

While the federal law sets the definitions for crimes relevant to the Clery Act and the Violence Against Women Act, New York Education Law, Article 129A, requires colleges to provide information about state laws governing sexual assault, domestic violence, stalking, and bias related offenses, as well as the penalties for violations of those laws. This document outlines key laws and provides links to the full text of those laws.

The Penal Law describes criminal offenses under state law penalties for the commission of those offences. A searchable version of the Law can be found here: [Laws of New York](#).

As of August 1, 2014, relevant New York Laws included:

[Sex Offenses \(New York Penal Law Article 130\)](#)

Definitions include:

1. "**Sexual intercourse** ... occurs upon any penetration, however slight."
3. "**Sexual contact** means any touching of the sexual or other intimate parts of a person for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim [or] 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."
7. "**Physically helpless** means ... unconscious or for any other reason ... 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 ...self or another ..., or in fear that he, she or another ... will immediately be kidnapped."
9. "**Foreign object** means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury."
10. "**Sexual conduct** means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact."

[§ 130.05 Sex offenses; lack of consent](#)

Under the law, "lack of consent" may result from (a) forcible compulsion; (b) incapacity to consent; (c) any additional circumstances in which the victim of *sexual abuse* or *forcible touching* does not expressly or impliedly acquiesce in the actor's conduct; or (d) for specified crimes, circumstances under which, at the time of the act, "the victim clearly expressed that he or she did not consent to the 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 ..."

A person is legally incapable of consent when (a) less than 17 years old; (b) mentally disabled; (c) mentally incapacitated; (d) physically helpless; or (e) in certain institutional settings.

§130.10 Sex offenses; limitation; defenses

§130.20 Sexual misconduct includes sexual intercourse, oral sexual conduct or anal sexual without consent. (Class A misdemeanor)

Rape is sexual intercourse without consent. It may be in the 1st, 2nd or 3rd degree.

§130.25 Rape in the 3rd degree includes sexual intercourse (a) with a person incapable of consent by some factor other than being less than 17 years old; (b) with a person under 17 if the actor is 21 or older and (c) where lack of consent is based on a factor other than incapacity to consent. (Class E felony)

§130.30 Rape in the 2nd degree includes sexual intercourse (a) with a person less than 14 if the actor is 18 or older and (b) with a person incapable because mentally disabled or incapacitated. (Class D felony)

§130.35 Rape in the 1st degree includes sexual intercourse (a) by forcible compulsion, (b) with a person incapable of consent because physically helpless, (c) with a person less than 11 years old, or (d) with a person who is less than 13 if the actor is 18 or older. (Class B felony)

A criminal sexual act is oral or anal sexual conduct. It may be in the 1st, 2nd or 3rd degree.

§130.40 Criminal sexual act in the 3rd degree is oral or anal sexual conduct under the circumstances described in §130.25 (Class E felony)

§130.45 Criminal sexual act in the 2nd degree is oral or anal sexual conduct under the circumstances described in §130.30 (Class D felony)

§130.50 Criminal sexual act in the 1st degree is oral or anal sexual conduct under the circumstances described in §130.35 (Class B felony).

§130.52 Forcible touching is “intentionally, and for no legitimate purpose, forcibly touch[ing] the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; ... gratifying the actor's sexual desire.” Forcible touching includes squeezing, grabbing or pinching. (Class A misdemeanor)

§130.53 Persistent sexual abuse is repeated commission of crimes under §§130.52, 130.55, §130.60, or any felony sex offense. (Class E felony)

Sexual abuse is sexual contact without consent. It may be in the 1st, 2nd or 3rd degree.

§130.55 Sexual abuse in the 3rd degree is sexual contact without consent, but it is an affirmative defense that the lack of consent was due solely to being less than 17 but more than 14 and the actor was less than 5 years older. (Class B misdemeanor)

§130.60 Sexual abuse in the 2nd degree is sexual contact when the victim is (a) incapable of consent by reason than being less than 17 or (b) less than 14. (Class A misdemeanor)

§130.65 Sexual abuse in the 1st degree is sexual contact (a) by forcible compulsion, (b) with a person incapable of consent because physically helpless, (c) with a person less than 11, or (d) with a person who is less than 13 if the actor is 21 or older. (Class D felony)

Aggravated sexual abuse is the insertion of a foreign object finger in the vagina, urethra, penis, rectum or anus of another. It may be in the 1st, 2nd, 3rd or 4th degree.

§130.65-a Aggravated sexual abuse in the 4th degree is inserting a foreign object when the victim is incapable of consent by a reason other than being less than 17. It also includes inserting a finger which causes physical injury under the same circumstances. (Class E felony)

§130.66 Aggravated sexual abuse in the 3rd degree is inserting a foreign object (a) by forcible compulsion; (b) when the other person is incapable of consent because physically helpless; or (c) when the other person is less than 11. It also includes inserting a foreign object causing physical injury when the other person is incapable of consent because mentally disabled or incapacitated (Class D felony)

§130.67 Aggravated sexual abuse in the 2nd degree is inserting a finger causing injury (a) by forcible compulsion; (b) when the other person is incapable of consent because physically helpless; or (c) when the other person is less than 11. (Class C felony)

§130.70 Aggravated sexual abuse in the 1st degree is inserting a foreign object causing injury (a) by forcible compulsion; (b) when the other person is incapable of consent because physically helpless; or (c) when the other person is less than 11. (Class B felony)

Course of sexual conduct against a child involves multiple acts of sexual conduct with a child under 11 or 13. The specific elements of the 1st and 2nd degree differ. See:

§130.75 Course of sexual conduct against a child in the 1st degree. (Class B felony)

§130.80 Course of sexual conduct against a child in the 2nd degree. (Class D felony)

§130.85 Female genital mutilation. (Class E felony)

§130.90 Facilitating a sex offense with a controlled substance is knowingly and unlawfully possessing a controlled or prescription and administering the substance to another person without consent and with intent to commit a felony sex offense.

§130.91 Sexually motivated felony is committing a specified felony offense “for the purpose, in whole or substantial part, of his or her own direct sexual gratification.”

§130.92 Sentencing.

§130.95 Predatory sexual assault is 1st degree felony rape, criminal sexual act, aggravated sexual abuse, or course of sexual conduct against a child when, in the course of the crime or flight, the actor (a) causes serious physical injury to the victim or (b) uses or threatens the immediate use of a dangerous instrument, (c) commits these crimes against more than one

person, or (d) has previously been convicted of a felony sexual offense, incest (§255.25) or use of a child in a sexual performance (§263.05). (Class A-II felony)

[§130.96 Predatory sexual assault against a child](#) is 1st degree felony rape, criminal sexual act, aggravated sexual abuse, or course of sexual conduct against a child when the victim is less than 13. (Class A-II felony)

Incest (Penal Law §§255.25, .26. & .27)

Incest is a sex offense involving a “relative, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece.”

[§ 255.25 Incest in the third degree](#) is marriage, sexual intercourse, oral sexual conduct or anal sexual conduct with a person known to be relative. (Class E felony.)

[§ 255.26 Incest in the second degree](#) is rape in the second degree or criminal sexual act in the second degree, against a person known to be relative. (Class D felony.)

[§ 255.27 Incest in the first degree](#) is rape in the first degree or criminal sexual act in the first degree, against a person known to be relative. (Class B felony.)

Stalking Offenses (Penal Law §§120.45, .50, .55 & .60)

[§ 120.40 Definitions](#) include:

3. "**Sex offense**" shall mean a felony defined in article 130), sexual misconduct, (§130.20), sexual abuse in the 3rd degree (§130.55) or sexual abuse in the 2nd (§130.60).
4. "**Immediate family**" means “spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.”
5. "**Specified predicate crime**" includes many crimes, including most felony sex crimes. See §120.40(5).

[§120.45 Stalking in the 4th degree](#) means intentionally, and for no legitimate purpose, engaging in a course of conduct directed at a specific person, when the actor knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person or such person's immediate family member or acquaintance; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, phoning or initiating communication or contact with such person or such person's immediate family member or acquaintance, when the actor was previously clearly informed to cease the conduct; or

3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

(Class B misdemeanor, as of October 21, 2014)

[§120.50 Stalking in the 3rd degree](#) includes multiple violations of §120.45 or, with the intent to harass, annoy or alarm a specific person, intentionally engaging in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family. (Class A misdemeanor)

[§120.55 Stalking in the 2nd degree](#) involves stalking in the 3rd degree where, in the course of in furtherance of the offense, the actor (a) displays, or possesses and threatens the use of, weapons ranging from firearms to slungshots to razor, or (b) displays what appears to be a firearm. It also includes stalking in the 3rd degree where the actor was previously convicted of a specified predicate crime and the victim of that predicate crime is the victim (or immediate family member of the victim) of the present offense. It further includes prior convictions, stalking children under 14, and multiple victims. (Class E felony)

[§120.60 Stalking in the 1st degree](#) involves stalking in the 3rd or 2nd degree where, in the course and furtherance thereof, the actor (a) intentionally or recklessly causes physical injury to the victim of such crime or (b) commits specified sex offenses. (Class D felony)

Domestic Violence

“Family Offenses” are defined in the **Criminal Procedure Law §530.11**. **Penal Law § 240.75** identifies “Aggravated Family Offense” as a separate crime.

[Criminal Procedure Law §530.11](#), a wide range of offenses, including harassment, most sex offenses, stalking, assault, identity theft and larceny may be treated as family offenses if they take place between “(a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time.

Under [Penal Code § 240.75](#), a person is guilty of an **Aggravated family offense**, when he or she commits a misdemeanor “specified offense” after having been convicted of one or more specified offenses within the immediately preceding 5 years. Specified offenses include many crimes, including assault, stalking, sexual misconduct, harassment, and burglary. The victims of the current and prior specified offense may be different and not need to be members of the same family or household. (Class E Felony).

Hate Crimes, Article 485 Penal Code

§485.05 Hate crimes. A hate crime is a “specified offense” – a broad range of property crimes and crimes against the person set out in §485.05(3) – in which the actor

(a) intentionally selects the victim or intended victim in whole or in substantial part because of a belief or perception regarding his or her race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation, regardless of whether the belief or perception is correct, or

(b) intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

Penalties

In General: **Sentences** of imprisonment are set out in **Article 70 of the Penal Law**. In general, the maximum term for a felony must be at least 3 years and:

- (a) For a class A felony, the term shall be life imprisonment;
- (b) For a class B felony, the term ... shall not exceed 25 years;
- (c) For a class C felony, the term ... shall not exceed fifteen years;
- (d) For a class D felony, the term ... shall not exceed seven years; and
- (e) For a class E felony, the term ... shall not exceed 4 years.

Sentences of imprisonment for violent felonies, including many sex offenses are greater, see **Penal Law §70.02**, and sentences of imprisonment for second violent felony offenders still greater. **Penal Law §70.04**.

Sexually motivated felonies carry enhanced penalties. See **Penal Law §130.91 (Sexually motivated Felony)** and **§130.92 (Sentencing)**.

Hate Crimes also carry enhanced penalties: see **Penal Law §485.10 Sentencing**.

Both felonies and misdemeanors may carry fines as well as sentences. See **Penal Law, Article 80**.