

# New York State Law Definitions Regarding Sex Offenses 2020

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Violence against women act specific definitions: The Violence Against Women Act and its proposed regulations require the inclusion of certain New York state definitions in a campus's Annual Security Report and also require that those definitions be provided in campaigns, orientations, programs and trainings for employees and students. Definitions required include: affirmative consent, dating violence, domestic violence, sexual assault and stalking. For more information on the below or other crimes, you can go to The [NYS Penal Law](#) website.

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## **New York State Education Law, [Article 129-B, section 6441](#): Affirmative Consent to Sexual Activity states:**

1. "Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as these words or actions create clear permission regarding willingness to engage in sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression."
2. Each institution's code of conduct shall reflect the following principles as guidance for the institutions community."
  - a. Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act.
  - b. Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
  - c. s Consent may be initially given but withdrawn at any time.
  - d. Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily retained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.

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**S 130.55 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.

**S 130.50 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. A minor who is less than 17 years old and the defendant is more than 5 years older than the minor.

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[S 130.67 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.

[S 130.70 Aggravated sexual abuse in the first degree:](#) 1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person: (a) By forcible compulsion; or (b) When the other person is incapable of consent by reason of being physically helpless; or (c) When the other person is less than eleven years old. 2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

[S 130.75 Course of sexual conduct against a child in the first degree:](#) 1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration: (a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or (b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old. 2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

[S 130.80 Course of sexual conduct against a child in the second degree:](#) 1. A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration: (a) he or she engages in two or more acts of sexual conduct with a child less than eleven years old; or (b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old. 2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

[S 130.90 Facilitating a sex offense with a controlled substance:](#) A person is guilty of facilitating a sex offense with a controlled substance when he or she: 1. knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit



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such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.

A family or household member is defined as persons related by cons

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**S 120.55 Stalking in the second degree:** A person is guilty of stalking in the second degree when he or she: 1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shirken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or 2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or 3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or 4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or 5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against ten or more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

**S 120.60 Stalking in the first degree:** A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she: 1. intentionally or recklessly causes physical injury to the victim of such crime; or 2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

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## Possible Penalties for Sex Offenses

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

Offense	Sentence
'A' Violent Felony	Life, 20-25 years
'B' Violent Felony	5-25 years
'B' Non Violent Felony	1-3, Max 25 years
'C' Violent Felony	3½ to 15 years
'C' Non Violent Felony	No Jail, Probation, 1-2 years to 15 Years
'D' Violent Felony	//// <sup>3</sup>

Offense	Sentence
'D' Non Violent Felony	No Jail, Probation, 1-3 to 7 years
'E' Violent Felony	No Jail, Probation, 1½ to 4 years
'E' Non Violent Felony	No Jail, Probation, 1 to 4 years
'A' Misdemeanor	<1 year and/or up to \$1000.00 fine
'B' Misdemeanor	<3 months and/or up to \$500.00 Fine