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime;

J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

K. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime;

L. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

M. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class C crime;

N. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of

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that other person and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

O. The other person submits as a result of compulsion. Violation of this paragraph is a Class C crime;

P. The other person submits as a result of compulsion and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

Q. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime;

R. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism and the sexual contact includes penetration. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

R-1. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime;

R-2. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

S. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in

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the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;

T. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration. Violation of this paragraph is a Class D crime;

U. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime;

V. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

W. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class D crime; or

X. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime.

CREDIT(S)

2005 ch. 450, §§ 1, 2 (AMD); 2007 ch. 102, §§ 2, 3 (AMD); 2011 ch. 423, §§ 4, 5, 6 (AMD); 2011 ch. 464, §§ 9, 10, 11 (AMD); 2011 ch. 542, § A-12 (AMD); 2011 ch. 691, §§ A-14, A-15 (AMD); 2016 ch. 509, § 2 (AMD)

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MD. CODE ANN., CRIM. LAW § 3-301 (2016). DEFINITIONS

(a) In general. -- In this subtitle the following words have the meanings indicated.

**** REVISOR'S NOTE**

This subsection formerly was Art. 27, § 461(a).

**** REVISOR'S NOTE**

In this section, the references to this "subtitle" are substituted for the former references to this "subheading", although this subtitle is derived, in part, from material outside of that contained in the former "Sexual Offenses" subheading in Article 27. Because the material revised in this subtitle that was not contained in the former "Sexual Offenses" subheading does not use the terms defined in this section in a manner contrary to the meanings set forth here, no substantive change results.

(b) Mentally incapacitated individual. -- "Mentally incapacitated individual" means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual's consent or awareness, is rendered substantially incapable of:

- (1) appraising the nature of the individual's conduct; or
- (2) resisting vaginal intercourse, a sexual act, or sexual contact.

**** REVISOR'S NOTE**

This subsection is new language derived without substantive change from former Art. 27, § 461(c).

**** REVISOR'S NOTE**

The defined term "mentally incapacitated individual" is substituted for the former defined term "mentally incapacitated" for grammatical accuracy.

**** REVISOR'S NOTE**

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "mentally defective individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. See §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

**** REVISOR'S NOTE**

The former redundant phrase "the act of" is deleted as implicit in the reference to "vaginal intercourse".

(c) Physically helpless individual. -- "Physically helpless individual" means an individual who:

- (1) is unconscious; or
- (2)
 - (i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and
 - (ii) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact.

**** REVISOR'S NOTE**

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This subsection is new language derived without substantive change from former Art. 27, § 461(d).

**** REVISOR'S NOTE**

The defined term "physically helpless individual" is substituted for the former defined term "physically helpless" for grammatical accuracy.

**** REVISOR'S NOTE**

The references to an "individual" are substituted for the former references to a "victim" because, where the defined term "physically helpless individual" is applicable in this subtitle, the term "victim" is used in the substantive crime. See §§ 3-304(a)(2), 3-306(a)(2)(i), and 3-307(a)(2) of this subtitle.

**** REVISOR'S NOTE**

The former redundant phrases "an act of" are deleted as implicit in the references to "vaginal intercourse".

(d) Sexual act. --

(1) "Sexual act" means any of the following acts, regardless of whether semen is emitted:

(i) anilingus;

(ii) cunnilingus;

(iii) fellatio;

(iv) anal intercourse, including penetration, however slight, of the anus; or

(v) an act:

in which an object or part of an individual's body penetrates, however slightly, into another individual's genital opening or anus; and

2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party.

(2) "Sexual act" does not include:

(i) vaginal intercourse; or

(ii) an act in which an object or part of an individual's body penetrates an individual's genital opening or anus for an accepted medical purpose.

(e) Sexual contact. --

(1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.

(2) "Sexual contact" does not include:

(i) a common expression of familial or friendly affection; or

(ii) an act for an accepted medical purpose.

(f) "Substantially cognitively impaired individual" means an individual who suffers from an intellectual disability or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of: (1) appraising the nature of the individual's conduct;

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- (2) resisting vaginal intercourse, a sexual act, or sexual contact; or
 - (3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact.
- (g) Vaginal intercourse. --
- (1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted.
 - (2) "Vaginal intercourse" includes penetration, however slight, of the vagina.

**** REVISOR'S NOTE**

This subsection is new language derived without substantive change from former Art. 27, § 461(g).

**** REVISOR'S NOTE**

In paragraph (1) of this subsection, the former reference to "ordinary meaning" is deleted as surplusage.

**** REVISOR'S NOTE**

In paragraph (2) of this subsection, the phrase "includes penetration, however slight, of the vagina" is substituted for the former inaccurate phrase "[p]enetration, however slight, is evidence of vaginal intercourse" for clarity.

CREDIT(S)

An. Code 1957, art. 27, § 461; 2002, ch. 26, § 2; 2007, ch. 458; 2011, chs. 195, 196.

2016 Md. ALS 633, 2016 Md. Laws 633, 2016 Md. Chap. 633, 2016 Md. HB 822

MD. CODE ANN., CRIM. LAW § 3-302 (2016). CONSTRUCTION OF SUBTITLE

In this subtitle an undefined word or phrase that describes an element of common-law rape retains its judicially determined meaning, except to the extent it is expressly or impliedly changed in this subtitle.

CREDIT(S)

An. Code 1957, art. 27, § 464E; 2002, ch. 26, § 2.

MD. CODE ANN., CRIM. LAW § 3-303 (2016). RAPE IN THE FIRST DEGREE

(a) Prohibited. -- A person may not:

- (1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and
- (2)
 - (i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

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- (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;
 - (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;
 - (iv) commit the crime while aided and abetted by another; or
 - (v) commit the crime in connection with a burglary in the first, second, or third degree.
- (b) Violation of § 3-503(a)(2) of this title. -- A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.
- (c) Age considerations. -- A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.
- (d) Penalties. --
- (1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life.
 - (2) A person who violates subsection (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.
 - (3) A person who violates subsection (a) or (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-305 of this subtitle.
 - (4)
 - (i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.
 - (ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.
 - (iii) The person is not eligible for parole during the mandatory minimum sentence.
 - (iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.
- (e) Required notice. -- If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

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CREDIT(S)

An. Code 1957, art. 27, § 462; 2002, ch. 26, § 2; ch. 187, § 1; 2003, ch. 21, § 1; 2005, ch. 482; 2006, ch. 44, § 6; 2006 Sp. Sess., ch. 4; 2007, chs. 494, 495; 2008, ch. 36, § 6; ch. 345; 2009, ch. 60

MD. CODE ANN., CRIM. LAW § 3-304 (2016). RAPE IN THE SECOND DEGREE

(a) Prohibited. -- A person may not engage in vaginal intercourse with another:

(1) by force, or the threat of force, without the consent of the other;

(2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or

(3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.

(b) Age considerations. -- A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

(c) Penalty. --

(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment not exceeding 20 years.

(2)

(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.

(ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

(d) Required notice. -- If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

An. Code 1957, art. 27, § 463; 2002, ch. 26, § 2; 2006 Sp. Sess., ch. 4; 2007, chs. 494, 495; 2010, chs. 174, 175, 180, 181; 2013, ch. 43.

2016 Md. ALS 633, 2016 Md. Laws 633, 2016 Md. Chap. 633, 2016 Md. HB 822

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MD. CODE ANN., CRIM. LAW § 3-305 (2016). SEXUAL OFFENSE IN THE FIRST DEGREE

(a) Prohibited. -- A person may not:

(1) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and

(2)

(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;

(iv) commit the crime while aided and abetted by another; or

(v) commit the crime in connection with a burglary in the first, second, or third degree.

(b) Violation of § 3-503(a)(2) of this title. -- A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

(c) Age considerations. -- A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.

(d) Penalty. --

(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life.

(2) A person who violates subsection (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-303 of this subtitle.

(4)

(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.

(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.

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- (iii) The person is not eligible for parole during the mandatory minimum sentence.
- (iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.
- (e) Required notice. -- If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

An. Code 1957, art. 27, § 464; 2002, ch. 26, § 2; ch. 187, § 1; 2003, ch. 21, § 1; 2005, ch. 482; 2006 Sp. Sess., ch. 4; 2007, chs. 494, 495; 2008, ch. 36, § 6; ch. 345.

MD. CODE ANN., CRIM. LAW § 3-306 (2016). SEXUAL OFFENSE IN THE SECOND DEGREE

- (a) Prohibited. -- A person may not engage in a sexual act with another:
 - (1) by force, or the threat of force, without the consent of the other;
 - (2) if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the sexual act knows or reasonably should know that the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual; or
 - (3) if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim.
- (b) Age considerations. -- A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.
- (c) Penalty. --
 - (1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment not exceeding 20 years.
 - (2)
 - (i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.
 - (ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.
 - (iii) The person is not eligible for parole during the mandatory minimum sentence.
 - (iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

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(d) Required notice. -- If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

An. Code 1957, art. 27, § 464A; 2002, ch. 26, § 2; 2006 Sp. Sess., ch. 4; 2007, chs. 494, 495; 2010, chs. 174, 175, 180, 181; 2013, ch. 43.

2016 Md. ALS 633, 2016 Md. Laws 633, 2016 Md. Chap. 633, 2016 Md. HB 822

MD. CODE ANN., CRIM. LAW § 3-307 (2016). SEXUAL OFFENSE IN THE THIRD DEGREE

(a) Prohibited. -- A person may not:

(1)

(i) engage in sexual contact with another without the consent of the other; and

(ii)

1. employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or

4. commit the crime while aided and abetted by another;

(2) engage in sexual contact with another if the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a substantially cognitively impaired individual, a mentally incapacitated individual, or a physically helpless individual;

(3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;

(4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or

(5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

(b) Penalty. -- A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment not exceeding 10 years

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CREDIT(S)

An. Code 1957, art. 27, § 464B; 2002, ch. 26, § 2; 2006, ch. 317.

2016 Md. ALS 633, 2016 Md. Laws 633, 2016 Md. Chap. 633, 2016 Md. HB 822

MD. CODE ANN., CRIM. LAW § 3-308 (2016). SEXUAL OFFENSE IN THE FOURTH DEGREE

(a) "Person in a position of authority" defined. -- In this section, "person in a position of authority":

(1) means a person who:

(i) is at least 21 years old;

(ii) is employed by or under contract with a public or private preschool, elementary school, or secondary school; and

(iii) because of the person's position or occupation, exercises supervision over a minor who attends the school; and

(2) includes a principal, vice principal, teacher, coach, or school counselor at a public or private preschool, elementary school, or secondary school.

(b) Prohibited. -- A person may not engage in:

(1) sexual contact with another without the consent of the other;

(2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or

(3) except as provided in § 3-307(a)(5) of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.

(c) Sexual abuse of a minor student by a person in a position of authority. --

(1) Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2) of this section, a person in a position of authority may not engage in a sexual act or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a student enrolled at a school where the person in a position of authority is employed.

(2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor who, at the time of the vaginal intercourse, is a student enrolled at a school where the person in a position of authority is employed.

(d) Penalty. --

(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the misdemeanor of sexual offense in the fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$ 1,000 or both.

(2)

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(i) On conviction of a violation of this section, a person who has been convicted on a prior occasion not arising from the same incident of a violation of §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to imprisonment not exceeding 3 years or a fine not exceeding \$ 1,000 or both.

(ii) If the State intends to proceed against a person under subparagraph (i) of this paragraph, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

CREDIT(S)

An. Code 1957, art. 27, § 464C; 2002, ch. 26, § 2; 2004, ch. 217; 2006, ch. 317; 2011, chs. 192, 193; 2014, ch. 170.

MASSACHUSETTS

MASS. ANN. LAWS CH. 265, § 22 (2016). Rape

(a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty–six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty–six or section ten of chapter two hundred and sixty–nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two–thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two–thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine–gun or assault weapon, shall be punished by imprisonment in the state prison

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for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).

CREDIT(S)

CL 15, § 15; 1697, 18; 1784, 68; 1805, 97, § 1; 1836, 125, § 18; 1852, 259, § 2; 1860, 160, § 26; 1871, 55; 1882, 202, § 27; 1886, 305; 1888, 391; 1893, 466, § 1; 1902, 207, § 22; 1974, 474, § 1; 1980, 459, § 6; 1998, 180, § 59.

MICHIGAN

MICH. COMP. LAWS § 750.520a (2016). Definitions

As used in this chapter:

- (a) “Actor” means a person accused of criminal sexual conduct.
- (b) “Developmental disability” means an impairment of general intellectual functioning or adaptive behavior that meets all of the following criteria:
 - (i) It originated before the person became 18 years of age.
 - (ii) It has continued since its origination or can be expected to continue indefinitely.
 - (iii) It constitutes a substantial burden to the impaired person’s ability to perform in society.
 - (iv) It is attributable to 1 or more of the following:
 - (A) Intellectual disability, cerebral palsy, epilepsy, or autism.
 - (B) Any other condition of a person that produces a similar impairment or requires treatment and services similar to those required for a person described in this subdivision.
- (c) “Electronic monitoring” means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.
- (d) “Intellectual disability” means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (e) “Intermediate school district” means a corporate body established under part 7 of the revised school code, 1976 PA 451, MCL 380.601 to 380.705.
- (f) “Intimate parts” includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.

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- (g) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.
- (h) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.
- (i) "Mentally disabled" means that a person has a mental illness, is intellectually disabled, or has a developmental disability.
- (j) "Mentally incapable" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (k) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.
- (l) "Nonpublic school" means a private, denominational, or parochial elementary or secondary school.
- (m) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (n) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.
- (o) "Public school" means a public elementary or secondary educational entity or agency that is established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (p) "School district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.
- (q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:
- (i) Revenge.
 - (ii) To inflict humiliation.
 - (iii) Out of anger.
- (r) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required.
- (s) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

CREDIT(S)

Pub Acts 1931, No. 328, Ch. LXXVI, § 520a, as added by Pub Acts 1974, No. 266, by § 4 eff November 1, 1974; amended by Pub Acts 1983, No. 158, eff March 29, 1984; 2000, No. 505, eff March 28, 2001; 2002, No. 714, by enacting § 1 eff April 1, 2003; Pub Acts 2006, No. 171, imd eff May 30, 2006, by enacting § 1 eff August 28, 2006; 2007, No. 163, imd eff December 21, 2007, by enacting § 1 eff July 1, 2008; Pub Acts 2014, No. 64, eff March 28, 2014.

MICH. COMP. LAWS § 750.520b (2016). Criminal Sexual Conduct in the First Degree; Circumstances; Felony; Consecutive Terms.

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency. As used in this subparagraph, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, [MCL 722.111](#).

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

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- (e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:
 - (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
 - (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
 - (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, "to retaliate" includes threats of physical punishment, kidnapping, or extortion.
 - (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.
 - (v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.
- (g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
 - (i) The actor is related to the victim by blood or affinity to the fourth degree.
 - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (2) Criminal sexual conduct in the first degree is a felony punishable as follows:
 - (a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.
 - (b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.
 - (c) For a violation that is committed by an individual 18 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.
 - (d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n.

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

CREDIT(S)

Pub Acts 1931, No. 328, Ch. LXXVI, § 520b, as added by Pub Acts 1974, No. 266, by § 4 eff November 1, 1974; amended by Pub Acts 1983, No. 158, eff March 29, 1984; 2002, No. 714, by enacting § 1 eff April 1, 2003; Pub Acts 2006, No. 165, imd eff May 30, 2006, by enacting § 1 eff August 28, 2006; 2006, No. 169, imd eff May 30, 2006, by enacting § 1 eff August 28, 2006; 2007, No. 163, imd eff December 21, 2007, by enacting § 1 eff July 1, 2008; Pub Acts 2012, No. 372, eff April 1, 2013; Pub Acts 2014, No. 23, eff March 4, 2014.

MICH. COMP. LAWS § 750.520c (2016). Criminal Sexual Conduct in the Second Degree; Felony.

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual contact occurs during the period of that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

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- (d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:
- (i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
 - (ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).
- (e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.
- (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).
- (g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:
- (i) The actor is related to the victim by blood or affinity to the fourth degree.
 - (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
- (i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.
- (j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.
- (k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.
- (l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.
- (2) Criminal sexual conduct in the second degree is a felony punishable as follows:
- (a) By imprisonment for not more than 15 years.

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(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

CREDIT(S)

Pub Acts 1931, No. 328, Ch. LXXVI, § 520c, as added by Pub Acts 1974, No. 266, by § 4 eff November 1, 1974; amended by Pub Acts 1983, No. 158, eff March 29, 1984; 2000, No. 227, imd eff June 27, 2000, by enacting § 1 eff October 1, 2000; 2002, No. 714, by enacting § 1 eff April 1, 2003; Pub Acts 2006, No. 171, imd eff May 30, 2006, by enacting § 1 eff August 28, 2006; 2007, No. 163, imd eff December 21, 2007, by enacting § 1 eff July 1, 2008; Pub Acts 2012, No. 372, eff April 1, 2013.

MICH. COMP. LAWS § 750.520d (2016). Criminal Sexual Conduct in the Third Degree; Felony.

(1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v).

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any

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service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual penetration occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

CREDIT(S)

Pub Acts 1931, No. 328, Ch. LXXVI, § 520d, as added by Pub Acts 1974, No. 266, by § 4 eff November 1, 1974; amended by Pub Acts 1983, No. 158, eff March 29, 1984; 1996, No. 155, imd eff April 3, 1996, by § 2 eff June 1, 1996; 2002, No. 714, by enacting § 1 eff April 1, 2003; Pub Acts 2007, No. 163, imd eff December 21, 2007, by enacting § 1 eff July 1, 2008; Pub Acts 2012, No. 372, eff April 1, 2013.

MICH. COMP. LAWS § 750.520e (2016). Criminal Sexual Conduct in the Fourth Degree; Misdemeanor.

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

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- (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
- (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.
- (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.
- (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.
- (v) When the actor achieves the sexual contact through concealment or by the element of surprise.
- (c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.
- (d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.
- (e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.
- (f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:
 - (i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.
 - (ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and

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the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(h) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual contact occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

CREDIT(S)

Pub Acts 1931, No. 328, Ch. LXXVI, § 520e, as added by Pub Acts 1974, No. 266, by § 4 eff November 1, 1974; amended by Pub Acts 1983, No. 158, eff March 29, 1984; 1988, No. 86, imd eff March 29, 1988, by § 2 eff June 1, 1988; 1994, No. 213, imd eff June 23, 1994, by § 2 eff October 1, 1994; 1996, No. 155, imd eff April 3, 1996, by § 2 eff June 1, 1996; 2000, No. 227, imd eff June 27, 2000, by enacting § 1 eff October 1, 2000; 2000, No. 505, eff March 28, 2001; 2002, No. 714, by enacting § 1 eff April 1, 2003; Pub Acts 2007, No. 163, imd eff December 21, 2007, by enacting § 1 eff July 1, 2008; Pub Acts 2012, No. 372, eff April 1, 2013.

MICH. COMP. LAWS § 750.520i (2016). Resistance by Victim Not Required

A victim need not resist the actor in prosecution under sections 520b to 520g.

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MINNESOTA

MINN. STAT. § 609.341 (2016). DEFINITIONS

Subdivision 1. *Scope*. — For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.

Subd. 2. *Actor*. — “Actor” means a person accused of criminal sexual conduct.

Subd. 3. *Force*. — “Force” means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

Subd. 4. *Consent*.

(a) “Consent” means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim’s testimony is not required to show lack of consent.

Subd. 5. *Intimate parts*. — “Intimate parts” includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

Subd. 6. *Mentally impaired*. — “Mentally impaired” means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

Subd. 7. *Mentally incapacitated*. — “Mentally incapacitated” means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person’s agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

Subd. 8. *Personal injury*. — “Personal injury” means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.

Subd. 9. *Physically helpless*. — “Physically helpless” means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

Subd. 10. *Position of authority.* — “Position of authority” includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, “position of authority” includes a psychotherapist.

Subd. 11. Sexual contact.

(a) “Sexual contact,” for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (o), includes any of the following acts committed without the complainant’s consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant’s intimate parts, or
- (ii) the touching by the complainant of the actor’s, the complainant’s, or another’s intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or
- (iii) the touching by another of the complainant’s intimate parts effected by coercion or by a person in a position of authority, or
- (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant’s body or the clothing covering the complainant’s body.

(b) “Sexual contact,” for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

- (i) the intentional touching by the actor of the complainant’s intimate parts;
- (ii) the touching by the complainant of the actor’s, the complainant’s, or another’s intimate parts;
- (iii) the touching by another of the complainant’s intimate parts;
- (iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts; or
- (v) the intentional touching with seminal fluid or sperm by the actor of the complainant’s body or the clothing covering the complainant’s body.

(c) “Sexual contact with a person under 13” means the intentional touching of the complainant’s bare genitals or anal opening by the actor’s bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant’s bare genitals or anal opening of the actor’s or another’s bare genitals or anal opening with sexual or aggressive intent.

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Subd. 12. *Sexual penetration*. — “Sexual penetration” means any of the following acts committed without the complainant’s consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or

(2) any intrusion however slight into the genital or anal openings:

(i) of the complainant’s body by any part of the actor’s body or any object used by the actor for this purpose;

(ii) of the complainant’s body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or

(iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

Subd. 13. *Complainant*. — “Complainant” means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

Subd. 14. *Coercion*. — “Coercion” means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant’s will. Proof of coercion does not require proof of a specific act or threat.

Subd. 15. *Significant relationship*. — “Significant relationship” means a situation in which the actor is:

(1) the complainant’s parent, stepparent, or guardian;

(2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or

(3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant’s spouse.

Subd. 16. *Patient*. — “Patient” means a person who seeks or obtains psychotherapeutic services.

Subd. 17. *Psychotherapist*. — “Psychotherapist” means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

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Subd. 18. *Psychotherapy*. — “Psychotherapy” means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

Subd. 19. *Emotionally dependent*. — “Emotionally dependent” means that the nature of the former patient’s emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

Subd. 20. *Therapeutic deception*. — “Therapeutic deception” means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient’s treatment.

Subd. 21. *Special transportation*. — “Special transportation service” means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

Subd. 22. *Predatory crime*. — “Predatory crime” means a felony violation of section 609.185 (first-degree murder), 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.205 (second-degree manslaughter), 609.221 (first-degree assault), 609.222 (second-degree assault), 609.223 (third-degree assault), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).

Subd. 23. *Secure treatment facility*. — “Secure treatment facility” has the meaning given in section 253B.02, subdivision 18a.

CREDIT(S)

1975 c 374 s 2; 1977 c 130 s 8; 1979 c 258 s 9-11; 1981 c 51 s 1; 1982 c 385 s 1; 1982 c 469 s 9; 1984 c 525 s 3; 1984 c 588 s 5,6; 1985 c 24 s 3,4; 1985 c 286 s 14; 1985 c 297 s 1-5; 1986 c 351 s 6,7; 1986 c 444; 1987 c 198 s 1-3; 1987 c 347 art 1 s 22; 1988 c 413 s 1; 1989 c 290 art 4 s 11; 1993 c 326 art 4 s 17-19; 1994 c 636 art 2 s 30-33; 1995 c 226 art 2 s 18; 1998 c 367 art 3 s 5,6; 2001 c 210 s 21; 2002 c 379 art 1 s 106; 2002 c 381 s 1; 2003 c 118 s 22; 2005 c 56 s 1; 2005 c 136 art 2 s 10,11; 2007 c 54 art 2 s 3; 2009 c 59 art 1 s 5; 2010 c 270 s 1.

MINN. STAT. § 609.342 (2016). CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE

Subdivision 1. *Crime defined*. — A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

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- (a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
 - (b) the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
 - (c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;
 - (d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
 - (e) the actor causes personal injury to the complainant, and either of the following circumstances exist:
 - (i) the actor uses force or coercion to accomplish sexual penetration; or
 - (ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
 - (f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:
 - (i) an accomplice uses force or coercion to cause the complainant to submit; or
 - (ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;
 - (g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or
 - (h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and:
 - (i) the actor or an accomplice used force or coercion to accomplish the penetration;
 - (ii) the complainant suffered personal injury; or
 - (iii) the sexual abuse involved multiple acts committed over an extended period of time.
- Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. *Penalty.*

(a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$ 40,000, or both.

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(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section. Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. *Stay*. — Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

Appellant argues Minn. Stat. § 609.342, subd. 1(g), is unconstitutionally vague. Appellant is correct. *HN6* Minn. Stat. § 609.342, subd. 1(g), is unconstitutionally vague and encourages arbitrary and discriminatory enforcement when applied to situations where both parties are under [436] the age of 16 and each person has a significant relationship to the other because, in such a case, the statute does not provide any basis for establishing which party is the actor.

HOLDINGS: [1]-Application of Minn. Stat. § 609.342, subd. 1(g) (2012) did not violate juvenile respondent's due process rights under U.S. Const. amend. XIV, § 1 and Minn. Const. art. I, § 2; the statute was not unconstitutionally vague as applied to respondent because Minn. Stat. §§ 609.341, subds., 12(1), 13, 15(2) (2012), 609.342, subd. 1(g) clearly prohibited a person from engaging in fellatio or anal intercourse with a child who was younger than 16 years old and to whom the person is related as a first cousin; [2]-State's enforcement of § 609.342, subd. 1(g) against respondent and not against the alleged victim did not violate respondent's rights to equal protection under U.S. Const. amend. XIV, § 1 and Minn. Const. art. I, § 2 because the case reflected an almost archetypal perpetrator and victim of criminal sexual conduct.

Outcome

Decision reversed.

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CREDIT(S)

1975 c 374 s 3; 1981 c 51 s 2; 1983 c 204 s 1; 1984 c 628 art 3 s 11; 1985 c 24 s 5; 1985 c 286 s 15; 1986 c 444; 1989 c 290 art 4 s 12; 1992 c 571 art 1 s 14; 1994 c 636 art 2 s 34; 1995 c 186 s 99; 1998 c 367 art 3 s 7, art 6 s 15; 2000 c 311 art 4 s 2; 2000 c 437 s 10; 2005 c 136 art 2 s 12,13; 2007 c 13 art 3 s 37.

In re Welfare of B.A.H., , 829 N.W.2d 431, 435-436 (Minn. Ct. App. 2013)

In re Welfare of B.A.H., 845 N.W.2d 158, 160 (Minn. 2014)

MINN. STAT. § 609.343 (2016). CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE

Subdivision 1. *Crime defined.* — A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists: (a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit;

(e) the actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) the actor uses force or coercion to accomplish the sexual contact; or

(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) an accomplice uses force or coercion to cause the complainant to submit; or

(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

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(g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. Penalty.

(a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$ 35,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 90 months must be imposed on an offender convicted of violating subdivision 1, clause (c), (d), (e), (f), or (h). Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay. — Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

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1975 c 374 s 4; 1979 c 258 s 12; 1981 c 51 s 3; 1983 c 204 s 2; 1984 c 628 art 3 s 11; 1985 c 24 s 6; 1985 c 286 s 16; 1986 c 444; 1989 c 290 art 4 s 13; 1992 c 571 art 1 s 15; 1998 c 367 art 3 s 8, art 6 s 15; 2000 c 437 s 11; 2002 c 381 s 2; 2005 c 136 art 2 s 14,15; 2007 c 13 art 3 s 37.

MINN. STAT. § 609.344 (2016). CRIMINAL SEXUAL CONDUCT IN THE THIRD DEGREE

Subdivision 1. *Crime defined.* — A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense.

Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

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- (i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;
- (j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;
- (k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;
- (1) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:
 - (i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or
 - (ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;
- (m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;
- (n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or
- (o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. *Penalty.* — Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced:

- (1) to imprisonment for not more than 15 years or to a payment of a fine of not more than \$ 30,000, or both; or
- (2) if the person was convicted under subdivision 1, paragraph (b), and if the actor was no more than 48 months but more than 24 months older than the complainant, to imprisonment for not more than five years or a fine of not more than \$ 30,000, or both.

A person convicted under this section is also subject to conditional release under section 609.3455.

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Subd. 3. *Stay*. — Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and
- (b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse;
- (2) a requirement that the offender complete a treatment program; and
- (3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

Defendant was a priest who had sexual relations with a parishioner while counseling her.

Following a jury trial, he was convicted of third-degree criminal sexual conduct in violation of Minn. Stat. § 609.344, subd. 1(l)(i) (2002) for sexual conduct that occurred during a single meeting in which the parishioner sought or received spiritual counsel. The appellate court found that the statute on its face did not violate the Establishment Clause because it had secular standards, but it was unconstitutionally applied to defendant because his conviction was based on excessive religious evidence.

Outcome

Trial court's determination that the statute did not violate the Establishment Clause on its face affirmed. However, the conviction under that statute was reversed and cause remanded for a new trial.

The court of appeals reversed the conviction and remanded for a new trial, concluding that the clergy sexual conduct statute, as applied in this case, violated the Establishment Clause of the United States Constitution. *State v. Wenthe (Wenthe I)*, 822 N.W.2d 822, 829-30 (Minn. App. 2012). The State appealed and we reversed, holding that the clergy sexual conduct statute does not violate the Establishment Clause, either facially or as applied in this case. *Wenthe II*, 839 N.W.2d at 92, 95.

CREDIT(S)

1975 c 374 s 5; 1979 c 258 s 13; 1983 c 204 s 3; 1984 c 588 s 7; 1984 c 628 art 3 s 11; 1985 c 24 s 7; 1985 c 286 s 17; 1985 c 297 s 6; 1986 c 351 s 8; 1986 c 444; 1Sp1986 c 3 art 1 s 80; 1987 c 94 s 1; 1989 c 290 art 4 s 14; 1992 c 571 art 1 s 16,17; 1993 c 326 art 4 s 20; 1994 c 636 art 2 s 35; 1998 c

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367 art 3 s 9, art 6 s 15; 2000 c 437 s 12; 2001 c 210 s 22; 2002 c 381 s 3; 2005 c 136 art 2 s 16,17; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 4; 2010 c 270 s 2; 2014 c 259 s 5, 6.

State v. Wenthe, 822 N.W.2d 822, 823 (Minn. Ct. App. 2012)

State v. Wenthe, 865 N.W.2d 293, 298 (Minn. 2015)

MINN. STAT. § 609.345 (2016). CRIMINAL SEXUAL CONDUCT IN THE FOURTH DEGREE

Subdivision 1. *Crime defined.* — A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

- (a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;
- (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;
- (c) the actor uses force or coercion to accomplish the sexual contact;
- (d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;
- (e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;
- (g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:
 - (i) the actor or an accomplice used force or coercion to accomplish the contact;
 - (ii) the complainant suffered personal injury; or
 - (iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

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(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;

(k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense;

(1) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. *Penalty.* — Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$ 20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

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Subd. 3. *Stay*. — Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

- (a) a stay is in the best interest of the complainant or the family unit; and
- (b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

- (1) incarceration in a local jail or workhouse;
- (2) a requirement that the offender complete a treatment program; and
- (3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

1975 c 374 s 6; 1976 c 124 s 9; 1979 c 258 s 14; 1981 c 51 s 4; 1983 c 204 s 4; 1984 c 588 s 8; 1984 c 628 art 3 s 11; 1985 c 24 s 8; 1985 c 286 s 18; 1985 c 297 s 7; 1986 c 351 s 9; 1986 c 444; 1Sp1986 c 3 art 1 s 81; 1987 c 94 s 2; 1989 c 290 art 4 s 15; 1992 c 571 art 1 s 18,19; 1993 c 326 art 4 s 21; 1994 c 636 art 2 s 36; 1998 c 367 art 3 s 10, art 6 s 15; 2000 c 437 s 13; 2001 c 210 s 23; 2002 c 381 s 4; 2005 c 136 art 2 s 18,19; 2007 c 13 art 3 s 37; 2007 c 54 art 2 s 5; 2010 c 270 s 3.

MINN. STAT. § 609.3451 (2016). CRIMINAL SEXUAL CONDUCT IN THE FIFTH DEGREE

Subdivision 1. *Crime defined*. — A person is guilty of criminal sexual conduct in the fifth degree:

- (1) if the person engages in nonconsensual sexual contact; or
- (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.

For purposes of this section, “sexual contact” has the meaning given in section 609.341, subdivision 11, paragraph (a), clauses (i), (iv), and (v), but does not include the intentional touching of the clothing covering the immediate area of the buttocks. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant’s intimate parts or undergarments, and the nonconsensual touching by the complainant of the actor’s intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.

Subd. 2. *Gross misdemeanor*. — A person convicted under subdivision 1 may be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$ 3,000, or both.

Subd. 3. *Felony*. — (a) A person is guilty of a felony and may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$ 14,000, or both, if the person violates this section within seven years of:

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(1) a previous conviction for violating subdivision 1, clause (2), a crime described in paragraph (b), or a statute from another state in conformity with any of these offenses; or

(2) the first of two or more previous convictions for violating subdivision 1, clause (1), or a statute from another state in conformity with this offense.

(b) A previous conviction for violating section 609.342, 609.343, 609.344, 609.345, 609.3453, 617.23, subdivision 2, clause (2), or subdivision 3, or 617.247 may be used to enhance a criminal penalty as provided in paragraph (a).

CREDIT(S)

1988 c 529 s 2; 1990 c 492 s 1; 1995 c 226 art 2 s 19; 1996 c 408 art 3 s 26,27; 1998 c 367 art 3 s 11; 2014 c 270 s 2; 2015 c 65 article 6, s 14.

MISSISSIPPI

MISS. CODE ANN. § 97-3-95 (2016). Sexual Battery

(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:

(a) Another person without his or her consent;

(b) A mentally defective, mentally incapacitated or physically helpless person;

(c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or

(d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.

(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of eighteen (18) years if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

CREDIT(S)

Laws, 1980, ch. 450, § 1; Laws, 1983, ch. 429, § 3; Laws, 1985, ch. 389, § 6; Laws, 1993, ch. 512, § 2; Laws, 1998, ch. 549, § 3, eff from and after July 1, 1998.

MISS. CODE ANN. § 97-3-97 (2016). Sexual Battery; Definitions

For purposes of Sections 97-3-95 through 97-3-103 the following words shall have the meaning ascribed herein unless the context otherwise requires:

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(a) "Sexual penetration" includes cunnilingus, fellatio, buggery or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body.

(b) A "mentally defective person" is one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct.

(c) A "mentally incapacitated person" is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent.

(d) A "physically helpless person" is one who is unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act.

CREDIT(S)

Laws, 1980, ch. 450, § 2, eff from and after July 1, 1980.

MISS. CODE ANN. § 97-3-101 (2016). Sexual Battery; Penalty

(1) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(a), (b), or (2) shall be imprisoned in the State Penitentiary for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the penitentiary for not more than forty (40) years.

(2) (a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$ 5,000.00), or both;

(b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$ 10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.

(3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.

(4) Every person who shall be convicted of sexual battery who is thirteen (13) years of age or older but under eighteen (18) years of age shall be sentenced to such imprisonment, fine or other sentence as the court, in its discretion, may determine.

CREDIT(S)

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Laws, 1980, ch 450, § 4; Laws, 1993, ch. 512, § 3; Laws, 1995, ch. 596, § 15; Laws, 1998, ch. 549, § 4; Laws, 1999, ch. 560, § 2, eff from and after passage (approved Apr. 21, 1999.)

MISSOURI

MO. REV. STAT. § 566.010 (2016). Chapter 566 and Chapter 568 Definitions [Effective Jan. 1, 2017]

As used in this chapter and chapter 568, the following terms mean:

- (1) “Aggravated sexual offense”, any sexual offense, in the course of which, the actor:
 - (a) Inflicts serious physical injury on the victim; or
 - (b) Displays a deadly weapon or dangerous instrument in a threatening manner; or
 - (c) Subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person; or
 - (d) Had previously been found guilty of an offense under this chapter or under section 573.200, child used in sexual performance; section 573.205, promoting sexual performance by a child; section 573.023, sexual exploitation of a minor; section 573.025, promoting child pornography in the first degree; section 573.035, promoting child pornography in the second degree; section 573.037, possession of child pornography; or section 573.040, furnishing pornographic materials to minors; or has previously been found guilty of an offense in another jurisdiction which would constitute an offense under this chapter or said sections;
 - (e) Commits the offense as part of an act or series of acts performed by two or more persons as part of an established or prescribed pattern of activity; or
 - (f) Engages in the act that constitutes the offense with a person the actor knows to be, without regard to legitimacy, the actor’s:
 - a. Ancestor or descendant by blood or adoption;
 - b. Stepchild while the marriage creating that relationship exists;
 - c. Brother or sister of the whole or half blood; or
 - d. Uncle, aunt, nephew, or niece of the whole blood;
- (2) “Commercial sex act”, any sex act on account of which anything of value is given to or received by any person;
- (3) “Deviate sexual intercourse”, any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the penis, female genitalia, or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;
- (4) “Forced labor”, a condition of servitude induced by means of:

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- (a) Any scheme, plan, or pattern of behavior intended to cause a person to believe that, if the person does not enter into or continue the servitude, such person or another person will suffer substantial bodily harm or physical restraint; or
- (b) The abuse or threatened abuse of the legal process;
- (5) “Sexual conduct”, sexual intercourse, deviate sexual intercourse or sexual contact;
- (6) “Sexual contact”, any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of terrorizing the victim;
- (7) “Sexual intercourse”, any penetration, however slight, of the female genitalia by the penis.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1987 H.B. 341; A.L. 1991 H.B. 566; A.L. 1994 S.B. 693; A.L. 2000 S.B. 757 & 602; A.L. 2002 S.B. 969, et al; A.L. 2006 H.B. 1698, et al; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MO. REV. STAT. § 566.030 (2016). Forcible Rape and Attempted Forcible Rape, Penalties — Suspended Sentences Not Granted, When [Effective Jan. 1, 2017

1. A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.
2. The offense of rape in the first degree or an attempt to commit rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:
 - (1) The offense is an aggravated sexual offense, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than fifteen years;
 - (2) The person is a persistent or predatory sexual offender as defined in section 566.125 and subjected to an extended term of imprisonment under said section;
 - (3) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such rape in the first degree is described under subdivision (4) of this subsection; or
 - (4) The victim is a child less than twelve years of age and such rape in the first degree or attempt to commit rape in the first degree was outrageously or wantonly vile, horrible or inhumane, in that

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it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.

3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of rape in the first degree or attempt to commit rape in the first degree when the victim is less than twelve years of age, and 'life imprisonment' shall mean imprisonment for the duration of a person's natural life for the purposes of this section.

4. No person found guilty of rape in the first degree or an attempt to commit rape in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1980 H.B. 1138, et al; A.L. 1990 H.B. 1370, et al; A.L. 1993 S.B. 180; A.L. 1994 S.B. 693; A.L. 1998 H.B. 1779; A.L. 2006 H.B. 1698, et al; A.L. 2009 S.B. 36 & 112; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MO. REV. STAT. § 566.031 (2016). Sexual Assault, Penalties [Effective Jan. 1, 2017]

1. A person commits the offense of rape in the second degree if he or she has sexual intercourse with another person knowing that he or she does so without that person's consent.

2. The offense of rape in the second degree is a class D felony.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1994 S.B. 693; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MO. REV. STAT. § 566.060 (2016). Forcible Sodomy, Penalties — Suspended Sentence Not Granted, When [Effective Jan. 1, 2017]

1. A person commits the offense of sodomy in the first degree if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. The offense of sodomy in the first degree or an attempt to commit sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:

(1) The offense is an aggravated sexual offense, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years;

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- (2) The person is a persistent or predatory sexual offender as defined in section 566.125 and subjected to an extended term of imprisonment under said section;
- (3) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such sodomy in the first degree is described under subdivision (4) of this subsection; or
- (4) The victim is a child less than twelve years of age and such sodomy in the first degree or attempt to commit sodomy in the first degree was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.
3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree when the victim is less than twelve years of age, and “life imprisonment” shall mean imprisonment for the duration of a person’s natural life for the purposes of this section.
4. No person found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1980 H.B. 1138, et al; A.L. 1990 H.B. 1370, et al; A.L. 1994 S.B. 693; A.L. 1998 H.B. 1779; A.L. 2006 H.B. 1698, et al; A.L. 2009 S.B. 36 & 112; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

Mo. REV. STAT. § 566.061 (2016). Deviate Sexual Assault, Penalty [Effective Jan. 1, 2017]

1. A person commits the offense of sodomy in the second degree if he or she has deviate sexual intercourse with another person knowing that he or she does so without that person’s consent.
2. The offense of sodomy in the second degree is a class D felony.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1994 S.B. 693; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

Mo. REV. STAT. § 566.093 (2016). Sexual Misconduct, First Degree, Penalties [Effective Jan. 1, 2017]

1. A person commits the offense of sexual misconduct in the first degree if such person:

- (1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm;
 - (2) Has sexual contact in the presence of a third person or persons under circumstances in which he or she knows that such conduct is likely to cause affront or alarm; or
 - (3) Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third person.
2. The offense of sexual misconduct in the first degree is a class B misdemeanor unless the person has previously been found guilty of an offense under this chapter, or has previously been found guilty of an offense in another jurisdiction which would constitute an offense under this chapter, in which case it is a class A misdemeanor.

CREDIT(S)

L. 1994 S.B. 693; A.L. 2004 H.B. 1055; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MO. REV. STAT. § 566.095 (2016). Sexual Misconduct, Second Degree, Penalty

1. A person commits the offense of sexual misconduct in the second degree if he or she solicits or requests another person to engage in sexual conduct under circumstances in which he or she knows that such request or solicitation is likely to cause affront or alarm.
2. The offense of sexual misconduct in the second degree is a class C misdemeanor.

CREDIT(S)

L. 1994 S.B. 693; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013.

MO. REV. STAT. § 566.100 (2016). Sexual Abuse in the First Degree, Penalties [Effective Jan. 1, 2017]

1. A person commits the offense of sexual abuse in the first degree if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion.
2. The offense of sexual abuse in the first degree is a class C felony unless the victim is less than fourteen years of age, or it is an aggravated sexual offense, in which case it is a class B felony.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1990 H.B. 1370, et al; A.L. 1991 H.B. 566; A.L. 1994 S.B. 693; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MO. REV. STAT. § 566.101 (2016). Sexual Misconduct, Second Degree, Penalties [Effective Jan. 1, 2017]

1. A person commits the offense of sexual abuse in the second degree if he or she purposely subjects another person to sexual contact without that person's consent.
2. The offense of sexual abuse in the second degree is a class A misdemeanor, unless it is an aggravated sexual offense, in which case it is a class E felony.

CREDIT(S)

L. 1977 S.B. 60; A.L. 1994 S.B. 693; A.L. 2002 S.B. 969, et al; A.L. 2006 H.B. 1698, et al; A.L. 2013 H.B. 215, § A, eff. Aug. 28, 2013; A.L. 2014 S.B. 491, § A, eff. Jan. 1, 2017.

MONTANA

MONT. CODE ANN. § 45-5-501 (2015). Definitions

(1)

(a) As used in 45-5-503, the term "without consent" means:

- (i) the victim is compelled to submit by force against the victim or another; or
- (ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:
 - (A) mentally disordered or incapacitated;
 - (B) physically helpless;
 - (C) overcome by deception, coercion, or surprise;
 - (D) less than 16 years old;
 - (E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;
 - (F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the youth care facility; or
 - (G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:
 - (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (II) is an employee, contractor, or volunteer of the facility or community-based service.

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(b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.

(c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

(2) As used in subsection (1), the term “force” means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

(3) As used in 45-5-502 and this section, the following definitions apply:

(a) “Parole”:

(i) in the case of an adult offender, has the meaning provided in 46-1-202; and

(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.

(b) “Probation” means:

(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and

(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.

(c) “Supervising authority” includes a court, including a youth court, a county, or the department of corrections.

CREDIT(S)

En. 94-5-501 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 2, Ch. 405, L. 1975; amd. Sec. 15, Ch. 359, L. 1977; R.C.M. 1947, 94-5-501; amd. Sec. 3, Ch. 175, L. 1991; amd. Sec. 1, Ch. 218, L. 1991; amd. Secs. 1, 8, Ch. 687, L. 1991; amd. Sec. 1, Ch. 84, L. 1999; amd. Sec. 1, Ch. 562, L. 2001; amd. Sec. 1, Ch. 321, L. 2007; amd. Sec. 1, Ch. 335, L. 2007; amd. Sec. 8, Ch. 161, L. 2015.

MONT. CODE ANN. § 45-5-502 (2016). Sexual Assault

(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2)

(a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$ 500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

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- (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$ 1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.
- (c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$ 10,000 or be imprisoned for a term not to exceed 5 years, or both.
- (3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$ 50,000.
- (4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.
- (5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:
- (i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;
 - (ii) less than 14 years old and the offender is 3 or more years older than the victim;
 - (iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:
 - (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (B) is an employee, contractor, or volunteer of the youth care facility; or
 - (iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:
 - (A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and
 - (B) is an employee, contractor, or volunteer of the facility or community-based service.
- (b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.
- (c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

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CREDIT(S)

En. 94-5-502 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-502; amd. Sec. 1, Ch. 687, L. 1979; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 172, L. 1985; amd. Sec. 1, Ch. 564, L. 1991; amd. Sec. 2, Ch. 687, L. 1991; amd. Sec. 1, Ch. 550, L. 1995; amd. Sec. 2, Ch. 84, L. 1999; amd. Sec. 1, Ch. 450, L. 2003; amd. Sec. 2, Ch. 321, L. 2007; amd. Sec. 2, Ch. 335, L. 2007; amd. Sec. 1, Ch. 46, L. 2011.

MONT. CODE ANN. § 45-5-503 (2015). Sexual Intercourse Without Consent

(1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3)

(a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed

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under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$ 50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section and who is the biological parent of the child resulting from the sexual intercourse without consent forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed.

Louisiana reintroduced the death penalty for rape of a child in 1995. See La. Stat. Ann. § 14:42 (West Supp. 1996). Under the current statute, any anal, vaginal, or oral intercourse with a child under the age of 13 constitutes aggravated rape and is punishable by death. See § 14:42 (West Supp. 2007). Mistake of age is not a defense, so the statute imposes strict liability in this regard. Five States have since followed Louisiana's lead: Georgia, see Ga. Code Ann. § 16-6-1 (2007) (enacted 1999); Montana, see Mont. Code Ann. § 45-5-503 (2007) (enacted 1997); Oklahoma, see Okla. Stat., Tit. 10, § 7115(K) (West 2007 Supp.) (enacted 2006); South Carolina, see S. C. Code Ann. § 16-3-655(C)(1) (Supp. 2007) (enacted 2006); and Texas, see Tex. Penal Code Ann. § 12.42(c)(3) (West Supp. 2007) (enacted 2007); see also § 22.021(a). Four of these States' statutes are more narrow than Louisiana's in that only offenders with a previous rape conviction are death eligible. See Mont. Code Ann. § 45-5-503(3)(c); Okla. Stat., Tit. 10, § 7115(K); S. C. Code Ann. § 16-3-655(C)(1); Tex. Penal Code Ann. § 12.42(c)(3). Georgia's statute makes child rape a capital offense only when aggravating circumstances are present, including but not limited to a prior conviction. See Ga. Code Ann. § 17-10-30 (Supp. 2007).

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CREDIT(S)

En. 94-5-503 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 1, Ch. 2, L. 1975; amd. Sec. 1, Ch. 129, L. 1975; amd. Sec. 1, Ch. 94, L. 1977; amd. Sec. 16, Ch. 359, L. 1977; amd. Sec. 10, Ch. 584, L. 1977; R.C.M. 1947, 94-5-503; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 2, Ch. 172, L. 1985; amd. Sec. 1, Ch. 356, L. 1985; amd. Sec. 1, Ch. 644, L. 1985; amd. Sec. 1, Ch. 175, L. 1991; amd. Sec. 2, Ch. 218, L. 1991; amd. Sec. 3, Ch. 687, L. 1991; amd. Sec. 1, Ch. 85, L. 1993; amd. Sec. 8, Ch. 482, L. 1995; amd. Sec. 2, Ch. 550, L. 1995; amd. Sec. 1, Ch. 312, L. 1997; amd. Sec. 3, Ch. 84, L. 1999; amd. Sec. 4, Ch. 523, L. 1999; amd. Sec. 85, Ch. 114, L. 2003; amd. Sec. 3, Ch. 335, L. 2007; amd. Sec. 5, Ch. 483, L. 2007; amd. Sec. 1, Ch. 149, L. 2013.

Kennedy v. Louisiana, 554 U.S. 407, 423 (U.S. 2008)

MONT. CODE ANN. § 45-5-511 (2015). Provisions Generally Applicable to Sexual Crimes.

(1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that the offender reasonably believed the child to be above that age. The belief may not be considered reasonable if the child is less than 14 years old.

(2) Evidence concerning the sexual conduct of the victim is inadmissible in prosecutions under this part except evidence of the victim's past sexual conduct with the offender or evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease that is at issue in the prosecution.

(3) If the defendant proposes for any purpose to offer evidence described in subsection (2), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection (2).

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.

(5) Resistance by the victim is not required to show lack of consent. Force, fear, or threat is sufficient alone to show lack of consent.

CREDIT(S)

En. 94-5-506 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 17, Ch. 359, L. 1977; R.C.M. 1947, 94-5-506; amd. Sec. 3, Ch. 407, L. 1979; MCA 1981, 45-5-506; redes. 45-5-511 by Code Commissioner, 1983; amd. Sec. 3, Ch. 172, L. 1985; amd. Sec. 1, Ch. 425, L. 1987; amd. Sec. 6, Ch. 687, L. 1991; amd. Sec. 1658, Ch. 56, L. 2009.

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NEBRASKA

NEB. REV. STAT. ANN. § 28-318 (2016). Terms, Defined

As used in sections 28-317 to 28-322.04, unless the context otherwise requires:

- (1) Actor means a person accused of sexual assault;
- (2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;
- (3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;
- (4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;
- (5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;
- (6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;
- (7) Victim means the person alleging to have been sexually assaulted;
- (8) Without consent means:
 - (a)
 - (i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;
 - (b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and
 - (c) A victim need not resist verbally or physically where it would be useless or futile to do so; and

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(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.

CREDIT(S)

Laws 1977, LB 38, § 33; Laws 1978, LB 701, § 1; Laws 1984, LB 79, § 3; Laws 1985, LB 2, § 2; Laws 1995, LB 371, § 3; Laws 2004, LB 943, § 4; Laws 2006, LB 1199, § 4; Laws 2009, LB 97, § 11.

NEB. REV. STAT. ANN. § 28-319 (2016). Sexual Assault; First Degree; Penalty

(1) Any person who subjects another person to sexual penetration (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to a mandatory minimum term of twenty-five years in prison

CREDIT(S)

Laws 1977, LB 38, § 34; Laws 1978, LB 748, § 5; Laws 1993, LB 430, § 1; Laws 1995, LB 371, § 4; Laws 2006, LB 1199, § 5.

NEB. REV. STAT. ANN. § 28-320 (2016). Sexual Assault; Second or Third Degree; Penalty

(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.

(2) Sexual assault shall be in the second degree and is a Class IIA felony if the actor shall have caused serious personal injury to the victim.

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(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

CREDIT(S)

Laws 1977, LB 38, § 35; Laws 1978, LB 701, § 2; Laws 1995, LB 371, § 5; Laws 2015, LB 605, § 18.

NEVADA

NEV. REV. STAT. ANN. § 200.364 (2015). Definitions

As used in NRS 200.364 to 200.3784, inclusive, unless the context otherwise requires:

1. "Offense involving a pupil" means any of the following offenses:
 - (a) Sexual conduct between certain employees of a school or volunteers at a school and a pupil pursuant to NRS 201.540.
 - (b) Sexual conduct between certain employees of a college or university and a student pursuant to NRS 201.550.
2. "Perpetrator" means a person who commits a sexual offense, an offense involving a pupil or sex trafficking.
3. "Sex trafficking" means a violation of subsection 2 of NRS 201.300.
4. "Sexual offense" means any of the following offenses:
 - (a) Sexual assault pursuant to NRS 200.366.
 - (b) Statutory sexual seduction pursuant to NRS 200.368.
5. "Sexual penetration" means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning. The term does not include any such conduct for medical purposes.
6. "Statutory sexual seduction" means ordinary sexual intercourse, anal intercourse, or sexual penetration committed by a person 18 years of age or older with a person who is 14 or 15 years of age and who is at least 4 years younger than the perpetrator.
7. "Victim" means a person who is a victim of a sexual offense, an offense involving a pupil or sex trafficking.

CREDIT(S)

1977, p. 1626; 1979, p. 572; 1991, ch. 304, § 1, p. 801; 1995, ch. 293, § 81, p. 700; 2009, ch. 68, § 8, p. 231; 2009, ch. 300, § 1.1, p. 1296; 2013, ch. 426, § 34, p. 2426; 2015, ch. 399, § 7, p. 2234.

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NEV. REV. STAT. ANN. § 200.366 (2015). Sexual Assault: Definition; Penalties

1. A person is guilty of sexual assault if he or she:

(a) Subjects another person to sexual penetration, or forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct; or

(b) Commits a sexual penetration upon a child under the age of 14 years or causes a child under the age of 14 years to make a sexual penetration on himself or herself or another, or on a beast.

2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

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5. The provisions of this section do not apply to a person who is less than 18 years of age and who commits any of the acts described in paragraph (b) of subsection 1 if the person is not more than 2 years older than the person upon whom the act was committed unless:

(a) The person committing the act uses force or threatens the use of force; or

(b) The person committing the act knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct.

6. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to [NRS 201.180](#);

(b) Lewdness with a child pursuant to [NRS 201.230](#);

(c) Sado-masochistic abuse pursuant to [NRS 201.262](#); or

(d) Luring a child using a computer, system or network pursuant to [NRS 201.560](#), if punished as a felony.

CREDIT(S)

1977, p. 1626; 1991, ch. 250, § 1, p. 612; 1995, ch. 443, § 58, p. 1186; 1997, ch. 314, § 3, p. 1179; 1997, ch. 455, § 1, p. 1719; 1999, ch. 105, § 23, p. 431; 2003, ch. 461, § 1, p. 2825; 2005, ch. 507, § 27, p. 2874; 2007, ch. 528, § 7, p. 3255; 2015, ch. 399, § 8, p. 2235.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 632-A: 1 (2016). Definitions

In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I-c. "Pattern of sexual assault" means committing more than one act under [RSA 632-A:2](#) or [RSA 632-A:3](#), or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

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III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V.

(a) "Sexual penetration" means:

(1) Sexual intercourse; or

(2) Cunnilingus; or

(3) Fellatio; or

(4) Anal intercourse; or

(5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or

(6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or

(7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)–(6) on the actor, on another person, or on himself.

(b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.

(c) "Objects" include animals as defined in RSA 644:8, II.

VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.

CREDIT(S)

1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3–5. 1994, 185:1, eff. Jan. 1, 1995. 1998, 240:1, eff. Jan. 1, 1999. 1999, 177:1, eff. Aug. 30, 1999. 2008, 334:8, eff. January 1, 2009.

N.H. REV. STAT. ANN. § 632-A: 2 (2016). Aggravated Felonious Sexual Assault

I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

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- (d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.
- (e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.
- (f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.
- (g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:
- (1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or
 - (2) Uses this position as such provider to coerce the victim to submit.
- (h) When, except as between legally married spouses, the victim has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability.
- (i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.
- (j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:
- (1) the actor is a member of the same household as the victim; or
 - (2) the actor is related by blood or affinity to the victim.
- (k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.
- (l) When the victim is less than 13 years of age.
- (m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.
- (n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:
- (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
 - (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

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Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

V. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Aggravated Felonious Sexual Assault — Domestic Violence."

CREDIT(S)

1975, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 254:6. 1994, 185:2, eff. Jan. 1, 1995. 1995, 66:1, eff. Jan. 1, 1996. 1997, 220:2, eff. Jan. 1, 1998. 1998, 240:2, eff. Jan. 1, 1999. 1999, 177:2, eff. Aug. 30, 1999. 2003, 226:1, 2, eff. Jan. 1, 2004. 2008, 334:13, eff. January 1, 2009. 2012, 105:1, eff. July 28, 2012. 2014, 152:6, eff. January 1, 2015.

N.H. REV. STAT. ANN. § 632-A: 3 (2016). Felonious Sexual Assault

A person is guilty of a class B felony if such person:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

IV.

(a) Engages in sexual contact with the person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the

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person and uses that authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

(b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense.

(c) For the purpose of this paragraph, "sexual contact" means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or the causing of such contact, can reasonably be construed as being for the purpose of sexual arousal or gratification of the person in the position of authority, or the humiliation of the person being touched.

V. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Felony Sexual Assault — Domestic Violence."

CREDIT(S)

1975, 302:1. 1981, 415:4. 1985, 228:4, eff. Jan. 1, 1986. 1997, 220:3, eff. Jan. 1, 1998. 2003, 226:3, 4, eff. Jan. 1, 2004. 2006, 162:1, eff. January 1, 2007. 2008, 334:9, eff. January 1, 2009. 2010, 223:1, eff. January 1, 2011. 2014, 152:7, eff. January 1, 2015.

N.H. REV. STAT. ANN. § 632-A: 4 (2016). Sexual Assault

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.

(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.

III.

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(a) A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

(b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense.

(c) For the purpose of this paragraph, "sexual contact" means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or the causing of such contact, can reasonably be construed as being for the purpose of sexual arousal or gratification of the person in the position of authority, or the humiliation of the person being touched.

IV. Upon proof that the victim and defendant were intimate partners or family or household members, as those terms are defined in RSA 631:2-b, III, a conviction under this section shall be recorded as "Sexual Assault — Domestic Violence."

CREDIT(S)

1975, 302:1. 1985, 228:5, eff. Jan. 1, 1986. 2003, 226:5, eff. Jan. 1, 2004. 316:7, eff. at 12:02 a.m., Jan. 1, 2004. 2005, 290:1, eff. January 1, 2006. 2008, 334:14, eff. January 1, 2009. 2010, 223:2, eff. January 1, 2011. 2014, 152:8, eff. January 1, 2015.

N.H. REV. STAT. ANN. § 651: 2 (2016). Calculation of Periods

I. A sentence of imprisonment commences when it is imposed if the defendant is in custody or surrenders into custody at that time. Otherwise, it commences when he becomes actually in custody. All the time actually spent in custody prior to the time he is sentenced shall be credited in the manner set forth in RSA 651-A:23 against the maximum term of imprisonment that is imposed and against any minimum term authorized by RSA 651:2 or 6.

II. If a court determines that the defendant violated the conditions of his probation or conditional discharge but reinstates the probation or discharge, the period between the date of the violation and the date of restoration is not computed as part of the period of probation or discharge.

CREDIT(S)

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1971, 518:1. 1975, 158:2. 1976, 32:1, eff. July 26, 1976.

NEW JERSEY

N.J. STAT. ANN. § 2C:14-1 (2016). Definitions

The following definitions apply to this chapter:

- a. "Actor" means a person accused of an offense proscribed under this act;
- b. "Victim" means a person alleging to have been subjected to offenses proscribed by this act;
- c. "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;
- d. "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;
- e. "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;
- f. "Severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;
- g. "Physically helpless" means that condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act;
- h. (Deleted by amendment, P.L.2011, c.232)
- i. "Mentally incapacitated" means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;
- j. "Coercion" as used in this chapter shall refer to those acts which are defined as criminal coercion in section 2C:13-5(1), (2), (3), (4), (6) and (7).

CREDIT(S)

L. 1978, c. 95; Amended 1983, c. 249, § 1; 1989, c. 228, § 2; 2011, c. 232, § 3, eff. Mar. 17, 2012.

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N.J. STAT. ANN. § 2C:14-2 (2016). Sexual Assault

a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The victim is less than 13 years old;
- (2) The victim is at least 13 but less than 16 years old; and
 - (a) The actor is related to the victim by blood or affinity to the third degree, or
 - (b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or
 - (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;
- (3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;
- (4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;
- (5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;
- (6) The actor uses physical force or coercion and severe personal injury is sustained by the victim;
- (7) The victim is one whom the actor knew or should have known was physically helpless or incapacitated, intellectually or mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.

Aggravated sexual assault is a crime of the first degree.

Except as otherwise provided in subsection d. of this section, a person convicted under paragraph (1) of this subsection shall be sentenced to a specific term of years which shall be fixed by the court and shall be between 25 years and life imprisonment of which the person shall serve 25 years before being eligible for parole, unless a longer term of parole ineligibility is otherwise provided pursuant to this Title.

b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

- (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;

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(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;

(3) The victim is at least 16 but less than 18 years old and:

(a) The actor is related to the victim by blood or affinity to the third degree; or

(b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or

(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

Sexual assault is a crime of the second degree.

d. Notwithstanding the provisions of subsection a. of this section, where a defendant is charged with a violation under paragraph (1) of subsection a. of this section, the prosecutor, in consideration of the interests of the victim, may offer a negotiated plea agreement in which the defendant would be sentenced to a specific term of imprisonment of not less than 15 years, during which the defendant shall not be eligible for parole. In such event, the court may accept the negotiated plea agreement and upon such conviction shall impose the term of imprisonment and period of parole ineligibility as provided for in the plea agreement, and may not impose a lesser term of imprisonment or parole or a lesser period of parole ineligibility than that expressly provided in the plea agreement. The Attorney General shall develop guidelines to ensure the uniform exercise of discretion in making determinations regarding a negotiated reduction in the term of imprisonment and period of parole ineligibility set forth in subsection a. of this section.

CREDIT(S)

L. 1978, c. 95; amended 1979, c. 178, § 26; 1983, c. 249, § 2; 1989, c. 228, § 3; 1997, c. 194, § 1, eff. Aug. 8, 1997; 2001, c. 60, § 1, eff. Apr. 19, 2001; 2004, c. 130, § 13, eff. Aug. 27, 2004; 2011, c. 232, § 4, eff. Mar. 17, 2012; 2013, c. 214, § 3, eff. July 1, 2014; 2014, c. 7, § 1, eff. May 15, 2014.

N.J. STAT. ANN. § 2C:14-3 (2016). Aggravated Criminal Sexual Contact; Criminal Sexual Contact

a. An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2 a.(2) through (7).

Aggravated criminal sexual contact is a crime of the third degree.

b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2 c.(1) through (4).

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Criminal sexual contact is a crime of the fourth degree.

CREDIT(S)

L. 1978, c. 95; Amended 1979, c. 178, § 27; 1997, c. 194, § 2.

N.J. STAT. ANN. § 2C:14-5 (2016). Provisions Generally Applicable to Chapter 14

- a. The prosecutor shall not be required to offer proof that the victim resisted, or resisted to the utmost, or reasonably resisted the sexual assault in any offense proscribed by this chapter.
- b. No actor shall be presumed to be incapable of committing a crime under this chapter because of age or impotency or marriage to the victim.
- c. It shall be no defense to a prosecution for a crime under this chapter that the actor believed the victim to be above the age stated for the offense, even if such a mistaken belief was reasonable.

CREDIT(S)

L. 1978, c. 95.

N.J. STAT. ANN. § 2C:14-6 (2016). Sentencing

If a person is convicted of a second or subsequent offense under sections 2C:14-2 or 2C:14-3 a., the sentence imposed under those sections for the second or subsequent offense shall, unless the person is sentenced pursuant to the provisions of 2C:43-7, include a fixed minimum sentence of not less than 5 years during which the defendant shall not be eligible for parole. The court may not suspend or make any other non-custodial disposition of any person sentenced as a second or subsequent offender pursuant to this section. For the purpose of this section an offense is considered a second or subsequent offense, if the actor has at any time been convicted under sections 2C:14-2 or 2C:14-3 a. or under any similar statute of the United States, this state, or any other state for an offense that is substantially equivalent to sections 2C:14-2 or 2C:14-3 a.

CREDIT(S)

L. 1978, c. 95.

NEW MEXICO

N.M. STAT. ANN. § 30-9-10 (2016). Definitions

As used in Sections 30-9-10 through 30-9-16 NMSA 1978:

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A. "force or coercion" means:

- (1) the use of physical force or physical violence;
- (2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;
- (3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;
- (4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or
- (5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy.

Physical or verbal resistance of the victim is not an element of force or coercion;

B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;

C. "patient" means a person who seeks or obtains psychotherapy;

D. "personal injury" means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;

E. "position of authority" means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;

F. "psychotherapist" means a person who is or purports to be a:

- (1) licensed physician who practices psychotherapy;
- (2) licensed psychologist;
- (3) licensed social worker;
- (4) licensed nurse;
- (5) counselor;
- (6) substance abuse counselor;
- (7) psychiatric technician;
- (8) mental health worker;
- (9) marriage and family therapist;
- (10) hypnotherapist; or

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(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;

G. “psychotherapy” means professional treatment or assessment of a mental or an emotional illness, symptom or condition;

H. “school” means any public or private school, including the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, the New Mexico boys’ school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the New Mexico behavioral health institute at Las Vegas and the Carrie Tingley crippled children’s hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. “School” does not include a college or university; and

I. “spouse” means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.

CREDIT(S)

1953 Comp., § 40A-9-20, enacted by Laws 1975, ch. 109, § 1; 1979, ch. 28, § 1; 1993, ch. 177, § 1; 2001, ch. 161, § 1; 2005, ch. 313, § 7.

N.M. STAT. ANN. § 30-9-11 (2016). Criminal Sexual Penetration

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) by the use of force or coercion on a child thirteen to eighteen years of age;

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- (2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;
- (3) by the use of force or coercion that results in personal injury to the victim;
- (4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;
- (5) in the commission of any other felony; or
- (6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

- (1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or
- (2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

CREDIT(S)

1953 Comp., § 40A-9-21, enacted by Laws 1975, ch. 109, § 2; 1987, ch. 203, § 1; 1991, ch. 26, § 1; 1993, ch. 177, § 2; 1995, ch. 159, § 1; 2001, ch. 161, § 2; 2003 (1st S.S.), ch. 1, § 3; 2007, ch. 69, § 1; 2009, ch. 56, § 1.

N.M. STAT. ANN. § 30-9-12 (2016). Criminal Sexual Contact

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A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.

B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:

(1) inadvertent;

(2) casual social contact not intended to be sexual in nature; or

(3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.

C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:

(1) by the use of force or coercion that results in personal injury to the victim;

(2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or

(3) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.

E. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

CREDIT(S)

1953 Comp., § 40A-9-22, enacted by Laws 1975, ch. 109, § 3; 1981, ch. 8, § 1; 1991, ch. 26, § 2; 1993, ch. 177, § 3.

N.M. STAT. ANN. § 31-18-15 (2016). Sentencing Authority; Noncapital Felonies; Basic Sentences and Fines; Parole Authority; Meritorious Deductions

A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:

(1) for a first degree felony resulting in the death of a child, life imprisonment;

(2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment;

(3) for a first degree felony, eighteen years imprisonment;

(4) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;

(5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment;

(6) for a second degree felony for sexual exploitation of children, twelve years imprisonment;

(7) for a second degree felony, nine years imprisonment;

(8) for a third degree felony resulting in the death of a human being, six years imprisonment;

(9) for a third degree felony for a sexual offense against a child, six years imprisonment;

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(10) for a third degree felony for sexual exploitation of children, eleven years imprisonment;

(11) for a third degree felony, three years imprisonment;

(12) for a fourth degree felony for sexual exploitation of children, ten years imprisonment; or

(13) for a fourth degree felony, eighteen months imprisonment.

B. The appropriate basic sentence of imprisonment shall be imposed upon a person convicted and sentenced pursuant to Subsection A of this section, unless the court alters the sentence pursuant to the provisions of the Criminal Sentencing Act.

C. The court shall include in the judgment and sentence of each person convicted and sentenced to imprisonment in a corrections facility designated by the corrections department authority for a period of parole to be served in accordance with the provisions of Section 31-21-10 NMSA 1978 after the completion of any actual time of imprisonment and authority to require, as a condition of parole, the payment of the costs of parole services and reimbursement to a law enforcement agency or local crime stopper program in accordance with the provisions of that section. The period of parole shall be deemed to be part of the sentence of the convicted person in addition to the basic sentence imposed pursuant to Subsection A of this section together with alterations, if any, pursuant to the provisions of the Criminal Sentencing Act.

D. When a court imposes a sentence of imprisonment pursuant to the provisions of Section 31-18-15.1, 31-18-16 or 31-18-17 NMSA 1978 and suspends or defers the basic sentence of imprisonment provided pursuant to the provisions of Subsection A of this section, the period of parole shall be served in accordance with the provisions of Section 31-21-10 NMSA 1978 for the degree of felony for the basic sentence for which the inmate was convicted. For the purpose of designating a period of parole, a court shall not consider that the basic sentence of imprisonment was suspended or deferred and that the inmate served a period of imprisonment pursuant to the provisions of the Criminal Sentencing Act.

E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:

(1) for a first degree felony resulting in the death of a child, seventeen thousand five hundred dollars (\$17,500);

(2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500);

(3) for a first degree felony, fifteen thousand dollars (\$15,000);

(4) for a second degree felony resulting in the death of a human being, twelve thousand five hundred dollars (\$12,500);

(5) for a second degree felony for a sexual offense against a child, twelve thousand five hundred dollars (\$12,500);

(6) for a second degree felony for sexual exploitation of children, five thousand dollars (\$5,000);

(7) for a second degree felony, ten thousand dollars (\$10,000);

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- (8) for a third degree felony resulting in the death of a human being, five thousand dollars (\$5,000);
- (9) for a third degree felony for a sexual offense against a child, five thousand dollars (\$5,000);
- (10) for a third degree felony for sexual exploitation of children, five thousand dollars (\$5,000);
- (11) for a third or fourth degree felony, five thousand dollars (\$5,000); or
- (12) for a fourth degree felony for sexual exploitation of children, five thousand dollars (\$5,000).

F. When the court imposes a sentence of imprisonment for a felony offense, the court shall indicate whether or not the offense is a serious violent offense, as defined in Section 33-2-34 NMSA 1978. The court shall inform an offender that the offender's sentence of imprisonment is subject to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. If the court fails to inform an offender that the offender's sentence is subject to those provisions or if the court provides the offender with erroneous information regarding those provisions, the failure to inform or the error shall not provide a basis for a writ of habeas corpus.

G. No later than October 31 of each year, the New Mexico sentencing commission shall provide a written report to the secretary of corrections, all New Mexico criminal court judges, the administrative office of the district attorneys and the chief public defender. The report shall specify the average reduction in the sentence of imprisonment for serious violent offenses and nonviolent offenses, as defined in Section 33-2-34 NMSA 1978, due to meritorious deductions earned by prisoners during the previous fiscal year pursuant to the provisions of Sections 33-2-34, 33-2-36, 33-2-37 and 33-2-38 NMSA 1978. The corrections department shall allow the commission access to documents used by the department to determine earned meritorious deductions for prisoners.

CREDIT(S)

1953 Comp., § 40A-29-28, enacted by Laws 1977, ch. 216, § 4; 1979, ch. 152, § 1; 1980, ch. 38, § 1; 1981, ch. 285, § 1; 1987, ch. 139, § 3; 1993, ch. 38, § 1; 1993, ch. 182, § 1; 1994, ch. 23, § 3; 1999, ch. 238, § 5; 2003, ch. 75, § 4; 2003 (1st S.S.), ch. 1, § 5; 2005, ch. 59, § 2; 2007, ch. 69, § 2; 2016, ch. 2, § 2.

NEW YORK

N.Y. LAW §130.00 (2016). 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.
- 2.

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- (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 ¹ 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, *as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.*
4. ¹ For the purposes of this article ²"married" means ³ the existence of the relationship ⁴ between the actor and the ⁵ *victim as spouses* which is recognized by law at the time the actor commits an offense proscribed by this article ⁶ against the ⁷ *victim*.
5. "Mentally ¹ *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 ¹, rectum *or anus*, is capable of causing physical injury.
10. "Sexual conduct" means sexual intercourse, ¹ *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 ¹, rectum *or anus* of a child, thereby causing physical injury to such child.
12. "Health care provider" means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.

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13. "Mental health care provider" ¹ shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.

Two separate grand juries were presented with evidence that defendants committed a series of sexual offenses against their wives. In instructing the grand juries, the assistant district attorneys omitted the language regarding marriage and/or did not proffer a definition of "sexual contact," thereby omitting any reference to the element that the parties could not be married to each other. The appellate court found that the only possible rationale for the continued constitutionality of the marital exception for third-degree sexual abuse was that a person had an absolute right to conjugal relations with his or her spouse based on an assumption that consent to such relations was implicit in marriage. However, given the established case law finding similar statutes unconstitutional, because the conclusion was inescapable, and because the invalidity of the act was apparent on its face, the court held that the marital exception to PL § 130.55 was unconstitutional. The evidence adduced before each grand jury was legally sufficient to establish the finding of each and every count of both indictments. The grand juries were correctly charged with respect to the applicable law.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967; amd, L 1977, ch 692, § 2; L 1978, ch 735, § 1, eff Sept 1, 1978; L 1981, ch 696, § 1, eff July 21, 1981; L 1982, ch 560, § 1; L 1983, ch 449, § 1, eff July 15, 1983; L 1984, ch 650, § 1, eff July 27, 1984; L 1996, ch 122, § 5, eff Aug 1, 1996 (see 1996 note below); L 2000, ch 1, § 1-a, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 12, eff Nov 1, 2003; L 2004, ch 230, § 25, eff July 27, 2004; L 2009, ch 485, §§ 1, 2, eff Jan 7, 2010; L 2010, ch 193, § 1, eff Oct 13, 2010.

People v. Alexis, 14 Misc. 3d 978, 978 (N.Y. Sup. Ct. 2007)

N.Y. LAW §130.05 (2016). Sex Offenses; Lack of Consent

1. Whether or not specifically stated, it is an element of every offense defined in this article ¹ that the sexual act was committed without consent of the victim.
2. Lack of consent results from:
 - (a) Forcible compulsion; or
 - (b) Incapacity to consent; or

(c) Where the offense charged is sexual abuse *or forcible touching*, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or

(d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, *oral sexual conduct* or ¹ *anal sexual* ² *conduct*, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

3. A person is deemed incapable of consent when he or she is:

(a) less than seventeen years old; or

(b) mentally ¹ *disabled*; or

(c) mentally incapacitated; or

(d) physically helpless; or

(e) committed to the care and custody *or supervision* of the state department of corrections and community supervision or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee ¹ who knows or reasonably should know that such person is committed to the care and custody *or supervision* of such department or hospital. For purposes of this paragraph, "employee" means

(i) an employee of the state department of corrections and community supervision who, *as part of his or her employment*, performs ¹ duties:

(A) in a state correctional facility *in which the victim is confined at the time of the offense* consisting of providing custody, medical or mental health services, counseling services, educational programs, ¹ vocational training ², *institutional parole services or direct supervision to inmates*; or

(B) ¹ of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or

(ii) an employee of the office of mental health who, *as part of his or her employment*, performs ¹ duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law *in which the inmate is confined at the time of the offense*, consisting of providing custody, ² medical or mental health services ³, *or direct supervision to such inmates*; or

(iii) a person, including a volunteer, providing direct services to inmates in ¹ a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of ² *corrections and community supervision* or, in the case

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of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or

(f) committed to the care and custody of a local correctional facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, “employee” means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates. For purposes of this paragraph, “employee” shall also mean a person, including a volunteer or a government employee of the state ¹ *department of corrections and community supervision* or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or

(g) committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, “employee” means an employee of the office of children and family services or of a residential facility *in which such person is committed to or placed at the time of the offense who, as part of his or her employment, performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, ¹ vocational training ², or direct supervision to persons committed to or placed ³ in a residential facility operated by the office of children and family services ⁴*; or

(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination ¹; or

(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, “employee” means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct

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supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967; amd, L 1965, ch 1038, § 1, eff Sept 1, 1967; L 1996, ch 266, § 1, eff Aug 1, 1996; L 2000, ch 1, §§ 3, 45, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, §§ 13, 14, eff Nov 1, 2003; L 2004, ch 40, § 1, eff April 20, 2004; L 2007, ch 335, §§ 1, 2, eff Nov 1, 2007; L 2011, ch 62, § 127–q (Part C, Subpart B), eff March 31, 2011; L 2011, ch 205, §§ 1, 2, eff Nov 1, 2011 (see 2011 note below); L 2012, ch 501, § 2 (Part G), eff Jan 17, 2013.

N.Y. LAW §130.10 (2016). Sex Offenses; Limitation; Defenses

1. In any prosecution under this article in which the victim's lack of consent is based solely upon his *or her* incapacity to consent because he *or she* was mentally¹ *disabled*, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he *or she* engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.
2. Conduct performed for a valid medical or mental health care purpose shall not constitute a violation of any section of this article in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article.
3. In any prosecution for the crime of rape in the third degree as defined in section 130.25,¹ *criminal sexual act* in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55 in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article it shall be an affirmative defense that the client or patient consented to such conduct charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.

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4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled,¹ a client or patient and the actor is a health care provider, *or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee*, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967; amd, L 2000, ch 1, § 4, eff Feb 1, 2001; L 2003, ch 264, § 15, eff Nov 1, 2003; L 2011, ch 205, § 3, eff Nov 1, 2011 (see 2011 note below).

N.Y. LAW §130.20 (2016). Sexual Misconduct

A person is guilty of sexual misconduct when:

1. ¹ *He or she* engages in sexual intercourse with ² *another person* without ³ *such person's* consent; or
2. He or she engages in ¹ *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.

The presentment agency filed an amended petition against the minor. The amended petition alleged that the minor, a 13-year old male, was a juvenile delinquent in that he engaged in sexual intercourse with a 15-year-old female, and that such act, if committed by an adult, constituted the crime of sexual misconduct in violation of N.Y. Penal Law § 130.20(1). The family court rejected the minor's motion to dismiss the amended petition, found the minor to be a juvenile delinquent, and placed him in custody for a period of 12 months. The court reversed the family court's order and dismissed the petition. The court held that (1) although § 130.20(1) was unconstitutionally under-inclusive in violation of the Equal Protection Clause, the appropriate remedy was to gender-neutralize the statute and the minor's successful constitutional challenge to § 130.20(1) did not require reversal of his conviction; and that (2) nevertheless the family court's order should have been reversed in the interest of justice, as the parties had stipulated that no force was employed, the minor was only 13 years old at the time, and the minor was no more at fault for his conduct than the female participant.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from §§ 690 in part, 2010; amd, L 2000, ch 1, § 31, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 17, eff Nov 1, 2003.

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In re Jessie C., 164 A.D.2d 731, 732 (N.Y. App. Div. 4th Dep't 1991)

N.Y. LAW §130.25 (2016). 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 ¹ who is incapable of consent by reason of some factor other than being less than seventeen years old; ²
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person ¹ less than seventeen years old ²; *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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from § 2010; amd, L 1987, ch 510, § 1, eff Nov 1, 1987; L 2000, ch 1, § 32, eff Feb 1, 2001 (see 2000 note below).

N.Y. LAW §130.30 (2016). Rape in the second degree

A person is guilty of rape in the second degree when ¹:

1. being eighteen years old or more, he or she engages in sexual intercourse with another person ¹ less than ² *fifteen* years old ³; *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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967; amd, L 1987, ch 510, § 2, eff Nov 1, 1987; L 2000, ch 1, § 33, eff Feb 1, 2001 (see 2000 note below).

N.Y. LAW §130.35 (2016). Rape in the first degree

A ¹ *person* is guilty of rape in the first degree when he *or she* engages in sexual intercourse with ² *another person*:

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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 ¹; *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.

Defendant, while living separate from his wife and after a temporary order of protection had been issued to his wife, forced her to have intercourse and perform fellatio on him. He appealed his convictions of rape under N.Y. Penal Law § 130.35 and sodomy under N.Y. Penal Law § 130.50 on the basis of his being married to his wife at the time and on equal protection grounds. The court affirmed, striking down the marital exemptions to the rape and sodomy statutes as having no rational basis. The court determined that the equal protection argument required the court to either eliminate the statutes or to make the statutes gender neutral. The court determined that making the statutes gender neutral would have addressed the equal protection concerns and would have been a better result than declaring the statutes a nullity because of the effect such a declaration would have had on public safety.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived in part from § 2010; amd, L 2000, ch 1, § 34, eff Feb 1, 2001 (see 2000 note below).

N.Y. LAW §130.40 (2016). 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.

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Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from § 690 in part; amd, L 2000, ch 1, § 35, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 18, eff Nov 1, 2003.

N.Y. LAW §130.45 (2016). 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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967; amd, L 2000, ch 1, § 36, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 19, eff Nov 1, 2003.

N.Y. LAW §130.50 (2016). 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; 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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from § 690 in part; amd, L 2000, ch 1, § 37, eff Feb 1, 2001 (see 2000 note below); L 2003, ch 264, § 20, eff Nov 1, 2003.

N.Y. LAW §130.52 (2016). Forcible touching

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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.

CREDIT(S)

Add, L 2000, ch 1, § 53, eff Feb 1, 2001 (see 2000 note below); amd, L 2003, ch 264, § 21, eff Nov 1, 2003; L 2015, ch 250, § 1, eff Nov 1, 2015.

N.Y. LAW §130.55 (2016). 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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from §§ 483-a, 483-b; amd, L 2000, ch 1, § 39, eff Feb 1, 2001 (see 2000 note below).

N.Y. LAW §130.60 (2016). 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.

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Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from §§ 483–a, 483–b; amd, L 2000, ch 1, § 40, eff Feb 1, 2001 (see 2000 note below).

N.Y. LAW §130.65 (2016). 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.

CREDIT(S)

Add, L 1965, ch 1030, § 1, eff Sept 1, 1967, with substance derived from §§ 483–a, 483–b; amd, L 2000, ch 1, § 41, eff Feb 1, 2001 (see 2000 note below); L 2011, ch 26, § 1, eff Nov 1, 2011.

N.Y. LAW §130.65-a (2016). 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.

CREDIT(S)

Add, L 2000, ch 1, § 42, eff Feb 1, 2001 (see 2000 note below); amd, L 2009, ch 485, § 3, eff Jan 7, 2010.

N.Y. LAW §130.66 (2016). 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.

CREDIT(S)

Add, L 1996, ch 181, § 2, eff Nov 1, 1996; amd, L 2000, ch 1, § 43, eff Feb 1, 2001 (see 2000 note below); L 2009, ch 485, § 4, eff Jan 7, 2010.

N.Y. LAW §130.67 (2016). 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.

CREDIT(S)

Add, L 1988, ch 450, § 1, eff Nov 1, 1988; amd, L 2009, ch 485, § 5, eff Jan 7, 2010 (see 2009 note below).

N.Y. LAW §130.70 (2016). Aggravated sexual abuse in the first degree

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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.

CREDIT(S)

Add, L 1978, ch 723, § 1; amd, L 1981, ch 696, § 2; L 1988, ch 450, § 2, eff Nov 1, 1988; L 2009, ch 485, § 6, eff Jan 7, 2010 (see 2009 note below).

N.Y. LAW §70.00 (2016). Sentence of imprisonment for felony

1. [Expires Sept 1, 2017, as amended L 2004, ch 738, § 28 and L 2007, ch 7, § 36] Indeterminate sentence. Except as provided in subdivisions four, five and six of this section or section 70.80 of this article, a sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

1. [Eff Sept 1, 2017, as amended L 2004, ch 738, § 29 and L 2007, ch 7, § 37] Indeterminate sentence. Except as provided in subdivisions four and five of this section or section 70.80 of this article, a sentence of imprisonment for a felony, other than a felony defined in article two hundred twenty or two hundred twenty-one of this chapter, shall be an indeterminate sentence. When such a sentence is imposed, the court shall impose a maximum term in accordance with the provisions of subdivision two of this section and the minimum period of imprisonment shall be as provided in subdivision three of this section.

2. Maximum term of sentence. The maximum term of an indeterminate sentence shall be at least three years and the term shall be fixed as follows:

- (a) For a class A felony, the term shall be life imprisonment;
- (b) For a class B felony, the term shall be fixed by the court, and shall not exceed twenty-five years;
- (c) For a class C felony, the term shall be fixed by the court, and shall not exceed fifteen years;
- (d) For a class D felony, the term shall be fixed by the court, and shall not exceed seven years; and
- (e) For a class E felony, the term shall be fixed by the court, and shall not exceed four years.

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3. Minimum period of imprisonment. The minimum period of imprisonment under an indeterminate sentence shall be at least one year and shall be fixed as follows:
- (a) In the case of a class A felony, the minimum period shall be fixed by the court and specified in the sentence.
 - (i) For a class A-I felony, such minimum period shall not be less than fifteen years nor more than twenty-five years; provided, however, that (A) where a sentence, other than a sentence of death or life imprisonment without parole, is imposed upon a defendant convicted of murder in the first degree as defined in section 125.27 of this chapter such minimum period shall be not less than twenty years nor more than twenty-five years, and, (B) where a sentence is imposed upon a defendant convicted of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or convicted of aggravated murder as defined in section 125.26 of this chapter, the sentence shall be life imprisonment without parole, and, (C) where a sentence is imposed upon a defendant convicted of attempted murder in the first degree as defined in article one hundred ten of this chapter and subparagraph (i), (ii) or (iii) of paragraph (a) of subdivision one and paragraph (b) of subdivision one of section 125.27 of this chapter or attempted aggravated murder as defined in article one hundred ten of this chapter and section 125.26 of this chapter such minimum period shall be not less than twenty years nor more than forty years.
 - (ii) For a class A-II felony, such minimum period shall not be less than three years nor more than eight years four months, except that for the class A-II felony of predatory sexual assault as defined in section 130.95 of this chapter or the class A-II felony of predatory sexual assault against a child as defined in section 130.96 of this chapter, such minimum period shall be not less than ten years nor more than twenty-five years.
 - (b) For any other felony, the minimum period shall be fixed by the court and specified in the sentence and shall be not less than one year nor more than one-third of the maximum term imposed.
4. Alternative definite sentence for class D and E felonies. When a person, other than a second or persistent felony offender, is sentenced for a class D or class E felony, and the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose an indeterminate or determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.
5. Life imprisonment without parole. Notwithstanding any other provision of law, a defendant sentenced to life imprisonment without parole shall not be or become eligible for parole or conditional release. For purposes of commitment and custody, other than parole and conditional release, such sentence shall be deemed to be an indeterminate sentence. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of murder in the first degree as defined in section 125.27 of this chapter and in accordance with the procedures

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provided by law for imposing a sentence for such crime. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of terrorism as defined in section 490.25 of this chapter, where the specified offense the defendant committed is a class A-I felony; the crime of criminal possession of a chemical weapon or biological weapon in the first degree as defined in section 490.45 of this chapter; or the crime of criminal use of a chemical weapon or biological weapon in the first degree as defined in section 490.55 of this chapter; provided, however, that nothing in this subdivision shall preclude or prevent a sentence of death when the defendant is also convicted of the crime of murder in the first degree as defined in section 125.27 of this chapter. A defendant must be sentenced to life imprisonment without parole upon conviction for the crime of murder in the second degree as defined in subdivision five of section 125.25 of this chapter or for the crime of aggravated murder as defined in subdivision one of section 125.26 of this chapter. A defendant may be sentenced to life imprisonment without parole upon conviction for the crime of aggravated murder as defined in subdivision two of section 125.26 of this chapter.

6. [Repealed eff Sept 1, 2017] Determinate sentence. Except as provided in subdivision four of this section and subdivisions two and four of section 70.02, when a person is sentenced as a violent felony offender pursuant to section 70.02 or as a second violent felony offender pursuant to section 70.04 or as a second felony offender on a conviction for a violent felony offense pursuant to section 70.06, the court must impose a determinate sentence of imprisonment in accordance with the provisions of such sections and such sentence shall include, as a part thereof, a period of post-release supervision in accordance with section 70.45.

CREDIT(S)

Add, L 1965, ch 1030, eff Sept 1, 1967; amd, L 1973, ch 276, § 9, eff Sept 1, 1973; L 1973, ch 277, § 7, eff Sept 1, 1973; L 1976, ch 480, § 5; L 1978, ch 481, § 2; L 1979, ch 410, § 6, eff Sept 1, 1979; L 1980, ch 873, §§ 1, 2, eff Sept 1, 1980; L 1983, ch 238, § 1, eff June 6, 1983; L 1986, ch 280, §§ 1, 2, eff Nov 1, 1986; L 1995, ch 3, § 1–c, eff Oct 1, 1995; L 1995, ch 1, §§ 3–5, eff Sept 1, 1995; L 1998, ch 1, §§ 2–4, eff Aug 6, 1998; L 2004, ch 1, § 5 (Part A), eff July 23, 2004; L 2004, ch 459, § 3, eff Nov 1, 2004; L 2004, ch 738, §§ 28, 29, eff Dec 14, 2004; L 2005, ch 765, §§ 2, 3, eff Dec 21, 2005; L 2006, ch 107, § 3, eff June 23, 2006; L 2006, ch 746, § 3, eff Dec 15, 2006; L 2007, ch 7, §§ 36, 37, eff April 13, 2007; L 2009, ch 482, § 2, eff Oct 9, 2009.

N.Y. LAW §70.02 (2016). Sentence of imprisonment for a violent felony offense

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1. Definition of a violent felony offense. A violent felony offense is a class B violent felony offense, a class C violent felony offense, a class D violent felony offense, or a class E violent felony offense, defined as follows:

(a) Class B violent felony offenses: an attempt to commit the class A-I felonies of murder in the second degree as defined in section 125.25, kidnapping in the first degree as defined in section 135.25, and arson in the first degree as defined in section 150.20; manslaughter in the first degree as defined in section 125.20, aggravated manslaughter in the first degree as defined in section 125.22, rape in the first degree as defined in section 130.35, criminal sexual act in the first degree as defined in section 130.50, aggravated sexual abuse in the first degree as defined in section 130.70, course of sexual conduct against a child in the first degree as defined in section 130.75; assault in the first degree as defined in section 120.10, kidnapping in the second degree as defined in section 135.20, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, robbery in the first degree as defined in section 160.15, sex trafficking as defined in paragraphs (a) and (b) of subdivision five of section 230.34, incest in the first degree as defined in section 255.27, criminal possession of a weapon in the first degree as defined in section 265.04, criminal use of a firearm in the first degree as defined in section 265.09, criminal sale of a firearm in the first degree as defined in section 265.13, aggravated assault upon a police officer or a peace officer as defined in section 120.11, gang assault in the first degree as defined in section 120.07, intimidating a victim or witness in the first degree as defined in section 215.17, hindering prosecution of terrorism in the first degree as defined in section 490.35, criminal possession of a chemical weapon or biological weapon in the second degree as defined in section 490.40, and criminal use of a chemical weapon or biological weapon in the third degree as defined in section 490.47.

(b) Class C violent felony offenses: an attempt to commit any of the class B felonies set forth in paragraph (a) of this subdivision; aggravated criminally negligent homicide as defined in section 125.11, aggravated manslaughter in the second degree as defined in section 125.21, aggravated sexual abuse in the second degree as defined in section 130.67, assault on a peace officer, police officer, fireman or emergency medical services professional as defined in section 120.08, assault on a judge as defined in section 120.09, gang assault in the second degree as defined in section 120.06, strangulation in the first degree as defined in section 121.13, burglary in the second degree as defined in section 140.25, robbery in the second degree as defined in section 160.10, criminal possession of a weapon in the second degree as defined in section 265.03, criminal use of a firearm in the second degree as defined in section 265.08, criminal sale of a firearm in the second degree as defined in section 265.12, criminal sale of a firearm with the aid of a minor as defined in section 265.14, aggravated criminal possession of a weapon as defined in section 265.19, soliciting or providing support for an act of terrorism in the first degree as defined in section 490.15, hindering prosecution of terrorism in the second degree as defined in section

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490.30, and criminal possession of a chemical weapon or biological weapon in the third degree as defined in section 490.37.

(c) Class D violent felony offenses: an attempt to commit any of the class C felonies set forth in paragraph (b); reckless assault of a child as defined in section 120.02, assault in the second degree as defined in section 120.05, menacing a police officer or peace officer as defined in section 120.18, stalking in the first degree, as defined in subdivision one of section 120.60, strangulation in the second degree as defined in section 121.12, rape in the second degree as defined in section 130.30, criminal sexual act in the second degree as defined in section 130.45, sexual abuse in the first degree as defined in section 130.65, course of sexual conduct against a child in the second degree as defined in section 130.80, aggravated sexual abuse in the third degree as defined in section 130.66, facilitating a sex offense with a controlled substance as defined in section 130.90, labor trafficking as defined in paragraphs (a) and (b) of subdivision three of section 135.35, criminal possession of a weapon in the third degree as defined in subdivision five, six, seven, eight, nine or ten of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11, intimidating a victim or witness in the second degree as defined in section 215.16, soliciting or providing support for an act of terrorism in the second degree as defined in section 490.10, and making a terroristic threat as defined in section 490.20, falsely reporting an incident in the first degree as defined in section 240.60, placing a false bomb or hazardous substance in the first degree as defined in section 240.62, placing a false bomb or hazardous substance in a sports stadium or arena, mass transportation facility or enclosed shopping mall as defined in section 240.63, and aggravated unpermitted use of indoor pyrotechnics in the first degree as defined in section 405.18.

(d) Class E violent felony offenses: an attempt to commit any of the felonies of criminal possession of a weapon in the third degree as defined in subdivision five, six, seven or eight of section 265.02 as a lesser included offense of that section as defined in section 220.20 of the criminal procedure law, persistent sexual abuse as defined in section 130.53, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, falsely reporting an incident in the second degree as defined in section 240.55 and placing a false bomb or hazardous substance in the second degree as defined in section 240.61.

2. Authorized sentence.

(a) [Expires Sept 1, 2017] Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of a class B or class C violent felony offense must be a determinate sentence of imprisonment which shall be in whole or half years. The term of such sentence must be in accordance with the provisions of subdivision three of this section.

(a) [Eff Sept 1, 2017] The sentence imposed upon a person who stands convicted of a class B or class C violent felony offense must be an indeterminate sentence of imprisonment. Except as provided in subdivision five of section 60.05, the maximum term of such sentence must be in

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accordance with the provisions of subdivision three of this section and the minimum period of imprisonment under such sentence must be in accordance with subdivision four of this section.

(b) Except as provided in paragraph (b-1) of this subdivision, subdivision six of section 60.05 and subdivision four of this section, the sentence imposed upon a person who stands convicted of a class D violent felony offense, other than the offense of criminal possession of a weapon in the third degree as defined in subdivision five, seven or eight of section 265.02 or criminal sale of a firearm in the third degree as defined in section 265.11, must be in accordance with the applicable provisions of this chapter relating to sentencing for class D felonies provided, however, that where a sentence of imprisonment is imposed which requires a commitment to the state department of corrections and community supervision, such sentence shall be a determinate sentence in accordance with paragraph (c) of subdivision three of this section.

(b-1) Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offense of menacing a police officer or peace officer as defined in section 120.18 of this chapter must be a determinate sentence of imprisonment.

(c) Except as provided in subdivision six of section 60.05, the sentence imposed upon a person who stands convicted of the class D violent felony offenses of criminal possession of a weapon in the third degree as defined in subdivision five, seven, eight or nine of section 265.02, criminal sale of a firearm in the third degree as defined in section 265.11 or the class E violent felonies of attempted criminal possession of a weapon in the third degree as defined in subdivision five, seven, eight or nine of section 265.02 must be a sentence to a determinate period of imprisonment, or, in the alternative, a definite sentence of imprisonment for a period of no less than one year, except that:

(i) the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime; and

(ii) the court may apply the provisions of paragraphs (b) and (c) of subdivision four of this section when imposing a sentence upon a person who has previously been convicted of a class A misdemeanor defined in this chapter in the five years immediately preceding the commission of the offense.

3. Term of sentence. The term of a determinate sentence for a violent felony offense must be fixed by the court as follows:

(a) For a class B felony, the term must be at least five years and must not exceed twenty-five years, provided, however, that the term must be: (i) at least ten years and must not exceed thirty

years where the sentence is for the crime of aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; and (ii) at least ten years and must not exceed thirty years where the sentence is for the crime of aggravated manslaughter in the first degree as defined in section 125.22 of this chapter;

(b) For a class C felony, the term must be at least three and one-half years and must not exceed fifteen years, provided, however, that the term must be: (i) at least seven years and must not exceed twenty years where the sentence is for the crime of aggravated manslaughter in the second degree as defined in section 125.21 of this chapter; (ii) at least seven years and must not exceed twenty years where the sentence is for the crime of attempted aggravated assault upon a police officer or peace officer as defined in section 120.11 of this chapter; (iii) at least three and one-half years and must not exceed twenty years where the sentence is for the crime of aggravated criminally negligent homicide as defined in section 125.11 of this chapter; and (iv) at least five years and must not exceed fifteen years where the sentence is imposed for the crime of aggravated criminal possession of a weapon as defined in section 265.19 of this chapter;

(c) For a class D felony, the term must be at least two years and must not exceed seven years, provided, however, that the term must be: (i) at least two years and must not exceed eight years where the sentence is for the crime of menacing a police officer or peace officer as defined in section 120.18 of this chapter; and (ii) at least three and one-half years and must not exceed seven years where the sentence is imposed for the crime of criminal possession of a weapon in the third degree as defined in subdivision ten of section 265.02 of this chapter;

(d) For a class E felony, the term must be at least one and one-half years and must not exceed four years.

4.

(a) Except as provided in paragraph (b) of this subdivision, where a plea of guilty to a class D violent felony offense is entered pursuant to section 220.10 or 220.30 of the criminal procedure law in satisfaction of an indictment charging the defendant with an armed felony, as defined in subdivision forty-one of section 1.20 of the criminal procedure law, the court must impose a determinate sentence of imprisonment.

(b) In any case in which the provisions of paragraph (a) of this subdivision or the provisions of subparagraph (ii) of paragraph (c) of subdivision two of this section apply, the court may impose a sentence other than a determinate sentence of imprisonment, or a definite sentence of imprisonment for a period of no less than one year, if it finds that the alternate sentence is consistent with public safety and does not deprecate the seriousness of the crime and that one or more of the following factors exist:

(i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or

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(ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution; or
(iii) possible deficiencies in proof of the defendant's commission of an armed felony.

(c) The defendant and the district attorney shall have an opportunity to present relevant information to assist the court in making a determination pursuant to paragraph (b) of this subdivision, and the court may, in its discretion, conduct a hearing with respect to any issue bearing upon such determination. If the court determines that a determinate sentence of imprisonment should not be imposed pursuant to the provisions of such paragraph (b), it shall make a statement on the record of the facts and circumstances upon which such determination is based. A transcript of the court's statement, which shall set forth the recommendation of the district attorney, shall be forwarded to the state division of criminal justice services along with a copy of the accusatory instrument.

CREDIT(S)

Add, L 1978, ch 481, § 3, eff Sept 1, 1978; amd, L 1980, ch 233, § 2, eff Aug 12, 1980; L 1980, ch 234, §§ 1, 2; L 1980, ch 583, § 1; L 1981, ch 175, § 1; L 1986, ch 124, § 1; L 1988, ch 450, § 3; L 1991, ch 496, § 4; L 1991, ch 521, § 1; L 1993, ch 291, §§ 1, 2, eff Nov 1, 1993; L 1995, ch 3, § 4, eff Oct 1, 1995; L 1996, ch 122, § 2; L 1996, ch 181, § 1, eff Nov 1, 1996; L 1996, ch 632, § 1; L 1996, ch 646, § 1; L 1996, ch 647, § 1, eff Nov 1, 1996; L 1998, ch 1, §§ 5–9, eff Aug 6, 1998; L 1998, ch 378, § 2, eff Nov 1, 1998; L 1999, ch 33, §§ 1–4, eff Nov 1, 1999; L 1999, ch 635, § 10, eff Dec 1, 1999; L 2000, ch 189, §§ 6, 7, eff Nov 1, 2000; L 2001, ch 300, § 2, eff Sept 17, 2001; L 2001, ch 301, § 8, eff Sept 17, 2001; L 2003, ch 264, § 6, eff Nov 1, 2003; L 2003, ch 584, § 3, eff Nov 1, 2003; L 2004, ch 1, § 6 (Part A), eff July 23, 2004; L 2005, ch 764, §§ 1, 4, eff Dec, 21, 2005; L 2005, ch 765, §§ 4–6, eff Dec 21, 2005; L 2006, ch 110, § 2, eff Nov 1, 2006; L 2006, ch 320, § 5, eff Nov 1, 2006; L 2007, ch 7, § 32, eff April 13, 2007; L 2010, ch 405, § 1, eff Nov 11, 2010; L 2011, ch 62, § 122 (Part C, Subpart B), eff March 31, 2011; L 2011, ch 148, § 2, eff Nov 17, 2011; L 2013, ch 1, §§ 27–30, eff March 16, 2013; L 2015, ch 368, § 3, eff Jan 19, 2016.

N.Y. LAW §70.15 (2016). Sentences of imprisonment for misdemeanors and violation

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year; provided, however, that a sentence of imprisonment imposed upon a conviction of criminal possession of a weapon in the fourth degree as defined in subdivision one of section 265.01 must be for a period of no less than one year when the conviction was the result of a plea of guilty entered in satisfaction of an indictment or any count thereof charging the defendant with the class D violent felony offense of criminal possession of a weapon in the third degree as defined

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in subdivision four of section 265.02, except that the court may impose any other sentence authorized by law upon a person who has not been previously convicted in the five years immediately preceding the commission of the offense for a felony or a class A misdemeanor defined in this chapter, if the court having regard to the nature and circumstances of the crime and to the history and character of the defendant, finds on the record that such sentence would be unduly harsh and that the alternative sentence would be consistent with public safety and does not deprecate the seriousness of the crime.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

CREDIT(S)

Add, L 1965, ch 1030, eff Sept 1, 1967; amd, L 1980, ch 233, § 4; L 1981, ch 175, § 2; L 1984, ch 673, § 1, eff Nov 1, 1984 (see 1984 and 1990 notes below); L 1993, ch 291, § 3, eff Nov 1, 1993 (see 1993 note below).

NORTH CAROLINA

N.C. GEN. STAT. § 14-27.20 (2016). Definitions

As used in this Article, unless the context requires otherwise:

(1) "Mentally disabled" means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.

(2) "Mentally incapacitated" means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.

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- (3) "Physically helpless" means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.
- (4) "Sexual act" means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.
- (5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.
- (6) "Touching" as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

CREDIT(S)

1979, c. 682, s. 1; 2002-159, s. 2(a); 2003-252, s. 1; 2006-247, s. 12(a); 2015-181, s. 2.

N.C. GEN. STAT. § 14-27.21 (2016). First-degree forcible rape

- (a) A person is guilty of first-degree forcible rape if the person engages in vaginal intercourse with another person by force and against the will of the other person, and does any of the following:
- (1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
 - (2) Inflicts serious personal injury upon the victim or another person.
 - (3) The person commits the offense aided and abetted by one or more other persons.
- (b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.
- (c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

CREDIT(S)

1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 4; 1981, c. 63; c. 106, ss. 1, 2; c. 179, s. 14; 1983, c. 175, ss. 4, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 2; 2004-128, s. 7; 2015-181, s. 3(a), (b).

N.C. GEN. STAT. § 14-27.22 (2016). Second-degree forcible rape

- (a) A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:
- (1) By force and against the will of the other person; or
 - (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless.
- (b) Any person who commits the offense defined in this section is guilty of a Class C felony.
- (c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

CREDIT(S)

1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 5; 1981, cc. 63, 179; 1993, c. 539, s. 1130; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(b); 2004-128, s. 8; 2015-181, s. 4(a), (b).

N.C. GEN. STAT. § 14-27.26 (2016). First-degree forcible sexual offense

- (a) A person is guilty of a first degree forcible sexual offense if the person engages in a sexual act with another person by force and against the will of the other person, and does any of the following:
- (1) Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon.
 - (2) Inflicts serious personal injury upon the victim or another person.
 - (3) The person commits the offense aided and abetted by one or more other persons.
- (b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

CREDIT(S)

1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 6; 1981, c. 63; c. 106, ss. 3, 4; c. 179, s. 14; 1983, c. 175, ss. 5, 10; c. 720, s. 4; 1994, Ex. Sess., c. 22, s. 3; 2015-181, s. 8(a), (b).

N.C. GEN. STAT. § 14-27.27 (2016). Second-degree forcible sexual offense

- (a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:
- (1) By force and against the will of the other person; or

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(2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless.

(b) Any person who commits the offense defined in this section is guilty of a Class C felony.

CREDIT(S)

1979, c. 682, s. 1; 1979, 2nd Sess., c. 1316, s. 7; 1981, c. 63; c. 179, s. 14; 1993, c. 539, s. 1131; 1994, Ex. Sess., c. 24, s. 14(c); 2002-159, s. 2(c); 2015-181, s. 9(a), (b).

NORTH DAKOTA

N.D. CENT. CODE § 12.1-20-02 (2015) Definitions

In sections 12.1-20-03 through 12.1-20-12:

1. "Coercion" means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.
2. "Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
3. "Object" means anything used in commission of a sexual act other than the person of the actor.
4. "Sexual act" means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.
5. "Sexual contact" means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.

CREDIT(S)

S.L. 1973, ch. 117, § 1; 1977, ch. 122, § 1; 1983, ch. 172, § 7; 1985, ch. 176, § 1; 1997, ch. 122, § 1; 2001, ch. 134, § 1; 2009, ch. 131, § 1.

N.D. CENT. CODE § 12.1-20-03 (2015) Gross sexual imposition — Penalty

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1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:
 - a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;
 - b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;
 - c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;
 - d. The victim is less than fifteen years old; or
 - e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.
2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:
 - a. The victim is less than fifteen years old;
 - b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
 - c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.
3.
 - a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.
 - b. Otherwise the offense is a class A felony.
4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

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CREDIT(S)

S.L. 1973, ch. 117, § 1; 1977, ch. 122, § 2; 1987, ch. 168, § 1; 1997, ch. 123, § 1; 2005, ch. 115, § 2; 2007, ch. 123, § 2; 2009, ch. 131, § 2; 2015, ch. 116, § 2.

N.D. CENT. CODE § 12.1-20-04 (2015) Sexual imposition

A person who engages in a sexual act or sexual contact with another, or who causes another to engage in a sexual act or sexual contact, is guilty of a class B felony if the actor:

1. Compels the other person to submit by any threat or coercion that would render a person reasonably incapable of resisting; or
2. Engages in a sexual act or sexual contact with another, whether consensual or not, as part of an induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang as defined in section 12.1-06.2-01.

CREDIT(S)

S.L. 1973, ch. 117, § 1; 1977, ch. 122, § 3; 1983, ch. 167, § 1; 2001, ch. 134, § 2; 2009, ch. 131, § 3.

N.D. CENT. CODE § 12.1-20-07 (2015) Sexual assault

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

- a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;
 - b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;
 - c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;
 - d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;
 - e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare;
- or
- f. The other person is a minor, fifteen years of age or older, and the actor is an adult.

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class

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A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

CREDIT(S)

S.L. 1973, ch. 117, § 1; 1977, ch. 122, § 5; 1997, ch. 122, § 3; 1997, ch. 123, § 2; 2001, ch. 135, § 2.

N.D. CENT. CODE § 12.1-32-01 (2015) Classification of offenses — Penalties

Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:

1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.
2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of twenty thousand dollars, or both, may be imposed.
4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.
5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of three thousand dollars, or both, may be imposed.
6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand five hundred dollars, or both, may be imposed.
7. Infraction, for which a maximum fine of one thousand dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.

This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.

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CREDIT(S)

S.L. 1973, ch. 116, § 31; 1975, ch. 116, § 23; 1979, ch. 177, § 2; 1995, ch. 134, § 1; 1997, ch. 132, § 1; 2013, ch. 104, § 11.

OHIO

OHIO REV. CODE ANN. §2907.01 (2016). Definitions

As used in sections 2907.01 to 2907.38 of the Revised Code:

(A) "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse, fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.

(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.

(C) "Sexual activity" means sexual conduct or sexual contact, or both.

(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.

(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:

(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in sex.

(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.

(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.

(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:

(1) Its dominant appeal is to prurient interest;

(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;

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- (3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;
- (4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;
- (5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.
- (G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.
- (H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.
- (I) "Juvenile" means an unmarried person under the age of eighteen.
- (J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.
- (K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.
- (L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:
- (1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;
 - (2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;
 - (3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.
- (M) "Minor" means a person under the age of eighteen.

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(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.

(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.

(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 142 v H 51 (Eff 3-17-89); 143 v H 514 (Eff 1-1-91); 146 v H 445 (Eff 9-3-96); 147 v H 32 (Eff 3-10-98); 149 v S 9 (Eff 5-14-2002); 149 v H 8. Eff 8-5-2002; 149 v H 490, § 1, eff. 1-1-04; 151 v H 95, § 1, eff. 8-3-06; 151 v H 23, § 1, eff. 8-17-06; 152 v S 10, § 1, eff. 1-1-08.

Ohio Rev. Code Ann. §2907.02 (2016). Rape

(A)

(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree

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in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

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(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 139 v S 199 (Eff 7-1-83); 141 v H 475 (Eff 3-7-86); 145 v S 31 (Eff 9-27-93); 146 v S 2 (Eff 7-1-96); 147 v H 32 (Eff 3-10-98); 149 v H 485. Eff 6-13-2002; 151 v S 260, § 1, eff. 1-2-07; 152 v S 10, § 1, eff. 1-1-08.

In re D.B., 129 Ohio St. 3d 104, 104 (Ohio 2011)

Ohio Rev. Code Ann. §2907.03 (2016). Sexual battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

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(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 145 v H 454 (Eff 7-19-94); 146 v S 2 (Eff 7-1-96); 147 v S 6 (Eff 6-20-97); 147 v H 32 (Eff 3-10-98); 149 v S 9(Eff 5-14-2002); 149 v H 510. Eff 3-31-2003; 151 v S 17, § 1, eff. 8-3-06; 151 v H 95, § 1, eff. 8-3-06; 152 v H 209, § 1, eff. 4-7-09.

State v. Mole, 2016-Ohio-5124, P1 (Ohio July 28, 2016)

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Ohio Rev. Code Ann. §2907.04 (2016). Unlawful sexual conduct with minor

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 148 v H 442. Eff 10-17-2000.

Ohio Rev. Code Ann. §2907.05 (2016). Gross sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

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- (4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.
- (5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.
- (B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (C) Whoever violates this section is guilty of gross sexual imposition.
- (1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.
- (2) Gross sexual imposition committed in violation of division (A)(4) or (B) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:
- (a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;
- (b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.
- (D) A victim need not prove physical resistance to the offender in prosecutions under this section.
- (E) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the

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evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(F) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(G) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 136 v S 144 (Eff 8-27-75); 137 v H 134 (Eff 8-8-77); 143 v H 208 (Eff 4-11-90); 145 v S 31 (Eff 9-27-93); 147 v H 32. Eff 3-10-98; 151 v H 95, § 1, eff. 8-3-06; 152 v S 10, § 1, eff. 1-1-08.

State v. Bevely, 142 Ohio St. 3d 41, 42 (Ohio 2015)

Ohio Rev. Code Ann. §2907.06 (2016). Sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

- (1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.
- (2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.
- (3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

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(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12 of the Revised Code, a violation of this section is a misdemeanor of the first degree.

CREDIT(S)

134 v H 511 (Eff 1-1-74); 137 v H 134 (Eff 8-8-77); 143 v H 44 (Eff 7-24-90); 146 v S 2 (Eff 7-1-96); 149 v S 9. Eff 5-14-2002.

**Ohio Rev. Code Ann. §2929.14 (2016). Basic prison terms.
[Effective September 14, 2016]**

(A) Except as provided in division (B)(1), (B)(2), (B)(3), (B)(4), (B)(5), (B)(6), (B)(7), (B)(8), (E), (G), (H), (J), or (K) of this section or in division (D)(6) of section 2919.25 of the Revised Code and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court imposing a sentence upon an offender for a felony elects or is required to impose a prison term on the offender pursuant to this chapter, the court shall impose a definite prison term that shall be one of the following:

(1) For a felony of the first degree, the prison term shall be three, four, five, six, seven, eight, nine, ten, or eleven years.

(2) For a felony of the second degree, the prison term shall be two, three, four, five, six, seven, or eight years.

(3)

(a) For a felony of the third degree that is a violation of section 2903.06, 2903.08, 2907.03, 2907.04, or 2907.05 of the Revised Code or that is a violation of section 2911.02 or 2911.12 of the Revised Code if the offender previously has been convicted of or pleaded guilty in two or more separate proceedings to two or more violations of section 2911.01, 2911.02, 2911.11, or 2911.12 of the Revised Code, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.

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(b) For a felony of the third degree that is not an offense for which division (A)(3)(a) of this section applies, the prison term shall be nine, twelve, eighteen, twenty-four, thirty, or thirty-six months.

(4) For a felony of the fourth degree, the prison term shall be six, seven, eight, nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, or eighteen months.

(5) For a felony of the fifth degree, the prison term shall be six, seven, eight, nine, ten, eleven, or twelve months.

(B)

(1)

(a) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.141, 2941.144, or 2941.145 of the Revised Code, the court shall impose on the offender one of the following prison terms:

(i) A prison term of six years if the specification is of the type described in division (A) of section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense;

(ii) A prison term of three years if the specification is of the type described in division (A) of section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using it to facilitate the offense;

(iii) A prison term of one year if the specification is of the type described in division (A) of section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense;

(iv) A prison term of nine years if the specification is of the type described in division (D) of section 2941.144 of the Revised Code that charges the offender with having a firearm that is an automatic firearm or that was equipped with a firearm muffler or suppressor on or about the offender's person or under the offender's control while committing the offense and specifies that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code;

(v) A prison term of fifty-four months if the specification is of the type described in division (D) of section 2941.145 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and displaying the firearm, brandishing the firearm, indicating that the offender possessed the firearm, or using the firearm to facilitate the offense and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code;

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(vi) A prison term of eighteen months if the specification is of the type described in division (D) of section 2941.141 of the Revised Code that charges the offender with having a firearm on or about the offender's person or under the offender's control while committing the offense and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code.

(b) If a court imposes a prison term on an offender under division (B)(1)(a) of this section, the prison term shall not be reduced pursuant to section 2967.19, section 2929.20, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. Except as provided in division (B)(1)(g) of this section, a court shall not impose more than one prison term on an offender under division (B)(1)(a) of this section for felonies committed as part of the same act or transaction.

(c)

(i) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in division (A) of section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of five years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

(ii) Except as provided in division (B)(1)(e) of this section, if an offender who is convicted of or pleads guilty to a violation of section 2923.161 of the Revised Code or to a felony that includes, as an essential element, purposely or knowingly causing or attempting to cause the death of or physical harm to another, also is convicted of or pleads guilty to a specification of the type described in division (C) of section 2941.146 of the Revised Code that charges the offender with committing the offense by discharging a firearm from a motor vehicle other than a manufactured home and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the violation of section 2923.161 of the Revised Code or for the other felony offense under division (A), (B)(2), or (3) of this section, shall impose an additional prison term of ninety months upon the offender that shall not be reduced pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

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(iii) A court shall not impose more than one additional prison term on an offender under division (B)(1)(c) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term on an offender under division (B)(1)(c) of this section relative to an offense, the court also shall impose a prison term under division (B)(1)(a) of this section relative to the same offense, provided the criteria specified in that division for imposing an additional prison term are satisfied relative to the offender and the offense.

(d) If an offender who is convicted of or pleads guilty to an offense of violence that is a felony also is convicted of or pleads guilty to a specification of the type described in section 2941.1411 of the Revised Code that charges the offender with wearing or carrying body armor while committing the felony offense of violence, the court shall impose on the offender a prison term of two years. The prison term so imposed, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(1)(d) of this section for felonies committed as part of the same act or transaction. If a court imposes an additional prison term under division (B)(1)(a) or (c) of this section, the court is not precluded from imposing an additional prison term under division (B)(1)(d) of this section.

(e) The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.12 or 2923.123 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) or (b) of this section upon an offender for a violation of section 2923.122 that involves a deadly weapon that is a firearm other than a dangerous ordnance, section 2923.16, or section 2923.121 of the Revised Code. The court shall not impose any of the prison terms described in division (B)(1)(a) of this section or any of the additional prison terms described in division (B)(1)(c) of this section upon an offender for a violation of section 2923.13 of the Revised Code unless all of the following apply:

(i) The offender previously has been convicted of aggravated murder, murder, or any felony of the first or second degree.

(ii) Less than five years have passed since the offender was released from prison or post-release control, whichever is later, for the prior offense.

(f)

(i) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in division (A) of section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer as defined in section 2935.01 of the Revised Code or a corrections officer, as defined in section 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender

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for the felony offense under division (A), (B)(2), or (B)(3) of this section, shall impose an additional prison term of seven years upon the offender that shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code.

(ii) If an offender is convicted of or pleads guilty to a felony that includes, as an essential element, causing or attempting to cause the death of or physical harm to another and also is convicted of or pleads guilty to a specification of the type described in division (B) of section 2941.1412 of the Revised Code that charges the offender with committing the offense by discharging a firearm at a peace officer, as defined in section 2935.01 of the Revised Code, or a corrections officer, as defined in section 2941.1412 of the Revised Code, and that the offender previously has been convicted of or pleaded guilty to a specification of the type described in section 2941.141, 2941.144, 2941.145, 2941.146, or 2941.1412 of the Revised Code, the court, after imposing a prison term on the offender for the felony offense under division (A), (B)(2), or (3) of this section, shall impose an additional prison term of one hundred twenty-six months upon the offender that shall not be reduced pursuant to section 2929.20, 2967.19, 2967.193, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(iii) If an offender is convicted of or pleads guilty to two or more felonies that include, as an essential element, causing or attempting to cause the death or physical harm to another and also is convicted of or pleads guilty to a specification of the type described under division (B)(1)(f) of this section in connection with two or more of the felonies of which the offender is convicted or to which the offender pleads guilty, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(f) of this section for each of two of the specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications. If a court imposes an additional prison term on an offender under division (B)(1)(f) of this section relative to an offense, the court shall not impose a prison term under division (B)(1)(a) or (c) of this section relative to the same offense.

(g) If an offender is convicted of or pleads guilty to two or more felonies, if one or more of those felonies are aggravated murder, murder, attempted aggravated murder, attempted murder, aggravated robbery, felonious assault, or rape, and if the offender is convicted of or pleads guilty to a specification of the type described under division (B)(1)(a) of this section in connection with two or more of the felonies, the sentencing court shall impose on the offender the prison term specified under division (B)(1)(a) of this section for each of the two most serious specifications of which the offender is convicted or to which the offender pleads guilty and, in its discretion, also may impose on the offender the prison term specified under that division for any or all of the remaining specifications.

(2)

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- (a) If division (B)(2)(b) of this section does not apply, the court may impose on an offender, in addition to the longest prison term authorized or required for the offense, an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:
- (i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.
 - (ii) The offense of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.
 - (iii) The court imposes the longest prison term for the offense that is not life imprisonment without parole.
 - (iv) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are inadequate to punish the offender and protect the public from future crime, because the applicable factors under section 2929.12 of the Revised Code indicating a greater likelihood of recidivism outweigh the applicable factors under that section indicating a lesser likelihood of recidivism.
 - (v) The court finds that the prison terms imposed pursuant to division (B)(2)(a)(iii) of this section and, if applicable, division (B)(1) or (3) of this section are demeaning to the seriousness of the offense, because one or more of the factors under section 2929.12 of the Revised Code indicating that the offender's conduct is more serious than conduct normally constituting the offense are present, and they outweigh the applicable factors under that section indicating that the offender's conduct is less serious than conduct normally constituting the offense.
- (b) The court shall impose on an offender the longest prison term authorized or required for the offense and shall impose on the offender an additional definite prison term of one, two, three, four, five, six, seven, eight, nine, or ten years if all of the following criteria are met:
- (i) The offender is convicted of or pleads guilty to a specification of the type described in section 2941.149 of the Revised Code that the offender is a repeat violent offender.
 - (ii) The offender within the preceding twenty years has been convicted of or pleaded guilty to three or more offenses described in division (CC)(1) of section 2929.01 of the Revised Code, including all offenses described in that division of which the offender is convicted or to which the offender pleads guilty in the current prosecution and all offenses described in that division of

which the offender previously has been convicted or to which the offender previously pleaded guilty, whether prosecuted together or separately.

(iii) The offense or offenses of which the offender currently is convicted or to which the offender currently pleads guilty is aggravated murder and the court does not impose a sentence of death or life imprisonment without parole, murder, terrorism and the court does not impose a sentence of life imprisonment without parole, any felony of the first degree that is an offense of violence and the court does not impose a sentence of life imprisonment without parole, or any felony of the second degree that is an offense of violence and the trier of fact finds that the offense involved an attempt to cause or a threat to cause serious physical harm to a person or resulted in serious physical harm to a person.

(c) For purposes of division (B)(2)(b) of this section, two or more offenses committed at the same time or as part of the same act or event shall be considered one offense, and that one offense shall be the offense with the greatest penalty.

(d) A sentence imposed under division (B)(2)(a) or (b) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, or section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. The offender shall serve an additional prison term imposed under this section consecutively to and prior to the prison term imposed for the underlying offense.

(e) When imposing a sentence pursuant to division (B)(2)(a) or (b) of this section, the court shall state its findings explaining the imposed sentence.

(3) Except when an offender commits a violation of section 2903.01 or 2907.02 of the Revised Code and the penalty imposed for the violation is life imprisonment or commits a violation of section 2903.02 of the Revised Code, if the offender commits a violation of section 2925.03 or 2925.11 of the Revised Code and that section classifies the offender as a major drug offender, if the offender commits a felony violation of section 2925.02, 2925.04, 2925.05, 2925.36, 3719.07, 3719.08, 3719.16, 3719.161, 4729.37, or 4729.61, division (C) or (D) of section 3719.172, division (C) of section 4729.51, or division (J) of section 4729.54 of the Revised Code that includes the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and the court imposing sentence upon the offender finds that the offender is guilty of a specification of the type described in section 2941.1410 of the Revised Code charging that the offender is a major drug offender, if the court imposing sentence upon an offender for a felony finds that the offender is guilty of corrupt activity with the most serious offense in the pattern of corrupt activity being a felony of the first degree, or if the offender is guilty of an attempted violation of section 2907.02 of the Revised Code and, had the offender completed the violation of section 2907.02 of the Revised Code that was attempted, the offender would have been subject to a sentence of life imprisonment or life imprisonment without parole for the violation of section 2907.02 of the Revised Code, the court

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shall impose upon the offender for the felony violation a mandatory prison term of the maximum prison term prescribed for a felony of the first degree that, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, cannot be reduced pursuant to section 2929.20, section 2967.19, or any other provision of Chapter 2967. or 5120. of the Revised Code.

(4) If the offender is being sentenced for a third or fourth degree felony OVI offense under division (G)(2) of section 2929.13 of the Revised Code, the sentencing court shall impose upon the offender a mandatory prison term in accordance with that division. In addition to the mandatory prison term, if the offender is being sentenced for a fourth degree felony OVI offense, the court, notwithstanding division (A)(4) of this section, may sentence the offender to a definite prison term of not less than six months and not more than thirty months, and if the offender is being sentenced for a third degree felony OVI offense, the sentencing court may sentence the offender to an additional prison term of any duration specified in division (A)(3) of this section. In either case, the additional prison term imposed shall be reduced by the sixty or one hundred twenty days imposed upon the offender as the mandatory prison term. The total of the additional prison term imposed under division (B)(4) of this section plus the sixty or one hundred twenty days imposed as the mandatory prison term shall equal a definite term in the range of six months to thirty months for a fourth degree felony OVI offense and shall equal one of the authorized prison terms specified in division (A)(3) of this section for a third degree felony OVI offense. If the court imposes an additional prison term under division (B)(4) of this section, the offender shall serve the additional prison term after the offender has served the mandatory prison term required for the offense. In addition to the mandatory prison term or mandatory and additional prison term imposed as described in division (B)(4) of this section, the court also may sentence the offender to a community control sanction under section 2929.16 or 2929.17 of the Revised Code, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

If the offender is being sentenced for a fourth degree felony OVI offense under division (G) (1) of section 2929.13 of the Revised Code and the court imposes a mandatory term of local incarceration, the court may impose a prison term as described in division (A)(1) of that section.

(5) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1414 of the Revised Code that charges that the victim of the offense is a peace officer, as defined in section 2935.01 of the Revised Code, or an investigator of the bureau of criminal identification and investigation, as defined in section 2903.11 of the Revised Code, the court shall impose on the offender a prison term of five years. If a court imposes a prison term on an offender under division (B)(5) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised

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Code. A court shall not impose more than one prison term on an offender under division (B)(5) of this section for felonies committed as part of the same act.

(6) If an offender is convicted of or pleads guilty to a violation of division (A)(1) or (2) of section 2903.06 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1415 of the Revised Code that charges that the offender previously has been convicted of or pleaded guilty to three or more violations of division (A) or (B) of section 4511.19 of the Revised Code or an equivalent offense, as defined in section 2941.1415 of the Revised Code, or three or more violations of any combination of those divisions and offenses, the court shall impose on the offender a prison term of three years. If a court imposes a prison term on an offender under division (B)(6) of this section, the prison term, subject to divisions (C) to (I) of section 2967.19 of the Revised Code, shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. or Chapter 5120. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(6) of this section for felonies committed as part of the same act.

(7)

(a) If an offender is convicted of or pleads guilty to a felony violation of section 2905.01, 2905.02, 2907.21, 2907.22, or 2923.32, division (A)(1) or (2) of section 2907.323, or division (B)(1), (2), (3), (4), or (5) of section 2919.22 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1422 of the Revised Code that charges that the offender knowingly committed the offense in furtherance of human trafficking, the court shall impose on the offender a mandatory prison term that is one of the following:

(i) If the offense is a felony of the first degree, a definite prison term of not less than five years and not greater than ten years;

(ii) If the offense is a felony of the second or third degree, a definite prison term of not less than three years and not greater than the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code;

(iii) If the offense is a felony of the fourth or fifth degree, a definite prison term that is the maximum prison term allowed for the offense by division (A) of section 2929.14 of the Revised Code.

(b) Subject to divisions (C) to (I) of section 2967.19 of the Revised Code, the prison term imposed under division (B)(7)(a) of this section shall not be reduced pursuant to section 2929.20, section 2967.19, section 2967.193, or any other provision of Chapter 2967. of the Revised Code. A court shall not impose more than one prison term on an offender under division (B)(7)(a) of this section for felonies committed as part of the same act, scheme, or plan.

(8) If an offender is convicted of or pleads guilty to a felony violation of section 2903.11, 2903.12, or 2903.13 of the Revised Code and also is convicted of or pleads guilty to a specification of the type described in section 2941.1423 of the Revised Code that charges that the victim of the

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violation was a woman whom the offender knew was pregnant at the time of the violation, notwithstanding the range of prison terms prescribed in division (A) of this section for felonies of the same degree as the violation, the court shall impose on the offender a mandatory prison term that is either a definite prison term of six months or one of the prison terms prescribed in section 2929.14 of the Revised Code for felonies of the same degree as the violation.

(C)

(1)

(a) Subject to division (C)(1)(b) of this section, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(a) of this section for having a firearm on or about the offender's person or under the offender's control while committing a felony, if a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(c) of this section for committing a felony specified in that division by discharging a firearm from a motor vehicle, or if both types of mandatory prison terms are imposed, the offender shall serve any mandatory prison term imposed under either division consecutively to any other mandatory prison term imposed under either division or under division (B)(1)(d) of this section, consecutively to and prior to any prison term imposed for the underlying felony pursuant to division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(b) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(d) of this section for wearing or carrying body armor while committing an offense of violence that is a felony, the offender shall serve the mandatory term so imposed consecutively to any other mandatory prison term imposed under that division or under division (B)(1)(a) or (c) of this section, consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(c) If a mandatory prison term is imposed upon an offender pursuant to division (B)(1)(f) of this section, the offender shall serve the mandatory prison term so imposed consecutively to and prior to any prison term imposed for the underlying felony under division (A), (B)(2), or (B)(3) of this section or any other section of the Revised Code, and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(d) If a mandatory prison term is imposed upon an offender pursuant to division (B)(7) or (8) of this section, the offender shall serve the mandatory prison term so imposed consecutively to any other mandatory prison term imposed under that division or under any other provision of law and consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

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(2) If an offender who is an inmate in a jail, prison, or other residential detention facility violates section 2917.02, 2917.03, or 2921.35 of the Revised Code or division (A)(1) or (2) of section 2921.34 of the Revised Code, if an offender who is under detention at a detention facility commits a felony violation of section 2923.131 of the Revised Code, or if an offender who is an inmate in a jail, prison, or other residential detention facility or is under detention at a detention facility commits another felony while the offender is an escapee in violation of division (A)(1) or (2) of section 2921.34 of the Revised Code, any prison term imposed upon the offender for one of those violations shall be served by the offender consecutively to the prison term or term of imprisonment the offender was serving when the offender committed that offense and to any other prison term previously or subsequently imposed upon the offender.

(3) If a prison term is imposed for a violation of division (B) of section 2911.01 of the Revised Code, a violation of division (A) of section 2913.02 of the Revised Code in which the stolen property is a firearm or dangerous ordnance, or a felony violation of division (B) of section 2921.331 of the Revised Code, the offender shall serve that prison term consecutively to any other prison term or mandatory prison term previously or subsequently imposed upon the offender.

(4) If multiple prison terms are imposed on an offender for convictions of multiple offenses, the court may require the offender to serve the prison terms consecutively if the court finds that the consecutive service is necessary to protect the public from future crime or to punish the offender and that consecutive sentences are not disproportionate to the seriousness of the offender's conduct and to the danger the offender poses to the public, and if the court also finds any of the following:

(a) The offender committed one or more of the multiple offenses while the offender was awaiting trial or sentencing, was under a sanction imposed pursuant to section 2929.16, 2929.17, or 2929.18 of the Revised Code, or was under post-release control for a prior offense.

(b) At least two of the multiple offenses were committed as part of one or more courses of conduct, and the harm caused by two or more of the multiple offenses so committed was so great or unusual that no single prison term for any of the offenses committed as part of any of the courses of conduct adequately reflects the seriousness of the offender's conduct.

(c) The offender's history of criminal conduct demonstrates that consecutive sentences are necessary to protect the public from future crime by the offender.

(5) If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) or (6) of this section, the offender shall serve the mandatory prison term consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. If a mandatory prison term is imposed upon an offender pursuant to division (B)(5) of this section, and if a mandatory prison term also is imposed upon the offender pursuant to division (B)(6) of this section in relation to the same violation, the offender shall serve the mandatory prison term

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imposed pursuant to division (B)(5) of this section consecutively to and prior to the mandatory prison term imposed pursuant to division (B)(6) of this section and consecutively to and prior to any prison term imposed for the underlying violation of division (A)(1) or (2) of section 2903.06 of the Revised Code pursuant to division (A) of this section or section 2929.142 of the Revised Code. (6) When consecutive prison terms are imposed pursuant to division (C)(1), (2), (3), (4), or (5) or division (H)(1) or (2) of this section, the term to be served is the aggregate of all of the terms so imposed.

(D)

(1) If a court imposes a prison term for a felony of the first degree, for a felony of the second degree, for a felony sex offense, or for a felony of the third degree that is not a felony sex offense and in the commission of which the offender caused or threatened to cause physical harm to a person, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division. If a court imposes a sentence including a prison term of a type described in this division on or after July 11, 2006, the failure of a court to include a post-release control requirement in the sentence pursuant to this division does not negate, limit, or otherwise affect the mandatory period of post-release control that is required for the offender under division (B) of section 2967.28 of the Revised Code. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(2) If a court imposes a prison term for a felony of the third, fourth, or fifth degree that is not subject to division (D)(1) of this section, it shall include in the sentence a requirement that the offender be subject to a period of post-release control after the offender's release from imprisonment, in accordance with that division, if the parole board determines that a period of post-release control is necessary. Section 2929.191 of the Revised Code applies if, prior to July 11, 2006, a court imposed a sentence including a prison term of a type described in this division and failed to include in the sentence pursuant to this division a statement regarding post-release control.

(E) The court shall impose sentence upon the offender in accordance with section 2971.03 of the Revised Code, and Chapter 2971. of the Revised Code applies regarding the prison term or term of life imprisonment without parole imposed upon the offender and the service of that term of imprisonment if any of the following apply:

(1) A person is convicted of or pleads guilty to a violent sex offense or a designated homicide, assault, or kidnapping offense, and, in relation to that offense, the offender is adjudicated a sexually violent predator.

(2) A person is convicted of or pleads guilty to a violation of division (A)(1)(b) of section 2907.02 of the Revised Code committed on or after January 2, 2007, and either the court does not impose a

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sentence of life without parole when authorized pursuant to division (B) of section 2907.02 of the Revised Code, or division (B) of section 2907.02 of the Revised Code provides that the court shall not sentence the offender pursuant to section 2971.03 of the Revised Code.

(3) A person is convicted of or pleads guilty to attempted rape committed on or after January 2, 2007, and a specification of the type described in section 2941.1418, 2941.1419, or 2941.1420 of the Revised Code.

(4) A person is convicted of or pleads guilty to a violation of section 2905.01 of the Revised Code committed on or after January 1, 2008, and that section requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(5) A person is convicted of or pleads guilty to aggravated murder committed on or after January 1, 2008, and division (A)(2)(b)(ii) of section 2929.022, division (A)(1)(e), (C)(1)(a)(v), (C)(2)(a)(ii), (D)(2)(b), (D)(3)(a)(iv), or (E)(1)(d) of section 2929.03, or division (A) or (B) of section 2929.06 of the Revised Code requires the court to sentence the offender pursuant to division (B)(3) of section 2971.03 of the Revised Code.

(6) A person is convicted of or pleads guilty to murder committed on or after January 1, 2008, and division (B)(2) of section 2929.02 of the Revised Code requires the court to sentence the offender pursuant to section 2971.03 of the Revised Code.

(F) If a person who has been convicted of or pleaded guilty to a felony is sentenced to a prison term or term of imprisonment under this section, sections 2929.02 to 2929.06 of the Revised Code, section 2929.142 of the Revised Code, section 2971.03 of the Revised Code, or any other provision of law, section 5120.163 of the Revised Code applies regarding the person while the person is confined in a state correctional institution.

(G) If an offender who is convicted of or pleads guilty to a felony that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.142 of the Revised Code that charges the offender with having committed the felony while participating in a criminal gang, the court shall impose upon the offender an additional prison term of one, two, or three years.

(H)

(1) If an offender who is convicted of or pleads guilty to aggravated murder, murder, or a felony of the first, second, or third degree that is an offense of violence also is convicted of or pleads guilty to a specification of the type described in section 2941.143 of the Revised Code that charges the offender with having committed the offense in a school safety zone or towards a person in a school safety zone, the court shall impose upon the offender an additional prison term of two years. The offender shall serve the additional two years consecutively to and prior to the prison term imposed for the underlying offense.

(2)

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(a) If an offender is convicted of or pleads guilty to a felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and to a specification of the type described in section 2941.1421 of the Revised Code and if the court imposes a prison term on the offender for the felony violation, the court may impose upon the offender an additional prison term as follows:

- (i) Subject to division (H)(2)(a)(ii) of this section, an additional prison term of one, two, three, four, five, or six months;
- (ii) If the offender previously has been convicted of or pleaded guilty to one or more felony or misdemeanor violations of section 2907.22, 2907.23, 2907.24, 2907.241, or 2907.25 of the Revised Code and also was convicted of or pleaded guilty to a specification of the type described in section 2941.1421 of the Revised Code regarding one or more of those violations, an additional prison term of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve months.

(b) In lieu of imposing an additional prison term under division (H)(2)(a) of this section, the court may directly impose on the offender a sanction that requires the offender to wear a real-time processing, continual tracking electronic monitoring device during the period of time specified by the court. The period of time specified by the court shall equal the duration of an additional prison term that the court could have imposed upon the offender under division (H)(2)(a) of this section. A sanction imposed under this division shall commence on the date specified by the court, provided that the sanction shall not commence until after the offender has served the prison term imposed for the felony violation of section 2907.22, 2907.24, 2907.241, or 2907.25 of the Revised Code and any residential sanction imposed for the violation under section 2929.16 of the Revised Code. A sanction imposed under this division shall be considered to be a community control sanction for purposes of section 2929.15 of the Revised Code, and all provisions of the Revised Code that pertain to community control sanctions shall apply to a sanction imposed under this division, except to the extent that they would by their nature be clearly inapplicable. The offender shall pay all costs associated with a sanction imposed under this division, including the cost of the use of the monitoring device.

(l) At the time of sentencing, the court may recommend the offender for placement in a program of shock incarceration under section 5120.031 of the Revised Code or for placement in an intensive program prison under section 5120.032 of the Revised Code, disapprove placement of the offender in a program of shock incarceration or an intensive program prison of that nature, or make no recommendation on placement of the offender. In no case shall the department of rehabilitation and correction place the offender in a program or prison of that nature unless the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for the placement.

If the court disapproves placement of the offender in a program or prison of that nature, the department of rehabilitation and correction shall not place the offender in any program of shock incarceration or intensive program prison.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison, and if the offender is subsequently placed in the recommended program or prison, the department shall notify the court of the placement and shall include with the notice a brief description of the placement.

If the court recommends placement of the offender in a program of shock incarceration or in an intensive program prison and the department does not subsequently place the offender in the recommended program or prison, the department shall send a notice to the court indicating why the offender was not placed in the recommended program or prison.

If the court does not make a recommendation under this division with respect to an offender and if the department determines as specified in section 5120.031 or 5120.032 of the Revised Code, whichever is applicable, that the offender is eligible for placement in a program or prison of that nature, the department shall screen the offender and determine if there is an available program of shock incarceration or an intensive program prison for which the offender is suited. If there is an available program of shock incarceration or an intensive program prison for which the offender is suited, the department shall notify the court of the proposed placement of the offender as specified in section 5120.031 or 5120.032 of the Revised Code and shall include with the notice a brief description of the placement. The court shall have ten days from receipt of the notice to disapprove the placement.

(J) If a person is convicted of or pleads guilty to aggravated vehicular homicide in violation of division (A)(1) of section 2903.06 of the Revised Code and division (B)(2)(c) of that section applies, the person shall be sentenced pursuant to section 2929.142 of the Revised Code.

(K)

(1) The court shall impose an additional mandatory prison term of two, three, four, five, six, seven, eight, nine, ten, or eleven years on an offender who is convicted of or pleads guilty to a violent felony offense if the offender also is convicted of or pleads guilty to a specification of the type described in section 2941.1424 of the Revised Code that charges that the offender is a violent career criminal and had a firearm on or about the offender's person or under the offender's control while committing the presently charged violent felony offense and displayed or brandished the firearm, indicated that the offender possessed a firearm, or used the firearm to facilitate the offense. The offender shall serve the prison term imposed under this division consecutively to and prior to the prison term imposed for the underlying offense. The prison term shall not be reduced pursuant to section 2929.20 or 2967.19 or any other provision of Chapter 2967. or 5120. of the Revised Code. A court may not impose more than one sentence under division (B)(2)(a) of this section and this division for acts committed as part of the same act or transaction.

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(2) As used in division (K)(1) of this section, “violent career criminal” and “violent felony offense” have the same meanings as in section 2923.132 of the Revised Code.

CREDIT(S)

146 v S 2 (Eff 7-1-96); 146 v S 269 (Eff 7-1-96); 146 v H 88 (Eff 9-3-96); 146 v H 445 (Eff 9-3-96); 146 v H 154 (Eff 10-4-96); 146 v S 166 (Eff 10-17-96); 146 v H 180 (Eff 1-1-97); 147 v H 151 (Eff 9-16-97); 147 v H 32 (Eff 3-10-98); 147 v S 111 (Eff 3-17-98); 147 v H 2 (Eff 1-1-99); 148 v S 1 (Eff 8-6-99); 148 v H 29 (Eff 10-29-99); 148 v S 107 (Eff 3-23-2000); 148 v S 22 (Eff 5-17-2000); 148 v S 222 (Eff 3-22-2001); 149 v H 485 (Eff 6-13-2002); 149 v H 327 (Eff 7-8-2002); 149 v H 130. Eff 4-7-2003; 149 v S 123, § 1, eff. 1-1-04; 150 v H 12, §§ 1, 3, eff. 4-8-04†; 150 v H 52, § 1, eff. 6-1-04; 150 v H 163, § 1, eff. 9-23-04; 150 v H 473, § 1, eff. 4-29-05; 151 v H 95, § 1, eff. 8-3-06; 151 v H 137, § 1, eff. 7-11-06; 151 v H 137, § 3, eff. 8-3-06; 151 v S 260, § 1, eff. 1-2-07; 151 v S 281, § 1, eff. 1-4-07; 151 v H 461, § 1, eff. 4-4-07; 152 v S 10, § 1, eff. 1-1-08; 152 v S 184, § 1, eff. 9-9-08; 152 v S 220, § 1, eff. 9-30-08; 152 v H 280, § 1, eff. 4-7-09; 152 v H 130, § 1, eff. 4-7-09; 2011 HB 86, § 1, eff. Sept. 30, 2011; 2012 SB 337, § 1, eff. Sept. 28, 2012; 2014 HB 234, § 1, effective March 23, 2015; 2016 SB 97, § 1, effective Sep 14, 2016.
State v. Foster, 109 Ohio St. 3d 1, 1 (Ohio 2006)

Ohio Rev. Code Ann. §2929.21 (2016). Overriding purposes of misdemeanor sentencing; discrimination prohibited

(A) A court that sentences an offender for a misdemeanor or minor misdemeanor violation of any provision of the Revised Code, or of any municipal ordinance that is substantially similar to a misdemeanor or minor misdemeanor violation of a provision of the Revised Code, shall be guided by the overriding purposes of misdemeanor sentencing. The overriding purposes of misdemeanor sentencing are to protect the public from future crime by the offender and others and to punish the offender. To achieve those purposes, the sentencing court shall consider the impact of the offense upon the victim and the need for changing the offender’s behavior, rehabilitating the offender, and making restitution to the victim of the offense, the public, or the victim and the public.

(B) A sentence imposed for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall be reasonably calculated to achieve the two overriding purposes of misdemeanor sentencing set forth in division (A) of this section, commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar offenses committed by similar offenders.

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(C) A court that imposes a sentence upon an offender for a misdemeanor or minor misdemeanor violation of a Revised Code provision or for a violation of a municipal ordinance that is subject to division (A) of this section shall not base the sentence upon the race, ethnic background, gender, or religion of the offender.

(D) Divisions (A) and (B) of this section shall not apply to any offense that is disposed of by a traffic violations bureau of any court pursuant to Traffic Rule 13 and shall not apply to any violation of any provision of the Revised Code that is a minor misdemeanor and that is disposed of without a court appearance. Divisions (A) to (C) of this section do not affect any penalties established by a municipal corporation for a violation of its ordinances.

CREDIT(S)

149 v H 490 §§ 1, 2, eff. 1-1-04; 150 v H 52, § 1, eff. 6-1-04.

OKLAHOMA

Okla. Stat. Ann. tit. 21, § 1111 (2016). Rape Defined

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;
6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;
7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the

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state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim;

8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system; or

9. Where the victim is nineteen (19) years of age or younger and is in the legal custody of a state agency, federal agency or tribal court and engages in sexual intercourse with a foster parent or foster parent applicant.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

CREDIT(S)

Laws 2006, ch. 62 (SB 682), § 5, eff. Apr. 17, 2006; Laws 2015, ch. 67 (sb637), § 1, eff. November 1, 2015.

Okla. Stat. Ann. tit. 21, § 1112 (2016). Age Limitations on Conviction for Rape

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.

CREDIT(S)

21 Okl. St. § 1112

Okla. Stat. Ann. tit. 21, § 1113 (2016). Slight Penetration is Sufficient to Complete Crime

The essential guilt of rape or rape by instrumentation, except with the consent of a male or female over fourteen (14) years of age, consists in the outrage to the person and feelings of the victim. Any sexual penetration, however slight, is sufficient to complete the crime.

CREDIT(S)

21 Okl. St. § 1113

Okla. Stat. Ann. tit. 21, § 1114 (2016). Rape in First Degree—Second Degree

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A. Rape in the first degree shall include:

1. rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age; or
2. rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or
3. rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or
4. rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or
5. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or
6. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or
7. rape by instrumentation committed upon a person under fourteen (14) years of age.

B. In all other cases, rape or rape by instrumentation is rape in the second degree.

CREDIT(S)

Laws 2008, ch. 438 (SB 1992), § 3, eff. June 3, 2008.

Okla. Stat. Ann. tit. 21, § 1115 (2016). Punishment for Rape In First Degree [Text as amended by Laws 2009, c. 234 § 124. See also, the text as amended by Laws 2002, c. 455 § 5.]

Rape in the first degree is a felony punishable by death or imprisonment in the custody of the Department of Corrections, for a term of not less than five (5) years, life or life without parole. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the custody of the Department of Corrections for life or life without parole.

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CREDIT(S)

Laws 2007, ch. 261 (HB 1760), § 18, eff. Nov. 1, 2007; Laws 2009, ch. 234 (HB 2029), § 124, eff. May 21, 2009.

Okla. Stat. Ann. tit. 21, § 1116 (2016). Second Degree Rape— Penalty

Rape in the second degree is a felony punishable by imprisonment in the State Penitentiary not less than one (1) year nor more than fifteen (15) years.

CREDIT(S)

21 Okl. St. § 1116

OREGON

Or. Rev. Stat. § 163.305 (2016). Definitions

As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:

- (1) “Deviate sexual intercourse” means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.
- (2) “Forcible compulsion” means to compel by:
 - (a) Physical force; or
 - (b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.
- (3) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.
- (4) “Mentally incapacitated” means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense.
- (5) “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (6) “Sexual contact” means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.
- (7) “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

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1971 c.743 § 104; 1975 c.461 § 1; 1977 c.844 § 1; 1979 c.744 § 7; 1983 c.500 § 1; 1999 c.949 § 1; 2009 c.770 § 1.

Or. Rev. Stat. § 163.315 (2016). Incapacity to consent; effect of lack of resistance

(1) A person is considered incapable of consenting to a sexual act if the person is:

- (a) Under 18 years of age;
- (b) Mentally defective;
- (c) Mentally incapacitated; or
- (d) Physically helpless.

(2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.

CREDIT(S)

1971 c.743 § 105; 1999 c.949 § 2; 2001 c.104 § 52.

Or. Rev. Stat. § 163.325 (2016). Ignorance or mistake as a defense

(1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.

(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.

(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.

CREDIT(S)

1971 c.743 § 106.

Or. Rev. Stat. § 163.355 (2016). Rape in the third degree

(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.

(2) Rape in the third degree is a Class C felony.

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CREDIT(S)

1971 c.743 § 109; 1991 c.628 § 1.

Or. Rev. Stat. § 163.365 (2016). Rape in the second degree

(1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.

(2) Rape in the second degree is a Class B felony.

CREDIT(S)

1971 c.743 § 110; 1989 c.359 § 1; 1991 c.628 § 2.

Or. Rev. Stat. § 163.375 (2016). Rape in the first degree

(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

(a) The victim is subjected to forcible compulsion by the person;

(b) The victim is under 12 years of age;

(c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or

(d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Rape in the first degree is a Class A felony.

CREDIT(S)

1971 c.743 § 111; 1989 c.359 § 2; 1991 c.628 § 3.

Or. Rev. Stat. § 163.385 (2016). Sodomy in the third degree

(1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.

(2) Sodomy in the third degree is a Class C felony.

CREDIT(S)

1971 c.743 § 112.

Or. Rev. Stat. § 163.395 (2016). Sodomy in the second degree

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony.

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CREDIT(S)

1971 c.743 § 113; 1989 c.359 § 3.

Or. Rev. Stat. § 163.405 (2016). Sodomy in the first degree

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

- (a) The victim is subjected to forcible compulsion by the actor;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or
- (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

CREDIT(S)

1971 c.743 § 114; 1989 c.359 § 4.

Or. Rev. Stat. § 163.408 (2016). Unlawful sexual penetration in the second degree

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

(2) Unlawful sexual penetration in the second degree is a Class B felony.

CREDIT(S)

1981 c.549 § 2; 1989 c.359 § 5; 1991 c.386 § 1.

Or. Rev. Stat. § 163.411 (2016). Unlawful sexual penetration in the first degree

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;
- (b) The victim is under 12 years of age; or
- (c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony.

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CREDIT(S)

1981 c.549 § 3; 1989 c.359 § 6; 1991 c.386 § 2.

Or. Rev. Stat. § 163.415 (2016). Sexual abuse in the third degree

- (1) A person commits the crime of sexual abuse in the third degree if:
 - (a) The person subjects another person to sexual contact and:
 - (A) The victim does not consent to the sexual contact; or
 - (B) The victim is incapable of consent by reason of being under 18 years of age; or
 - (b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.
- (2) Sexual abuse in the third degree is a Class A misdemeanor.
- (3) As used in this section, “dangerous substance” means blood, urine, semen or feces.

CREDIT(S)

1971 c.743 § 115; 1979 c.489 § 1; [1991 c.830 § 1](#); [1995 c.657 § 11](#); [1995 c.671 § 9](#); [2009 c.616 § 1](#).

Or. Rev. Stat. § 163.425 (2016). Sexual abuse in the second degree

- (1) A person commits the crime of sexual abuse in the second degree when:
 - (a) The person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto; or
 - (b)
 - (A) The person violates ORS 163.415 (1)(a)(B);
 - (B) The person is 21 years of age or older; and
 - (C) At any time before the commission of the offense, the person was the victim’s coach as defined in ORS 163.426.
- (2) Sexual abuse in the second degree is a Class C felony.

CREDIT(S)

1971 c.743 § 116; 1983 c.564 § 1; 1991 c.386 § 14; 1991 c.830 § 2; 2009 c.876 § 2.

Or. Rev. Stat. § 163.427 (2016). Sexual abuse in the first degree

- (1) A person commits the crime of sexual abuse in the first degree when that person:
 - (a) Subjects another person to sexual contact and:
 - (A) The victim is less than 14 years of age;
 - (B) The victim is subjected to forcible compulsion by the actor; or

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- (C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or
- (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.
- (2) Sexual abuse in the first degree is a Class B felony.

CREDIT(S)

1991 c.830 § 3; 1995 c.657 § 12; 1995 c.671 § 10.

Or. Rev. Stat. § 161.605 (2016). Maximum prison terms for felonies

The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:

- (1) For a Class A felony, 20 years.
- (2) For a Class B felony, 10 years.
- (3) For a Class C felony, 5 years.
- (4) For an unclassified felony as provided in the statute defining the crime.

CREDIT(S)

1971 c.743 § 74.

Or. Rev. Stat. § 161.615 (2016). Prison terms for misdemeanors

Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:

- (1) For a Class A misdemeanor, 1 year.
- (2) For a Class B misdemeanor, 6 months.
- (3) For a Class C misdemeanor, 30 days.
- (4) For an unclassified misdemeanor, as provided in the statute defining the crime.

CREDIT(S)

1971 c.743 § 75.

Or. Rev. Stat. § 161.625 (2016). Fines for felonies

- (1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding:
 - (a) \$ 500,000 for murder or aggravated murder.
 - (b) \$ 375,000 for a Class A felony.
 - (c) \$ 250,000 for a Class B felony.
 - (d) \$ 125,000 for a Class C felony.

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(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3)

(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.

(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.

(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.

(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.

(6) Except as provided in ORS 161.655, this section does not apply to a corporation.

CREDIT(S)

1971 c.743 § 76; 1981 c.390 § 1; 1991 c.837 § 11; 1993 c.680 § 36; 2003 c.615 § 1; 2003 c.737 § 86.

Or. Rev. Stat. § 161.635 (2016). Fines for misdemeanors

(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:

(a) \$ 6,250 for a Class A misdemeanor.

(b) \$ 2,500 for a Class B misdemeanor.

(c) \$ 1,250 for a Class C misdemeanor.

(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.

(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.

(4) This section does not apply to corporations.

CREDIT(S)

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1971 c.743 § 77; 1981 c.390 § 2; 1993 c.680 § 30; 1995 c.545 § 2; 1999 c.1051 § 44; 2003 c.737 § 87.

PENNSYLVANIA

18 PA. CONS. STAT. ANN. § 3101 (2016). Definitions

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Complainant.” —An alleged victim of a crime under this chapter.

“Deviate sexual intercourse.” —Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.

“Forcible compulsion.” —Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during or after sexual intercourse.

“Foreign object.” —Includes any physical object not a part of the actor’s body.

“Indecent contact.” —Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in any person.

“Serious bodily injury.” —As defined in section 2301 (relating to definitions).

“Sexual intercourse.” —In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1984-230 (H.B. 281), P.L. 1210, § 1, approved Dec. 21, 1984, eff. immediately; Act 1990-4 (H.B. 1120), P.L. 6, § 4, approved Feb. 2, 1990, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 1, approved Mar. 31, 1995, See section of this act for effective date information; Act 2002-162 (H.B. 976), P.L. 1350, § 1, approved Dec. 9, 2002, eff. in 60 days; Act 2002-226 (S.B. 1402), P.L. 1953, § 1, approved Dec. 16, 2002, eff. in 60 days; Act 2013-105(H.B. 321), P.L. 1163, § 1, approved Dec. 18, 2013, eff. Jan. 1, 2014.

18 PA. CONS. STAT. ANN. § 3121 (2016). Rape

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(a) *Offense defined.* — A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

(1) By forcible compulsion.

(2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.

(3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.

(4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.

(5) Who suffers from a mental disability which renders the complainant incapable of consent.

(6) (Deleted by amendment).

(b) *Additional penalties.* — In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$ 100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

(c) *Rape of a child.* — A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

(d) *Rape of a child with serious bodily injury.* — A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

(e) *Sentences.* — Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

(1) Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1984-230 (H.B. 281), P.L. 1210, § 1, approved Dec. 21, 1984, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 3, approved Mar. 31, 1995, See section of this act for effective date information; Act 1997-65 (H.B. 1125), P.L. 621, § 2, approved Dec. 19, 1997, eff. in 60 days; Act 2002-162 (H.B. 976),

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P.L. 1350, § 2, approved Dec. 9, 2002, eff. in 60 days; Act 2002-226 (S.B. 1402), P.L. 1953, § 1.1, approved Dec. 16, 2002, eff. in 60 days.

18 PA. CONS. STAT. ANN. § 3123 (2016). Involuntary deviate sexual intercourse

(a) *Offense defined.* — A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (5) who suffers from a mental disability which renders him or her incapable of consent; or
- (6) (Deleted by amendment).
- (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) *Involuntary deviate sexual intercourse with a child.* — A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

(c) *Involuntary deviate sexual intercourse with a child with serious bodily injury.* — A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.

(d) *Sentences.* — Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

- (1) Subsection (b) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.
- (2) Subsection (c) shall be sentenced up to a maximum term of life imprisonment.

(e) *Definition.* — As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 6, approved Mar. 31, 1995, See section of this act for effective date

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information; Act 2002-162 (H.B. 976), P.L. 1350, § 2, approved Dec. 9, 2002, eff. in 60 days; Act 2002-226 (S.B. 1402), P.L. 1953, § 1.1, approved Dec. 16, 2002, eff. in 60 days.

18 PA. CONS. STAT. ANN. § 3124.1 (2016). Sexual assault

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

CREDIT(S)

Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 8, approved Mar. 31, 1995, See section of this act for effective date information.

18 PA. CONS. STAT. ANN. § 3125 (2016). Aggravated indecent assault

(a) *Offenses defined.* — Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) *Aggravated indecent assault of a child.* — A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

(c) *Grading and sentences.*

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- (1) An offense under subsection (a) is a felony of the second degree.
- (2) An offense under subsection (b) is a felony of the first degree.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1973-117 (S.B. 513), P.L. 341, § 1, approved Nov. 28, 1973, eff. in 60 days; Act 1990-4 (H.B. 1120), P.L. 6, § 5, approved Feb. 2, 1990, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 9, approved Mar. 31, 1995, See section of this act for effective date information; Act 2002-162 (H.B. 976), P.L. 1350, § 2, approved Dec. 9, 2002, eff. in 60 days; Act 2002-226 (S.B. 1402), P.L. 1953, § 1.1, approved Dec. 16, 2002, eff. in 60 days.

18 PA. CONS. STAT. ANN. § 3126 (2016). Indecent assault

(a) *Offense defined.* — A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) *Grading.* — Indecent assault shall be graded as follows:

- (1) An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.
- (2) An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.
- (3) An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:
 - (i) It is a second or subsequent offense.
 - (ii) There has been a course of conduct of indecent assault by the person.

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- (iii) The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.
- (iv) The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1976-53 (H.B. 580), P.L. 120, § 1, approved May 18, 1976, eff. in 30 days; Act 1990-4 (H.B. 1120), P.L. 6, § 6, approved Feb. 2, 1990, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 9, approved Mar. 31, 1995, See section of this act for effective date information; Act 2005-76 (H.B. 1400), P.L. 412, § 1, approved Nov. 23, 2005, eff. in 60 days.

18 PA. CONS. STAT. ANN. § 1103 (2016). Sentence of imprisonment for felony

Except as provided in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses), a person who has been convicted of a felony may be sentenced to imprisonment as follows:

- (1) In the case of a felony of the first degree, for a term which shall be fixed by the court at not more than 20 years.
- (2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.
- (3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1995 Special Session-21 (H.B. 93), P.L. 1058, § 1, approved Oct. 1, 1995, eff. in 60 days.

18 PA. CONS. STAT. ANN. § 1104 (2016). Sentence of imprisonment for misdemeanors

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

- (1) Five years in the case of a misdemeanor of the first degree.
- (2) Two years in the case of a misdemeanor of the second degree.
- (3) One year in the case of a misdemeanor of the third degree.

CREDIT(S)

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1976-53 (H.B. 580), P.L. 120, § 1, approved May 18, 1976, eff. in 30 days; Act 1990-4 (H.B. 1120), P.L. 6, § 6, approved Feb. 2, 1990, eff. in 60 days; Act 1995 Special Session-10 (S.B. 2), P.L. 985, § 9, approved Mar. 31, 1995, See section of this act for effective date information; Act 2005-76 (H.B. 1400), P.L. 412, § 1, approved Nov. 23, 2005, eff. in 60 days.

RHODE ISLAND

R.I. Gen. Laws § 11-37-1 (2016). Definitions

The following words and phrases, when used in this chapter, have the following meanings:

- (1) "Accused" means a person accused of a sexual assault.
- (2) "Force or coercion" means when the accused does any of the following:
 - (i) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.
 - (ii) Overcomes the victim through the application of physical force or physical violence.
 - (iii) Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats.
 - (iv) Coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat.
- (3) "Intimate parts" means the genital or anal areas, groin, inner thigh, or buttock of any person or the breast of a female.
- (4) "Mentally disabled" means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.
- (5) "Mentally incapacitated" means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act.
- (6) "Physically helpless" means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.
- (7) "Sexual contact" means the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.
- (8) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon the accused's instruction, but emission of semen is not required.

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(9) "Spouse" means a person married to the accused at the time of the alleged sexual assault, except that such persons shall not be considered the spouse if the couple are living apart and a decision for divorce has been granted, whether or not a final decree has been entered.

(10) "Victim" means the person alleging to have been subjected to sexual assault.

CREDIT(S)

P.L. 1979, ch. 302, § 2; P.L. 1980, ch. 273, § 1; P.L. 1984, ch. 152, § 1; P.L. 1986, ch. 191, § 1; P.L. 1996, ch. 204, § 1; P.L. 1999, ch. 83, § 13; P.L. 1999, ch. 130, § 13.

R.I. Gen. Laws § 11-37-2 (2016). First degree sexual assault

A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the following circumstances exist:

(1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.

(2) The accused uses force or coercion.

(3) The accused, through concealment or by the element of surprise, is able to overcome the victim.

(4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

CREDIT(S)

P.L. 1979, ch. 302, § 2; P.L. 1980, ch. 273, § 1; P.L. 1981, ch. 119, § 1; P.L. 1984, ch. 59, § 1; P.L. 1984, ch. 355, § 1; P.L. 1986, ch. 191, § 1; P.L. 1987, ch. 238, § 1.

R.I. Gen. Laws § 11-37-3 (2016). Penalty for first degree sexual assault

Every person who shall commit sexual assault in the first degree shall be imprisoned for a period not less than ten (10) years and may be imprisoned for life.

CREDIT(S)

P.L. 1979, ch. 302, § 2.

R.I. Gen. Laws § 11-37-4 (2016). Second degree sexual assault

A person is guilty of a second-degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.

(2) The accused uses force, element of surprise, or coercion.

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(3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.

CREDIT(S)

P.L. 1979, ch. 302, § 2; P.L. 1980, ch. 273, § 1; P.L. 1981, ch. 119, § 1; P.L. 1984, ch. 59, § 1; P.L. 1986, ch. 191, § 1; P.L. 2014, ch. 157, § 1; P.L. 2014, ch. 164, § 1.

R.I. Gen. Laws § 11-37-5 (2016). Penalty for second degree sexual assault

Every person who shall commit sexual assault in the second degree shall be imprisoned for not less than three (3) years and not more than fifteen (15) years.

CREDIT(S)

P.L. 1979, ch. 302, § 2.

R.I. Gen. Laws § 11-37-6 (2016). Third degree sexual assault

A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.

CREDIT(S)

P.L. 1979, ch. 302, § 2; P.L. 1988, ch. 219, § 1.

R.I. Gen. Laws § 11-37-7 (2016). Penalty for third degree sexual assault

Every person who shall commit sexual assault in the third degree shall be imprisoned for not more than five (5) years.

CREDIT(S)

P.L. 1979, ch. 302, § 2.

R.I. Gen. Laws § 11-37-8 (2016). Penalty for assault with intent to commit first degree sexual assault

Every person who shall commit assault with intent to commit first degree sexual assault shall be imprisoned for not less than three (3) years or more than twenty (20) years.

CREDIT(S)

P.L. 1979, ch. 302, § 2

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SOUTH CAROLINA

S.C. Code Ann. § 16-3-651 (2015). Criminal sexual conduct; definitions

For the purposes of Sections 16-3-651 to 16-3-659.1:

- (a) "Actor" means a person accused of criminal sexual conduct.
- (b) "Aggravated coercion" means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.
- (c) "Aggravated force" means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.
- (d) "Intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.
- (e) "Mentally defective" means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (f) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause.
- (g) "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
- (h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.
- (i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.

CREDIT(S)

1977 Act No. 157 § 1.

S.C. Code Ann. § 16-3-652 (2015). Criminal sexual conduct in the first degree

- (1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:
 - (a) The actor uses aggravated force to accomplish sexual battery.

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(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.

(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.

(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.

CREDIT(S)

1977 Act No. 157 § 2; 1998 Act No. 372, § 4; 2000 Act No. 355, § 1; 2010 Act No. 289, § 5, eff June 11, 2010.

S.C. Code Ann. § 16-3-653 (2015). Criminal sexual conduct in the second degree

(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.

CREDIT(S)

1977 Act No. 157 § 3.

S.C. Code Ann. § 16-3-654 (2015). Criminal sexual conduct in the third degree

(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:

(a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances.

(b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.

CREDIT(S)

1977 Act No. 157 § 4.

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S.C. Code Ann. § 16-3-658 (2015). Criminal sexual conduct; when victim is spouse

A person cannot be guilty of criminal sexual conduct under Sections 16-3-651 through 16-3-659.1 if the victim is the legal spouse unless the couple is living apart and the offending spouse's conduct constitutes criminal sexual conduct in the first degree or second degree as defined by Sections 16-3-652 and 16-3-653.

The offending spouse's conduct must be reported to appropriate law enforcement authorities within thirty days in order for a person to be prosecuted for these offenses.

This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

CREDIT(S)

1977 Act No. 157 § 8; 1991 Act No. 139, § 2; 1997 Act No. 95, § 3.

S.C. Code Ann. § 16-1-20 (2015). Penalties for classes of felonies

(A) A person convicted of classified offenses, must be imprisoned as follows:

- (1) for a Class A felony, not more than thirty years;
- (2) for a Class B felony, not more than twenty-five years;
- (3) for a Class C felony, not more than twenty years;
- (4) for a Class D felony, not more than fifteen years;
- (5) for a Class E felony, not more than ten years;
- (6) for a Class F felony, not more than five years;
- (7) for a Class A misdemeanor, not more than three years;
- (8) for a Class B misdemeanor, not more than two years;
- (9) for a Class C misdemeanor, not more than one year.

(B) For all offenders sentenced on or after July 1, 1993, the minimum term of imprisonment required by law does not apply to the offenses listed in Sections 16-1-90 and 16-1-100 unless the offense refers to a mandatory minimum sentence or the offense prohibits suspension of any part of the sentence. Offenses listed in Section 16-1-10(C) and (D) are exempt and minimum terms of imprisonment are applicable. No sentence of imprisonment precludes the timely execution of a death sentence.

(C) This chapter does not apply to the minimum sentences established for fines or community service.

CREDIT(S)

1962 Code § 16-12; 1960 (51) 1602; 1993 Act No. 184, § 2; 1995 Act No. 7, Part I § 1.

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SOUTH DAKOTA

S.D. CODIFIED LAWS § 22-22-1 (2016). Rape — Penalty

Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes of age twenty-five or within seven years of the commission of the crime, whichever is longer.

CREDIT(S)

SDC 1939, §§ 13.2801, 13.2803; SDCL, § 22-22-5; SL 1972, ch 154, § 21; 1975, ch 169, §§ 1, 5; 1976, ch 158, § 22-1; 1977, ch 189, § 51; 1978, ch 158, § 10; 1980, ch 175; 1982, ch 176, § 1; 1984, ch 165, § 1; 1984, ch 167, § 2; 1985, ch 179; 1985, ch 181, § 1; 1988, ch 187; 1989, ch 194, § 2; 1990, ch 161, § 2; 1990, ch 162, § 1; 1991, ch 24, § 8; 1994, ch 165, § 2; 1994, ch 166, § 2; 2000, ch 100, § 1; 2005, ch 120, § 390; 2012, ch 125, § 1, eff. July 1, 2012.

S.D. CODIFIED LAWS § 22-22-2 (2016). "Sexual penetration" defined

Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this

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section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.

CREDIT(S)

SDC 1939, § 13.2802; SL 1975, ch 169, § 2; 1980, ch 176, §§ 1, 2; 1986, ch 181; 1993, ch 178, § 4; 1997, ch 133, § 1.

S.D. CODIFIED LAWS § 22-22-7.1 (2016). “Sexual contact” defined

As used in this chapter, the term, sexual contact, means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party.

Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.

CREDIT(S)

SL 1976, ch 158, § 22-4; 1982, ch 177, § 2; 1993, ch 178, § 5; 1997, ch 133, § 2; 2004, ch 152, § 1.

S.D. CODIFIED LAWS § 22-22-7.4 (2016). Sexual contact without consent — Penalty

No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.

CREDIT(S)

SL 1991, ch 189; 2005, ch 120, § 398.

S.D. CODIFIED LAWS § 22-24B-1 (2016). “Sex crime” defined

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;

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- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia as previously set forth in § 22-22-30.1;
- (11) Felony indecent exposure as previously set forth in former § 22-24-1 or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this section;
- (16) Any crime, court martial offense, or tribal offense committed in a place other than this state that constitutes a sex crime under this section if committed in this state;
- (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex crime under federal law;
- (18) Any crime committed in another state if that state also requires anyone convicted of that crime register as a sex offender in that state;
- (19) If the victim is a minor:
 - (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;
 - (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
 - (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor; or
- (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor.

CREDIT(S)

SL 1994, ch 174, § 1; SL 1995, ch 123, § 1; SL 1997, ch 134, § 1; SL 1998, ch 136, § 4; SL 2002, ch 109, § 11; SL 2002, ch 110, § 1; SL 2003, ch 127, § 4; SL 2004, ch 153, § 1; SDCL 22-22-30; SL 2005, ch 120, §§ 415, 416; 2006, ch 123, § 1; 2008, ch 110, § 1; 2010, ch 117, § 1; 2010, ch 119, § 9; 2015, ch 130, § 1, eff. July 1, 2015; 2016, ch 126, § 1, eff. July 1, 2016.

S.D. CODIFIED LAWS § 22-6-1 (2016). Felonies — Classification — Penalties

Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

- (1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;
- (2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;
- (3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;
- (6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;
- (7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;
- (8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and
- (9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.

If the defendant is under the age of eighteen years at the time of the offense and found guilty of a Class A, B, or C felony, the maximum sentence may be a term of years in the state penitentiary, and a fine of fifty thousand dollars may be imposed.

The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.

CREDIT(S)

SDC 1939, § 13.0606; SL 1976, ch 158, §§ 6-1, 6-4; 1977, ch 189, § 16; 1978, ch 158, § 4; 1979, ch 160, § 1; 1980, ch 173, § 8; 1985, ch 192, § 2; 1997, ch 143, § 5; 2005, ch 120, § 148; 2013, ch 105, § 1, eff. July 1, 2013; 2016, ch 121, § 1, eff. July 1, 2016.

S.D. CODIFIED LAWS § 22-6-2 (2016). Misdemeanors — Classification — Penalties

Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:

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- (1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;
- (2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.

The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.

Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.

CREDIT(S)

SDC 1939, §§ 13.0105, 13.0607; SDCL § 22-1-5; SL 1976, ch 158, §§ 1-3, 6-2, 6-5; 1977, ch 189, § 17; 1978, ch 158, § 5; 1985, ch 192, § 3; 1989, ch 255, § 2; 1990, ch 158, § 1; 1991, ch 186, § 2; 1991, ch 187, § 4; 1991, ch 337, § 1; 1992, ch 158, § 1; 1993, ch 172, § 1; 1994, ch 161; 1995, ch 120, § 1; 1997, ch 126, § 1; 1997, ch 143, § 6; 2005, ch 120, § 173.

TENNESSEE

Tenn. Code Ann. § 39-13-501 (2016). Definitions for §§ 39-13-501 - 39-13-511

As used in §§ 39-13-501 -- 39-13-511, except as specifically provided in § 39-13-505, unless the context otherwise requires:

- (1) "Coercion" means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age;
- (2) "Intimate parts" includes semen, vaginal fluid, the primary genital area, groin, inner thigh, buttock or breast of a human being;
- (3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct;
- (4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent;

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- (5) "Physically helpless" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act;
- (6) "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification;
- (7) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required; and
- (8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.

CREDIT(S)

[Acts 1989, ch. 591, § 1](#); [1997, ch. 256, § 2](#); [2005, ch. 456, § 1](#); [2013, ch. 172, § 1](#).

Tenn. Code Ann. § 39-13-502 (2016). Aggravated rape

(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
 - (2) The defendant causes bodily injury to the victim;
 - (3) The defendant is aided or abetted by one (1) or more other persons; and
 - (A) Force or coercion is used to accomplish the act; or
 - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.
- (b) Aggravated rape is a Class A felony.

CREDIT(S)

Acts 1989, ch. 591, § 1; 1990, ch. 980, § 3; 1992, ch. 878, § 3.

Tenn. Code Ann. § 39-13-503 (2016). Rape

(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:

- (1) Force or coercion is used to accomplish the act;

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- (2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
 - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The sexual penetration is accomplished by fraud.
- (b) Rape is a Class B felony.

CREDIT(S)

Acts 1989, ch. 591, § 1; 1995, ch. 484, § 1; 1997, ch. 406, § 1; 2005, ch. 353, § 11.

Tenn. Code Ann. § 39-13-504 (2016). Aggravated sexual battery

- (a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:
- (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;
 - (2) The defendant causes bodily injury to the victim;
 - (3) The defendant is aided or abetted by one (1) or more other persons; and
 - (A) Force or coercion is used to accomplish the act; or
 - (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The victim is less than thirteen (13) years of age.
- (b) Aggravated sexual battery is a Class B felony.

CREDIT(S)

Acts 1989, ch. 591, § 1; 1993, ch. 289, § 1.

TEXAS

Tex. Penal Code Ann. § 22.011 (2015). Sexual assault

- (a) A person commits an offense if the person:
- (1) intentionally or knowingly:
 - (A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

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- (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or
- (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
- (2) intentionally or knowingly:
 - (A) causes the penetration of the anus or sexual organ of a child by any means;
 - (B) causes the penetration of the mouth of a child by the sexual organ of the actor;
 - (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
 - (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.
- (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:
 - (1) the actor compels the other person to submit or participate by the use of physical force or violence;
 - (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
 - (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
 - (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
 - (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
 - (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
 - (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
 - (8) the actor is a public servant who coerces the other person to submit or participate;
 - (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
 - (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

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(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

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- (ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and
- (B) the victim:
 - (i) was a child of 14 years of age or older; and
 - (ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.
- (f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

CREDIT(S)

Enacted by Acts 1983, 68th Leg., ch. 977 (H.B. 2008), § 3, effective September 1, 1983; am. Acts 1985, 69th Leg., ch. 557 (H.B. 2139), § 1, effective September 1, 1985; am. Acts 1987, 70th Leg., ch. 1029 (H.B. 2576), § 1, effective September 1, 1987; am. Acts 1991, 72nd Leg., ch. 662 (H.B. 263), § 1, effective September 1, 1991; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 273 (S.B. 286), § 1, effective September 1, 1995; am. Acts 1995, 74th Leg., ch. 318 (S.B. 15), § 6, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1031 (S.B. 542), §§ 1, 2, effective September 1, 1997; am. Acts 1997, 75th Leg., ch. 1286 (S.B. 185), § 1, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 1102 (H.B. 3479), § 3, effective September 1, 1999; am. Acts 1999, 76th Leg., ch. 1415 (H.B. 2145), § 24, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 1420 (H.B. 2812), § 14.829, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 155 (S.B. 825), §§ 1, 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 528 (H.B. 1246), § 1, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 553 (H.B. 1483), § 2.017, effective February 1, 2004; am. Acts 2005, 79th Leg., ch. 268 (S.B. 6), § 4.02, effective September 1, 2005; am. Acts 2009, 81st Leg., ch. 260 (H.B. 549), §§ 3, 4, effective September 1, 2009.

Tex. Penal Code Ann. § 22.021 (2015). Aggravated Sexual Assault

- (a) A person commits an offense:
 - (1) if the person:
 - (A) intentionally or knowingly:
 - (i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;
 - (ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

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- (iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or
- (B) intentionally or knowingly:
 - (i) causes the penetration of the anus or sexual organ of a child by any means;
 - (ii) causes the penetration of the mouth of a child by the sexual organ of the actor;
 - (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;
 - (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or
 - (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and
- (2) if:
 - (A) the person:
 - (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;
 - (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;
 - (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person;
 - (iv) uses or exhibits a deadly weapon in the course of the same criminal episode;
 - (v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or
 - (vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;
 - (B) the victim is younger than 14 years of age; or
 - (C) the victim is an elderly individual or a disabled individual.
- (b) In this section:
 - (1) "Child" has the meaning assigned by Section 22.011(c).
 - (2) "Elderly individual" has the meaning assigned by Section 22.04(c).
 - (3) "Disabled individual" means a person older than 13 years of age who by reason of age or physical or mental disease, defect, or injury is substantially unable to protect the person's self from harm or to provide food, shelter, or medical care for the person's self.
- (c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

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- (d) The defense provided by Section 22.011(d) applies to this section.
- (e) An offense under this section is a felony of the first degree.
- (f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:
 - (1) the victim of the offense is younger than six years of age at the time the offense is committed; or
 - (2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

CREDIT(S)

Enacted by Acts 1983, 68th Leg., ch. 977 (H.B. 2008), § 3, effective September 1, 1983; am. Acts 1987, 70th Leg., ch. 573 (H.B. 161), § 1, effective September 1, 1987; am. Acts 1987, 70th Leg., 2nd C.S., ch. 16 (S.B. 35), § 1, effective September 1, 1987; am. Acts 1993, 73rd Leg., ch. 900 (S.B. 1067), § 1.01, effective September 1, 1994; am. Acts 1995, 74th Leg., ch. 318 (S.B. 15), § 7, effective September 1, 1995; am. Acts 1997, 75th Leg., ch. 1286 (S.B. 185), § 2, effective September 1, 1997; am. Acts 1999, 76th Leg., ch. 417 (S.B. 1100), § 1, effective September 1, 1999; am. Acts 2001, 77th Leg., ch. 459 (H.B. 139), § 5, effective September 1, 2001; am. Acts 2003, 78th Leg., ch. 528 (H.B. 1246), § 2, effective September 1, 2003; am. Acts 2003, 78th Leg., ch. 896 (S.B. 837), § 1, effective September 1, 2003; am. [Acts 2007, 80th Leg., ch. 593 \(H.B. 8\), § 1.18](#), effective September 1, 2007; am. [Acts 2011, 82nd Leg., ch. 1 \(S.B. 24\), § 6.05](#), effective September 1, 2011; am. Acts 2015, 84th Leg., ch. HB2589 (H.B. 2589), § 1, effective September 1, 2015.

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UTAH CODE ANN. § 76-5-402 (2016). Rape

- (1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent.
- (2) This section applies whether or not the actor is married to the victim.
- (3) Rape is a felony of the first degree, punishable by a term of imprisonment of:
 - (a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the rape the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(a) or (c).

(6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with [Section 76-3-406](#).

CREDIT(S)

C. 1953, 76-5-402, enacted by L. 1973, ch. 196, [§ 76-5-402](#); 1977, ch. 86, § 1; 1979, ch. 73, § 2; 1983, ch. 88, § 17; [1991, ch. 267, § 1](#); 2007, ch. 339, § 12; [2013, ch. 81, § 4](#).

UTAH CODE ANN. § 76-5-403 (2016). Sodomy — Forcible sodomy

(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

(2) A person commits forcible sodomy when the actor commits sodomy upon another without the other's consent.

(3) Sodomy is a class B misdemeanor.

(4) Forcible sodomy is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (4)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

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- (c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.
- (5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser term than the term described in Subsection (4)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) 10 years and which may be for life; or
 - (b) six years and which may be for life.
- (6) The provisions of Subsection (5) do not apply when a person is sentenced under Subsection (4)(a) or (c).
- (7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance with Section 76-3-406.

CREDIT(S)

C. 1953, 76-5-403, enacted by L. 1973, ch. 196, § 76-5-403; 1977, ch. 86, § 2; 1979, ch. 73, § 3; 1983, ch. 88, § 21; 2007, ch. 339, § 16; 2013, ch. 81, § 8.

UTAH CODE ANN. § 76-5-404 (2016). Forcible sexual abuse

- (1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.
- (2) Forcible sexual abuse is:
 - (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or
 - (b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.
- (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (a) 10 years and which may be for life; or
 - (b) six years and which may be for life.
- (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.

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CREDIT(S)

C. 1953, 76-5-404, enacted by L. 1973, ch. 196, § 76-5-404; 1977, ch. 86, § 3; 1979, ch. 73, § 4; 1983, ch. 88, § 23; 1984, ch. 18, § 9; 2007, ch. 339, § 18; 2010, ch. 218, § 37.

UTAH CODE ANN. § 76-5-405 (2016). Aggravated sexual assault — Penalty

(1) A person commits aggravated sexual assault if:

(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:

(i) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iii) is aided or abetted by one or more persons;

(b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons; or

(c) in the course of an attempted forcible sexual abuse, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601; or

(iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of:

(a) for an aggravated sexual assault described in Subsection (1)(a):

(i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

(b) for an aggravated sexual assault described in Subsection (1)(b):

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- (i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and which may be for life; or
- (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or
- (c) for an aggravated sexual assault described in Subsection (1)(c):
 - (i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and which may be for life; or
 - (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.
- (3)
 - (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:
 - (i) 10 years and which may be for life; or
 - (ii) six years and which may be for life.
 - (b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under Subsection (2)(a)(ii).
- (4)
 - (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.
 - (b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).
- (5)
 - (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.
 - (b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).
- (6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was younger than 18 years of age at the time of the offense.
- (7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

CREDIT(S)

C. 1953, 76-5-405, enacted by L. 1973, ch. 196, § 76-5-405; 1977, ch. 86, § 4; 1983, ch. 88, § 25; 1986, ch. 31, § 1; 1989, ch. 170, § 5; 1995, ch. 337, § 9; 1995 (1st S.S.), ch. 10, § 10; 1996, ch. 40, § 11; 1997, ch. 289, § 7; 2007, ch. 339, § 20; 2009, ch. 176, § 1; 2013, ch. 81, § 11.

UTAH CODE ANN. § 76-5-406 (2016). Sexual offenses against the victim without consent of victim — Circumstances

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

- (1) the victim expresses lack of consent through words or conduct;
- (2) the actor overcomes the victim through the actual application of physical force or violence;
- (3) the actor is able to overcome the victim through concealment or by the element of surprise;
- (4)
 - (a)
 - (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or
 - (ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;
 - (b) as used in this Subsection (4), “to retaliate” includes threats of physical force, kidnapping, or extortion;
- (5) the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;
- (6) the actor knows that as a result of mental disease or defect, or for any other reason the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;
- (7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim’s spouse;
- (8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim’s knowledge;
- (9) the victim is younger than 14 years of age;

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(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) "health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

CREDIT(S)

C. 1953, 76-5-406, enacted by L. 1973, ch. 196, § 76-5-406; 1983, ch. 88, § 26; 1988, ch. 156, § 2; 1989, ch. 259, § 1; 1992, ch. 64, § 1; 1996, ch. 137, § 4; 1998, ch. 252, § 1; 2000, ch. 129, § 1; 2003, ch. 149, § 4; 2013, ch. 196, § 9; L. 2014, ch. 135, § 5; L. 2014, ch. 141, § 3; L. 2015, ch. 57, § 1.

UTAH CODE ANN. § 76-5-407 (2016). Applicability of part — "Penetration" or "touching" sufficient to constitute offense

(1) The provisions of this part do not apply to consensual conduct between persons married to each other.

(2) In any prosecution for:

(a) the following offenses, any sexual penetration, however slight, is sufficient to constitute the relevant element of the offense:

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- (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving sexual intercourse;
- (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Subsection 76-5-401.2, involving sexual intercourse; or
- (iii) rape, a violation of Section 76-5-402; or
- (b) the following offenses, any touching, however slight, is sufficient to constitute the relevant element of the offense:
 - (i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving acts of sodomy;
 - (ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section 76-5-401.2, involving acts of sodomy;
 - (iii) sodomy, a violation of Subsection 76-5-403(1);
 - (iv) forcible sodomy, a violation of Subsection 76-5-403(2);
 - (v) rape of a child, a violation of Section 76-5-402.1; or
 - (vi) object rape of a child, a violation of Section 76-5-402.3.
- (3) In any prosecution for the following offenses, any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense:
 - (a) sodomy on a child, a violation of Section 76-5-403.1; or
 - (b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section 76-5-404.1.

CREDIT(S)

C. 1953, 76-5-407, enacted by L. 1973, ch. 196, § 76-5-407; 1974, ch. 32, § 13; 1977, ch. 86, § 5; 1979, ch. 73, § 5; 1988, ch. 181, § 1; 1989, ch. 255, § 1; 1991, ch. 267, § 2; 1996, ch. 137, § 5; 1999, ch. 302, § 4; 2000, ch. 128, § 2.

UTAH CODE ANN. § 76-3-203 (2016). Felony conviction — Indeterminate term of imprisonment

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

- (1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.
- (2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.
- (3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

CREDIT(S)

C. 1953, 76-3-203, enacted by L. 1973, ch. 196, § 76-3-203; 1976, ch. 9, § 1; 1977, ch. 88, § 1; 1983, ch. 88, § 5; 1995, ch. 244, § 2; 1997, ch. 289, § 2; 2000, ch. 214, § 1; 2003, ch. 148, § 2.

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VT. STAT. ANN. tit. 13, § 3251 (2016). Definitions

As used in this chapter:

- (1) A "sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.
- (2) "Sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual acts, use of contraceptives, living arrangement and mode of living.
- (3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act.
- (4) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title.
- (5) "Bodily injury" means physical pain, illness or any impairment of physical condition.
- (6) "Actor" means a person charged with sexual assault or aggravated sexual assault.
- (7) "Deadly force" means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury.
- (8) "Deadly weapon" means:
 - (A) any firearm; or
 - (B) any weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.

CREDIT(S)

Added 1977, No. 51, § 1; amended 1985, No. 83, § 1; 1989, No. 293 (Adj. Sess.), § 4; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.

VT. STAT. ANN. tit. 13, § 3252 (2016). Sexual assault

- (a) No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act:
 - (1) without the consent of the other person; or
 - (2) by threatening or coercing the other person; or
 - (3) by placing the other person in fear that any person will suffer imminent bodily injury.
- (b) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person.

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- (c) No person shall engage in a sexual act with a child who is under the age of 16, except:
- (1) where the persons are married to each other and the sexual act is consensual; or
 - (2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.
- (d) No person shall engage in a sexual act with a child who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild.
- (e) No person shall engage in a sexual act with a child under the age of 16 if:
- (1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or
 - (2) the actor is at least 18 years of age, resides in the victim's household, and serves in a parental role with respect to the victim.
- (f)
- (1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$ 25,000.00.
 - (2) A person who violates subsection (c) of this section shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$ 10,000.00.
- (g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title.

CREDIT(S)

Added 1977, No. 51, § 1; amended 1985, No. 83, § 2; 1989, No. 293 (Adj. Sess.), § 5; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.

VT. STAT. ANN. tit. 13, § 3253 (2016). Aggravated sexual assault

- (a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:
- (1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.
 - (2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.
 - (3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.
 - (4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed in this state.

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- (5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.
- (6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.
- (7) At the time of the sexual assault, the actor applies deadly force to the victim.
- (8) The victim is under the age of 13 and the actor is at least 18 years of age.
- (9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.
- (b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$ 50,000.00.
- (c)
- (1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.
- (2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years.
- (d) A person convicted of violating this section shall be sentenced under section 3271 of this title.

CREDIT(S)

Added 1977, No. 51, § 1; amended 1989, No. 293 (Adj. Sess.), § 6; 2005, No. 79, § 10; 2005, No. 192 (Adj. Sess.), § 10, eff. May 26, 2006.

VT. STAT. ANN. tit. 13, § 3254 (2016). Trial procedure; consent

In a prosecution for a crime defined in this chapter or section 2601 of this title:

- (1) lack of consent may be shown without proof of resistance;
- (2) a person shall be deemed to have acted without the consent of the other person where the actor:
- (A) knows that the other person is mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct; or

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(B) knows that the other person is not physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct; or

(C) knows that the other person is unaware that a sexual act or lewd and lascivious conduct is being committed; or

(D) knows that the other person is mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to a mental condition or a psychiatric or developmental disability as defined in 14 V.S.A. § 3061.

CREDIT(S)

Added 1977, No. 51, § 1; amended 1993, No. 100, § 13; 2013, No. 96 (Adj. Sess.), § 57.

VIRGINIA

VA. CODE ANN. § 18.2-61 (2016). Rape

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

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There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under [§ 19.2-218.1](#) if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

Code 1950, § 18.1-44; 1960, c. 358; 1972, c. 394; 1975, cc. 14, 15, 606; 1981, c. 397; 1982, c. 506; 1986, c. 516; 1994, cc. 339, 772,794; 1997, c. 330; 1999, c. 367; 2002, cc. 810, 818; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

VA. CODE ANN. § 18.2-67.10 (2016). General definitions

As used in this article:

1. "*Complaining witness*" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.
2. "*Intimate parts*" means the genitalia, anus, groin, breast, or buttocks of any person.
3. "*Mental incapacity*" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.

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4. "*Physical helplessness*" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.

5. The complaining witness's "*prior sexual conduct*" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.

6. "*Sexual abuse*" means an act committed with the intent to sexually molest, arouse, or gratify any person, where:

- a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;
- b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;
- c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or
- d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.

CREDIT(S)

1981, c. 397; 1987, c. 277; 1993, c. 549; 1994, c. 568; 2004, c. 741.

VA. CODE ANN. § 18.2-67.1 (2016). Forcible sodomy

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age; or
2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

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2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

1981, c. 397; 1986, c. 516; 1994, cc. 772, 794; 1999, c. 367; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

VA. CODE ANN. § 18.2-67.2 (2016). Object sexual penetration; penalty

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her

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spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age; or
2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or
2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant

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and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

1981, c. 397; 1982, c. 508; 1986, c. 516; 1988, c. 437; 1993, c. 549; 1994, cc. 772, 794; 1999, c. 367; 2005, c. 631; 2006, cc. 853, 914; 2012, cc. 575, 605; 2013, cc. 761, 774.

VA. CODE ANN. § 18.2-67.3 (2016). Aggravated sexual battery; penalty

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age, or
2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or
3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or
4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and
 - a. The complaining witness is at least 13 but less than 15 years of age, or
 - b. The accused causes serious bodily or mental injury to the complaining witness, or
 - c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$ 100,000.

CREDIT(S)

1981, c. 397; 1993, c. 590; 2004, c. 843; 2005, cc. 185, 406.

VA. CODE ANN. § 18.2-67.4 (2016). Sexual battery

A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse, (ii) within a two-year period, more than one complaining witness or one complaining witness on more than one occasion intentionally and without the consent of the complaining witness, (iii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iv) a probationer, parolee, or a pretrial defendant or post trial offender under the jurisdiction of the Department of Corrections, a local community-based

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probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.

B. Sexual battery is a Class 1 misdemeanor.

CREDIT(S)

1981, c. 397; 1997, c. 643; 1999, c. 294; 2000, cc. 832, 1040; 2006, c. 284; 2007, c. 133; 2014, c. 656.

VA. CODE ANN. § 18.2-67.5 (2016). Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery

A. An attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration shall be punishable as a Class 4 felony.

B. An attempt to commit aggravated sexual battery shall be a felony punishable as a Class 6 felony.

C. An attempt to commit sexual battery is a Class 1 misdemeanor.

CREDIT(S)

1981, c. 397; 1993, c. 549.

VA. CODE ANN. § 18.2-67.5:1 (2016). Punishment upon conviction of third misdemeanor offense

When a person is convicted of sexual battery in violation of § 18.2-67.4, attempted sexual battery in violation of subsection C of § 18.2-67.5, a violation of § 18.2-371 involving consensual intercourse, anal intercourse, cunnilingus, fellatio, or anilingus with a child, indecent exposure of himself or procuring another to expose himself in violation of § 18.2-387, or a violation of § 18.2-130, and it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he is guilty of a Class 6 felony.

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1994, c. 468; 2006, c. 875; 2014, c. 794.

VA. CODE ANN. § 18.2-67.5:2 (2016). Punishment upon conviction of certain subsequent felony sexual assault

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of § 18.2-67.5:3 when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between thirteen and fifteen years of age in violation of § 18.2-63 when the offense is committed by a person over the age of eighteen;
2. Carnal knowledge of certain minors in violation of § 18.2-64.1;
3. Aggravated sexual battery in violation of § 18.2-67.3;
4. Crimes against nature in violation of subsection B of § 18.2-361;
5. Adultery or fornication with one's own child or grandchild in violation of § 18.2-366;
6. Taking indecent liberties with a child in violation of § 18.2-370 or § 18.2-370.1; or
7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

CREDIT(S)

1995, c. 834; 2000, c. 333.

VA. CODE ANN. § 18.2-67.5:3 (2016). Punishment upon conviction of certain subsequent violent felony sexual assault

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in § 53.1-151 between each conviction shall, upon conviction of the second or subsequent such

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offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to convictions for:

1. Rape in violation of § 18.2-61;
2. Forcible sodomy in violation of § 18.2-67.1;
3. Object sexual penetration in violation of § 18.2-67.2;
4. Abduction with intent to defile in violation of § 18.2-48; or
5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to § 18.2-22.

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

CREDIT(S)

1995, c. 834; 2007, c. 506.

WASHINGTON

Wash. Rev. Code Ann. § 9A.44.010 (2016) Definitions

As used in this chapter:

- (1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and
(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and
(c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.
- (2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.

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- (3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.
- (4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.
- (5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
- (6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.
- (7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
- (8) "Significant relationship" means a situation in which the perpetrator is:
- (a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;
 - (b) A person who in the course of his or her employment supervises minors; or
 - (c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.
- (9) "Abuse of a supervisory position" means:
- (a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or
 - (b) To exploit a significant relationship in order to obtain the consent of a minor.
- (10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020.
- (11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1) (c) or (e) and 9A.44.100(1) (c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility.

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- (12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020.
- (13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in *RCW 70.96A.020(4).
- (14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state.
- (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide.
- (16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.

CREDIT(S)

2007 c 20 § 3; 2005 c 262 § 1; 2001 c 251 § 28. Prior: 1997 c 392 § 513; 1997 c 112 § 37; 1994 c 271 § 302; 1993 c 477 § 1; 1988 c 146 § 3; 1988 c 145 § 1; 1981 c 123 § 1; 1975 1st ex.s. c 14 § 1. Formerly RCW 9.79.140.

Wash. Rev. Code Ann. § 9A.44.040 (2016) Rape in the first degree

- (1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:
- (a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
 - (b) Kidnaps the victim; or
 - (c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
 - (d) Feloniously enters into the building or vehicle where the victim is situated.
- (2) Rape in the first degree is a class A felony.

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1998 c 242 § 1. Prior: 1983 c 118 § 1; 1983 c 73 § 1; 1982 c 192 § 11; 1982 c 10 § 3; prior: (1) 1981 c 137 § 36; 1979 ex.s. c 244 § 1; 1975 1st ex.s. c 247 § 1; 1975 1st ex.s. c 14 § 4. (2) 1981 c 136 § 57 repealed by 1982 c 10 § 18. Formerly RCW 9.79.170.

Wash. Rev. Code Ann. § 9A.44.050 (2016) Rape in the second degree

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

- (a) By forcible compulsion;
 - (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
 - (c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:
 - (i) Has supervisory authority over the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;
 - (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;
 - (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
 - (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:
 - (i) Has a significant relationship with the victim; or
 - (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.
- (2) Rape in the second degree is a class A felony.

CREDIT(S)

2007 c 20 § 1; 1997 c 392 § 514; 1993 c 477 § 2; 1990 c 3 § 901; 1988 c 146 § 1; 1983 c 118 § 2; 1979 ex.s. c 244 § 2; 1975 1st ex.s. c 14 § 5. Formerly RCW 9.79.180.

Wash. Rev. Code Ann. § 9A.44.060 (2016) Rape in the third degree

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person:

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- (a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or
 - (b) Where there is threat of substantial unlawful harm to property rights of the victim.
- (2) Rape in the third degree is a class C felony.

CREDIT(S)

2013 c 94 § 1; 1999 c 143 § 34; 1979 ex.s. c 244 § 3; 1975 1st ex.s. c 14 § 6. Formerly RCW 9.79.190.

WEST VIRGINIA

W. Va. Code Ann. § 61-8B-1 (2016). Definition of terms

In this article, unless a different meaning plainly is required:

- (1) "Forcible compulsion" means:
 - (a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or
 - (b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or
 - (c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.
- For the purposes of this definition "resistance" includes physical resistance or any clear communication of the victim's lack of consent.
- (2) "Married", for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.
 - (3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person incapable of appraising the nature of his or her conduct.
 - (4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.
 - (5) "Physically helpless" means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.
 - (6) "Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of

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any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.

(7) "Sexual intercourse" means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.

(8) "Sexual intrusion" means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.

(9) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition.

(10) "Serious bodily injury" means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(11) "Deadly weapon" means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.

(12) "Forensic medical examination" means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.

CREDIT(S)

1976, c. 43; 1984, c. 56; 1986, 1st Ex. Sess., c. 11; 1996, c. 105; 2000, c. 85; 2007, c. 65.

W. Va. Code Ann. § 61-8B-2 (2016). Lack of consent

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

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- (4) Physically helpless; or
- (5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten [§ 61-8B-10] of this article.

CREDIT(S)

1976, c. 43; 1984, c. 56; 2012, c. 44.

W. Va. Code Ann. § 61-8B-3 (2016). Sexual assault in the first degree

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

- (i) Inflicts serious bodily injury upon anyone; or
- (ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

CREDIT(S)

1976, c. 43; 1984, c. 56; 1991, c. 41; 2000, c. 85; 2006, 1st Ex. Sess., c. 15.

W. Va. Code Ann. § 61-8B-4 (2016). Sexual assault in the second degree

(a) A person is guilty of sexual assault in the second degree when:

(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or

(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.

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(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty-five years.

CREDIT(S)

1976, c. 43; 1984, c. 56; 1991, c. 41.

W. Va. Code Ann. § 61-8B-5 (2016). Sexual assault in the third degree

(a) A person is guilty of sexual assault in the third degree when:

- (1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or
- (2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

CREDIT(S)

1976, c. 43; 1984, c. 56; 2000, c. 85.

W. Va. Code Ann. § 61-8B-7 (2016). Sexual abuse in the first degree

(a) A person is guilty of sexual abuse in the first degree when:

- (1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or
- (2) Such person subjects another person to sexual contact who is physically helpless; or
- (3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor

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more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.

CREDIT(S)

1976, c. 43; 1984, c. 56; 2006, 1st Ex. Sess., c. 15.

W. Va. Code Ann. § 61-8B-8 (2016). Sexual abuse in the second degree

- (a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.
- (b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.

CREDIT(S)

1976, c. 43; 1984, c. 56.

W. Va. Code Ann. § 61-8B-9 (2016). Sexual abuse in the third degree

- (a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.
- (b) In any prosecution under this section it is a defense that:
 - (1) The defendant was less than sixteen years old; or
 - (2) The defendant was less than four years older than the victim.
- (c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.

CREDIT(S)

1976, c. 43; 1984, c. 56.

WISCONSIN

Wis. Stat. Ann. § 940.225 (2016). Sexual assault

- (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

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- (a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.
 - (b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.
 - (c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
- (2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class C felony:
- (a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.
 - (b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.
 - (c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the persons conduct, and the defendant knows of such condition.
 - (cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.
 - (d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.
 - (f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.
 - (g) Is an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.
 - (h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.
 - (i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agents supervision of the individual.

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This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685 (1)

(b) or 50.065 (1) (c), and has sexual contact or sexual intercourse with a client of the entity.

(3) THIRD DEGREE SEXUAL ASSAULT. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. or 3. with a person without the consent of that person is guilty of a Class G felony.

(3m) FOURTH DEGREE SEXUAL ASSAULT. Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) CONSENT. "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub. (2) (c), (cm), (d), (g), (h), and (i). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) DEFINITIONS. In this section:

(abm) "Client" means an individual who receives direct care or treatment services from an entity.

(acm) "Correctional institution" means a jail or correctional facility, as defined in s. 961.01 (12m), a juvenile correctional facility, as defined in s. 938.02 (10p), or a juvenile detention facility, as defined in s. 938.02 (10r).

(ad) "Correctional staff member" means an individual who works at a correctional institution, including a volunteer.

(ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "Intoxicant" means any alcohol beverage, hazardous inhalant, controlled substance, controlled substance analog, or other drug, or any combination thereof.

(ak) "Nonclient resident" means an individual who resides, or is expected to reside, at an entity, who is not a client of the entity, and who has, or is expected to have, regular, direct contact with the clients of the entity.

(am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program or from a person providing services under contract with a facility or program.

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2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employee of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1):

a. Intentional touching by the defendant or, upon the defendants instruction, by another person, by the use of any body part or object, of the complainants intimate parts.

b. Intentional touching by the complainant, by the use of any body part or object, of the defendants intimate parts or, if done upon the defendants instructions, the intimate parts of another person.

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendants instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

3. For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendants body, whether clothed or unclothed.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a persons body or of any object into the genital or anal opening either by the defendant or upon the defendants instruction. The emission of semen is not required.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) MARRIAGE NOT A BAR TO PROSECUTION. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

CREDIT(S)

1975 c. 184, 421; 1977 c. 173; 1979 c. 24, 25, 175, 221; 1981 c. 89, 308, 309, 310, 311; 1985 a. 134; 1987 a. 245, 332, 352; 1987 a. 403 ss. 235, 236, 256; 1993 a. 445; 1995 a. 69; 1997 a. 220; 2001 a. 109; 2003 a. 51; 2005 a. 273, 344, 388, 435, 436; 2013 a. 83.

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WIS. STAT. ANN. § 939.50 (2016). Classification of felonies

- (1) Felonies in the statutes are classified as follows:
 - (a) Class A felony.
 - (b) Class B felony.
 - (c) Class C felony.
 - (d) Class D felony.
 - (e) Class E felony.
 - (f) Class F felony.
 - (g) Class G felony.
 - (h) Class H felony.
 - (i) Class I felony.
- (2) A felony is a Class A, B, C, D, E, F, G, H, or I felony when it is so specified in the statutes.
- (3) Penalties for felonies are as follows:
 - (a) For a Class A felony, life imprisonment.
 - (b) For a Class B felony, imprisonment not to exceed 60 years.
 - (c) For a Class C felony, a fine not to exceed 100,000 or imprisonment not to exceed 40 years, or both.
 - (d) For a Class D felony, a fine not to exceed 100,000 or imprisonment not to exceed 25 years, or both.
 - (e) For a Class E felony, a fine not to exceed 50,000 or imprisonment not to exceed 15 years, or both.
 - (f) For a Class F felony, a fine not to exceed 25,000 or imprisonment not to exceed 12 years and 6 months, or both.
 - (g) For a Class G felony, a fine not to exceed 25,000 or imprisonment not to exceed 10 years, or both.
 - (h) For a Class H felony, a fine not to exceed 10,000 or imprisonment not to exceed 6 years, or both.
 - (i) For a Class I felony, a fine not to exceed 10,000 or imprisonment not to exceed 3 years and 6 months, or both.

CREDIT(S)

1977 c. 173; 1981 c. 280; 1987 a. 332 s. 64; 1993 a. 194; 1995 a. 69; 1997 a. 283; 1999 a. 188; 2001 a. 109.

WYOMING

WYO. STAT. ANN. § 6-2-301 (2016). Definitions

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- (a) As used in this article:
- (i) "Actor" means the person accused of criminal assault;
 - (ii) "Intimate parts" means the external genitalia, perineum, anus or pubes of any person or the breast of a female person;
 - (iii) "Physically helpless" means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;
 - (iv) "Position of authority" means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person;
 - (v) "Sexual assault" means any act made criminal pursuant to W.S. 6-2-302 through 6-2-319;
 - (vi) "Sexual contact" means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;
 - (vii) "Sexual intrusion" means:
 - (A) Any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or
 - (B) Sexual intercourse, cunnilingus, fellatio, analingus or anal intercourse with or without emission.
 - (viii) "Victim" means the person alleged to have been subjected to sexual assault;
 - (ix) "This article" means W.S. 6-2-301 through 6-2-320.

CREDIT(S)

Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1; 1997, ch. 135, § 1; 2001, ch. 41, § 2; 2007, ch. 159, § 2; 2010, ch. 82, § 1; ch. 87, § 2.

WYO. STAT. ANN. § 6-2-302 (2016). Sexual assault in the first degree

- (a) Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if:
- (i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;
 - (ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;
 - (iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or
 - (iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.

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CREDIT(S)

Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1.

WYO. STAT. ANN. § 6-2-303 (2016). Sexual assault in the second degree

(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:

(i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat. "To retaliate" includes threats of kidnapping, death, serious bodily injury or extreme physical pain;

(ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;

(iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;

(iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;

(v) Repealed by Laws 2007, ch. 159, § 3.

(vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;

(vii) The actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities or secure treatment facilities and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system; or

(viii) The actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.

(b) A person is guilty of sexual assault in the second degree if he subjects another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S. 6-2-302(a)(i) through (iv) or paragraphs (a)(i) through (vii) of this section.

(c) Repealed by Laws 1997, ch. 135, § 2.

CREDIT(S)

Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1; 1997, ch. 135, § 2; 2007, ch. 7, § 1; ch. 159, § 3; 2014, ch. 117, § 1.

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WYO. STAT. ANN. § 6-2-304 (2016). Sexual assault in the third degree

(a) An actor commits sexual assault in the third degree if, under circumstances not constituting sexual assault in the first or second degree:

(i) and (ii) Repealed by Laws 2007, ch. 159 § 3.

(iii) The actor subjects a victim to sexual contact under any of the circumstances of W.S. 6-2-302(a)(i) through (iv) or 6-2-303(a)(i) through (vii) without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim.

CREDIT(S)

Laws 1982, ch. 75, § 3; 1984, ch. 44, § 2; 1997, ch. 135, § 1; 2007, ch. 159, § 3; 2009, ch. 87, § 1.

WYO. STAT. ANN. § 6-2-306 (2016). Penalties for sexual assault

(a) An actor convicted of sexual assault under W.S. 6-2-302 through 6-2-304 who does not qualify under the criteria of subsection (b) or (d) of this section shall be punished as follows:

(i) Sexual assault in the first degree under W.S. 6-2-302 is a felony punishable by imprisonment for not less than five (5) years nor more than fifty (50) years;

(ii) Sexual assault in the second degree under W.S. 6-2-303 is a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years;

(iii) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than fifteen (15) years;

(iv) Repealed by Laws 1997, ch. 135, § 2.

(b) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, who has previously been convicted of any crime containing the same or similar elements as the crimes defined in W.S. 6-2-302 through 6-2-304 and who does not qualify under the criteria of subsection (d) of this section shall be punished as follows:

(i) and (ii) Repealed by Laws 2007, ch. 159, § 3.

(iii) Sexual assault in the first or second degree under W.S. 6-2-302 or 6-2-303 is a felony punishable by imprisonment for not less than twenty-five (25) years or for life; or

(iv) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than twenty (20) years.

(c) Repealed by Laws 2007, ch. 159, § 3.

(i) and (ii) Repealed by Laws 2007, ch. 159, § 3.

(iii) Repealed by Laws 1997, ch. 135, § 2.

(d) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor under W.S. 6-2-316 through 6-2-317, shall be punished by life imprisonment without parole if the actor has two (2) or more previous convictions for any of the following designated offenses, which convictions resulted from charges separately brought and which arose

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out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age:

(i) A crime defined in W.S. 6-2-302 through 6-2-304 or a criminal statute from another jurisdiction containing the same or similar elements as a crime defined by W.S. 6-2-302 through 6-2-304.

(ii) Repealed by Laws 1997, ch. 135, § 2.

(iii) Repealed by Laws 2007, ch. 159, § 3.

(e) An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age.

CREDIT(S)

Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1; 1996, ch. 73, § 2; 1997, ch. 135, §§ 1, 2; 2000, ch. 48, § 1; 2007, ch. 159, §§ 2, 3; 2013, ch. 18, § 1.

WYO. STAT. ANN. § 6-2-307 (2016). Evidence of marriage as defense

(a) The fact that the actor and the victim are married to each other is not by itself a defense to a violation of W.S. 6-2-302(a)(i), (ii) or (iii) or 6-2-303(a)(i), (ii), (iii), (vi) or (vii).

(b) Consent of the victim is not a defense to a violation of W.S. 6-2-303(a)(vii) or 6-2-304(a)(iii).

CREDIT(S)

Laws 1982, ch. 75, § 3; 1983, ch. 171, § 1; 2007, ch. 7, § 1; 2009, ch. 87, § 1.

WYO. STAT. ANN. § 6-2-313 (2016). Sexual battery

(a) Except under circumstances constituting a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 through 6-2-317 or 6-2-502, an actor who unlawfully subjects another person to any sexual contact is guilty of sexual battery.

(b) Sexual battery is a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both.

CREDIT(S)

Laws 2001, ch. 41, § 1; 2007, ch. 159, § 2.

National Center for Prosecution of Violence Against Women

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