

§130.20 Sexual misconduct. (A/MISD.)

A person is guilty of sexual misconduct when:

1. Being a male, he engages in sexual intercourse with a female without her consent; or

2. He engages in deviate sexual intercourse with another person without the latter's consent; or

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

Sexual misconduct is a class A misdemeanor.

§130.25 Rape in the third degree. (E/FELONY)

A male is guilty of rape in the third degree when:

1. He engages in sexual intercourse with a female who is incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Being twenty-one years old or more, he engages in sexual intercourse with a female less than seventeen years old.
Rape in the third degree is a class E felony.

§130.30 Rape in the second degree. (D/FELONY)

A male is guilty of rape in the second degree when, being eighteen years old or more, he engages in sexual intercourse with a female less than fourteen years old.
Rape in the second degree is a class D felony.

§130.35 Rape in the first degree. (B/FELONY)

A male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

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.
Rape in the first degree is a class B felony.

§130.38 Consensual sodomy.

A person is guilty of consensual sodomy when he engages in deviate sexual intercourse with another person.
Consensual sodomy is a class B misdemeanor.

§130.40 Sodomy in the third degree.

A person is guilty of sodomy in the third degree when:

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

2. Being twenty-one years old or more, he engages in deviate sexual intercourse with a person less than seventeen years old.
Sodomy in the third degree is a class E felony.

§130.45 Sodomy in the second degree.

A person is guilty of sodomy in the second degree when, being eighteen years old or more, he engages in deviate sexual intercourse with another person less than fourteen years old.
Sodomy in the second degree is a class D felony.

§130.50 Sodomy in the first degree.

A person is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person:

1. By forcible compulsion; or

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

3. Who is less than eleven years old.
Sodomy in the first degree is a class B felony.

§130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.
Sexual abuse in the third degree is a class B misdemeanor.

§130.60 Sexual abuse in the second degree.

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

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or

2. Less than fourteen years old.
Sexual abuse in the second degree is a class A misdemeanor.

§130.65 Sexual abuse in the first degree.

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

1. By forcible compulsion; or

2. When the other person is incapable of consent by reason of being physically helpless; or

3. When the other person is less than eleven years old.
Sexual abuse in the first degree is a class D felony.

§130.70 Aggravated sexual abuse.

1. A person is guilty of aggravated sexual abuse when he inserts a foreign object in the vagina, urethra, penis or rectum 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.

3. Aggravated sexual abuse is a class B felony.
Aggravated sexual abuse is a class B felony.

(Eff. 7/21/81, Ch. 696, L. 1981)

ARTICLE 130 - SEX OFFENSES

1984

Ny State
Penal Code

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§ 130.00 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. "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva.
3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing. *(Eff. 7/27/84, Ch. 850, L. 1984)*
4. "Female" means any female person who is not married to the actor. For the purposes of this article "not married" means:
 - (a) the lack of an existing relationship of husband and wife between the female and the actor which is recognized by law, or
 - (b) the existence of the relationship of husband and wife between the actor and the female which is recognized by law at the time the actor commits an offense proscribed by this article by means of forcible compulsion against the female, and the female and actor are living apart at such time pursuant to a valid and effective:
 - (i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or
 - (ii) decree or judgment of separation, or
 - (iii) written agreement of separation subscribed by them and acknowledged in the form required to entitle a deed to be recorded which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense proscribed by this article against and without the consent of the female. *(Eff. 9/11/78, Ch. 735, L. 1978)*
5. "Mentally defective" 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" 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. *(Eff. 7/15/83, Ch. 449, L. 1983)*

9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury. *(Eff. 7/21/81, Ch. 696, L. 1981)*

§ 130.05 Sex offenses; lack of consent.

1. Whether or not specifically stated, it is an element of every offense defined in this article, except the offense of consensual sodomy, 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, 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 is:
- (a) less than seventeen years old; or
 - (b) mentally defective; or
 - (c) mentally incapacitated; or
 - (d) physically helpless.

§ 130.10 Sex offenses; defense.

In any prosecution under this article in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time

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he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

§ 130.16 Sex offenses; corroboration.

A person shall not be convicted of consensual sodomy, or an attempt to commit the same, or of any offense defined in this article of which lack of consent is an element but results solely from incapacity to consent because of the victim's mental defect, or mental incapacity, or an attempt to commit the same, solely on the testimony of the victim, unsupported by other evidence tending to:

- (a) Establish that an attempt was made to engage the victim in sexual intercourse, deviate sexual intercourse, or sexual contact, as the case may be, at the time of the occurrence; and
- (b) Connect the defendant with the commission of the offense or attempted offense. *(Eff. 11/1/84, Ch. 89, L. 1984)*