



Sexual Assault / Sex Offenses

Explanation of Sex Offense Statute 130 – Sex Offenses

Penal Law article 130 establishes most sexual offenses in New York State. The State legislature passed the Governor's omnibus, 52-point bill, Sexual Assault Reform Act (SARA), which became law on February 1, 2001. Since that time, the law has been amended several times. The following is an interpretation of the New York State Penal Code 130 and changes brought about by SARA. It should not be substituted for any information or advice offered by your local District Attorney's Office.

NYS Sexual Assault Reform Act (SARA) – New Provisions

(1) Drug-Facilitated Rape

GHB (sometimes known as the "date rape drug") was "scheduled" so that its illegal use is criminal. Committing a sex crime by using GHB is a D level felony and is determined by the following:

- An individual knowingly and unlawfully possesses a controlled substance
- He or she administers that substance without such person's consent
- The drug is administered with the intent to commit felonious sexual assault
- He or she commits or attempts to commit such a felony

(2) Emergency Contraception

A new provision in 2003 requires hospitals that treat rape victims to provide information on emergency contraception. If requested by the victim, the hospital must provide emergency contraception to him or her. The Department of Health was given the responsibility to develop and produce informational materials on emergency contraception to be used by all NYS hospitals.

(3) New Crimes and New Provisions (not previously addressed)

- Creates the crime of persistent sexual abuse for repeat sexual offenders as an E level felony.
- Creates the crime of Aggravated Sexual Abuse IV that broadens conditions under which aggravated sexual abuse can be charged. This is an E level felony.
- In addition to age changes in statutory rape charges, SARA brought about other age changes including:
 - Age of swearability is lowered from 12 to 9, eliminating a separate hearing to determine whether children between ages of 9 and 12 can provide testimony in a court of law.
 - Raised from "less than 16" to "less than 17" the crimes of "Use of a child in a sexual performance", "promoting a sexual performance by a child" and "promoting an obscene sexual performance by a child" .
 - Provisions added to "Course of Sexual Conduct against a child" which raises the age from "less than 11" to "less than 13" for the victim when someone 18 years of age or older commits the act.

Repeat felony offenses against a child less than 15 years old by a person 18 years or older at the time of the previous offense may carry a sentence up to life imprisonment. For offenders under 18 at the time if the first felony, sentences may not exceed 25 years.

(4) Offenders/Bail/Sentencing Provisions

- Convicted sex offender changes
 - a. Mandated probation and parole conditions are added for released convicted child molesters to keep them away from child settings, such as playgrounds and schoolyards.
 - b. Harsher penalties and determinate sentences for repeat sex offenders and longer periods of probation and parole for persistent child molesters. This includes 10 years of probation for any felony sexual assault and 6 years for a misdemeanor sexual assault charge.
 - c. No reduced bail or release on their own recognizance for offenders 18 years or older who have been convicted, but not sentenced, for Class A, B, or C felony sex offenses against a child less than 18 years old.
 - d. No bail for those convicted of B or C level violent felonies, even on appeal. No orders of recognizance in bail pending an appeal for Class A, B, or C felony sex offenses against a child.
 - e. New requirements for the sex offender registry were added whereby internet accounts and screen names must be added to aliases of registered sex offenders.
- Five years will be added to the maximum sentence of a defendant who engaged in sex with a child after contacting their victim through the Internet.
- The "900" number used to receive information about convicted sexual offenders will notify callers about the charge (lowered from \$5.00 to .50) and provide basic information about a packet of materials that is available.

Prosecutors who failed in discovery to reveal some non-essential document to the defense cannot result in a vacated conviction of the case.

SARA Summary	
(1)	GHB and Drug-Facilitated Rape
(2)	Emergency Contraception
(3)	New Crimes and New Provisions
(4)	Offenders/Bail/Sentencing Provisions



Sexual Assault / Sex Offenses

Common Questions Asked by Advocates

What constitutes lack of consent?

"Lack of consent" is defined in NYS Penal Law as occurring in the following circumstances:

(1) Forcible compulsion:

- actual physical force.
- the threat of physical force, expressed or implied, that puts the victim in fear of being physically harmed or of another person being physically harmed (e.g., one's child).
- the threat to kidnap the victim or a third person; **OR**

(2) Physically helpless: physically unable to indicate a lack of consent (e.g., because victim is unconscious or because of a physical disability that makes one unable to physically or verbally communicate lack of consent); **OR**

(3) Under 17 years of age: New York law states that a person less than 17 years of age is legally incapable of consenting to sexual intercourse or other sexual contact. These laws are typically known as statutory rape laws.

- If the victim is under 13, and the defendant is at least 18, this constitutes a 1st degree sexual offense. 1st degree crimes are considered the most serious ones and carry the longest penalties.
- If the victim is under 15 and the perpetrator is at least 18, this constitutes a 2nd degree sexual offense. However, if the defendant is less than 4 years older than the victim, this may constitute an affirmative defense. Affirmative defenses are those in which the defendant introduces evidence which negates criminal liability; **OR**

(4) Mentally Incapacitated: when the victim is made temporarily incapable of understanding or controlling his or her conduct because a drug or other intoxicating substance (e.g. alcohol) was given to them without their consent; **OR**

(5) Mentally Disabled: when a person suffers from a mental illness or a condition that renders them incapable of understanding the nature of their conduct; **OR**

(6) Inmate: when a person is literally or physically under the control of others. Some examples are:

- The victim is an inmate in either a state or city correctional facility (i.e., jail or prison)
- The victim is committed to a psychiatric institution
- The victim is a juvenile held in any facility, if the perpetrator is anyone employed at that facility
- The perpetrator is a health care or mental health provider and the victim is his/her client, unless the doctor makes clear that the sex act is not part of the treatment. If the medical provider can prove that s/he informed the client that intercourse was not part of the treatment, and the client consented, then a crime has not occurred. This is a Class E felony.
- Penal Code 130 also prohibits workers in Office of Children and Family Services facilities from having sexual contact with patients of those facilities; **OR**

(7) Some Factor Other Than Incapacity to Consent: Rape 3 and Criminal Sexual Act 3 have recently been modified with a "no means no" clause. In cases of intercourse only, if the victim expressed that he or she did not consent to the sex act in such a way that a reasonable person would have understood those words or acts as expressing lack of consent, this would be prosecutable as Rape in the third degree or Criminal Sexual Act in the third degree. This makes a case easier for the District Attorney to prosecute because it is based on a reasonable person standard, and not on the specific interpretation of a defendant.

What constitutes a sexual assault?

If any of the following acts are perpetrated against a victim "without his or her consent," as defined above, it is a crime under NYS Law:

(1) Sexual Intercourse: the penetration of the penis into the vagina, however slight-- in other words, if the penis goes into the vagina just a little, not in its entirety, that is considered completed "sexual intercourse". (There is no requirement of physical injury and usually there is no requirement that ejaculation or orgasm have occurred.); **AND/OR**

(2) Oral or Anal Sexual Conduct: Does not require any penetration and occurs upon contact between penis and mouth, penis and anus (rectum), or mouth and vaginal area; **AND/OR**

(3) Sexual Contact: any touching of the sexual or intimate parts of the body whether over or under clothing:

- done for the purpose of gratifying the sexual desire of either party
- includes the touching of the victim's sexual or intimate parts by the perpetrator AND the touching of the perpetrator's sexual or intimate parts by the victim; **AND/OR**

(4) Forcible Touching: the intentional and forcible touching of another

- done for the purpose of degrading or abusing another person or done for the purpose of gratifying the defendant's sexual desire
- includes squeezing, grabbing, or pinching; **AND/OR**

(5) Aggravated Sexual Contact: insertion of a foreign object (e.g. coke bottle, broom handle, etc.) into the vagina, urethra, penis or rectum.

- Insertion of a finger into vagina, urethra, penis or rectum causing injury, constitutes 2nd degree sexual offense
- If the insertion of the object causes physical injury, this constitutes a 1st degree sexual offense
- If no injury occurs, this constitutes a 3rd degree sexual offense

Common Questions

- (1) What constitutes lack of consent?
- (2) What constitutes a sexual offense?