A GUIDE FOR
SURVIVING SEXUAL
ASSAULT

Male and Female Victims

Faculty & Staff
**WHAT IS RAPE/ SEXUAL ASSAULT?**

It is a crime under New York State law to perpetrate any of the following acts against a victim without his or her consent. Lack of consent includes the victim’s clear expression of lack of consent as well as the legal inability to consent by means of age or mental or physical disability or incapacitation.

*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.)

*Criminal Sexual Act (Oral or Anal Sexual Conduct):* does not require any penetration and occurs upon contact between penis and mouth, penis and anus (rectum), mouth and anus, or mouth and vaginal area.

*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

*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

*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.

New York State Coalition Against Sexual Assault
518.482.4222
[www.nyscasa.org](http://www.nyscasa.org)

Violations of the Gender-Based Misconduct Policy (including same sex-based misconduct) are set forth in full detail later in this Handbook and at [http://www.nyit.edu/human_resources](http://www.nyit.edu/human_resources).

Specific forms of Gender-Based Misconduct include but are not limited to:

1. **Nonconsensual Sexual Contact:** This includes any type of touching, or contact with, another person’s sexual or intimate parts, under or over clothing, or forcing the other person to touch the perpetrator’s sexual or intimate parts. It may also include touching of other parts of the body (e.g. squeezing, grabbing or pinching) for the purpose of degrading or abusing the other person or for the purpose of gratifying the perpetrator’s sexual desire
2. **Sexual Exploitation:** Taking abusive or nonconsensual sexual advantage of another. Examples include:
   a) Taking or transmitting sexual photographs, videos, or audiotapes without consent, or causing or permitting others to take or transmit such photographs, videos, or audiotapes without consent
   b) Watching another engage in sexual activity or contact without consent; viewing another nude without consent (e.g. watching someone in the shower without consent); allowing a third party to observe sexual acts without a partner’s consent

3. **Sexual or Gender-Based Harassment:** This includes:
   a) Unwelcome sexual advances, requests for sexual favors, and other nonverbal, expressive or physical conduct of a sexual nature
   b) Other verbal, nonverbal, or physical acts, or acts of aggression, intimidation or hostility, when based on gender or gender-stereotyping

This conduct constitutes sexual or gender-based harassment when it either substantially interferes with an individual’s ability to participate in or benefit from the institution’s programs or activities or creates an intimidating, hostile, or offensive environment for learning or participating in NYIT programs and activities.

Examples include:
   i. Unwanted flirtation, advances, or propositions of a sexual nature.
   ii. Insults, humor, jokes, or anecdotes (not legitimately related to the subject matter of a course, if one is involved) that belittle or demean an individual’s or a group’s sexuality or gender.
   iii. Unwelcome comments of a sexual nature about an individual’s body or clothing.
   c) Physically threatening a person because of his or her gender identity or expression or sexual orientation

4. **Domestic Violence:** This includes the use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards:
   a) A current or former spouse or intimate partner;
   b) A person with whom one shares a child; or
   c) Anyone who is protected from the respondent’s act under the domestic or family violence laws of New York.

This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Domestic violence can be a single act or a pattern of behavior in relationships.

5. **Dating Violence:** This includes the use of physical violence, coercion, threats, intimidation, isolation, stalking, or other forms of emotional, sexual or economic abuse directed towards a person who is or has been in a social relationship of a romantic or sexually intimate nature with the victim. This includes any behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone. Dating violence can be a single act or a pattern of behavior in relationship injuries, or wound someone. Dating violence can be a single act or a pattern of behavior in relationships.
Confidentiality

NYIT will maintain the confidentiality of any complaint involving a sexual assault, stalking, and domestic violence or dating violence to the greatest extent possible, consistent with the law and NYIT’s goal of conducting a thorough and complete investigation. Efforts will be made to safeguard the privacy and rights of all persons involved.

While NYIT recognizes that it is critical that a victim’s confidentiality be protected to the extent possible, employees should understand, however, that, under certain circumstances involving public safety, the institution may investigate complaints, even if a victim does not wish to proceed. Therefore, victims should understand that their complaint may be disclosed, as necessary, to persons other than the one(s) to whom the complaint is made, including the accused employee. Notwithstanding, where claims involving a sexual assault, stalking, domestic violence or dating violence are reported to NYIT employees who serve in a professional role in which communication is protected under applicable federal, state or local law or regulation or licensing authority – including Human Resources – such reports will not be further disclosed to the extent the communication is protected by law. Notice by an employee to any such professional administrator or staff member of sexual assault, stalking, and domestic violence or dating violence, i.e. where the communication is protected, shall not constitute notice to NYIT of such sexual misconduct.

Although NYIT will endeavor to maintain the confidentiality of sexual assault, stalking, domestic violence or dating violence complaints and proceedings in accordance with this policy, it cannot prevent the further dissemination of information by individuals to whom such information was disclosed. Moreover, any response by the institution may be hindered to the extent the complainant wishes to remain anonymous.

Definition of Sexual Misconduct

Specific forms of sexual misconduct include but are not limited to:

- **Non-Consensual Sexual Contact**
- **Sexual Exploitation**: Taking abusive or non-consensual sexual advantage of another

Examples include:

- Taking or transmitting sexual photographs, videos, or audiotapes without consent, or causing or permitting others to take or transmit such photographs, videos, or audiotapes without consent

- Watching another engage in sexual activity or contact without consent; viewing another nude without consent (e.g. watching someone in the shower without consent); allowing a third party to observe sexual acts without a partner’s consent

- **Sexual or Gender-based harassment**, which includes
  - Unwelcome sexual advances, requests for sexual favors, and other nonverbal, expressive or physical conduct of a sexual nature
  - Other verbal, nonverbal, or physical acts, or acts of aggression, intimidation or hostility, when based on gender or gender-stereotyping

The above conduct constitutes sexual or gender-based harassment when it either substantially interferes with an individual’s ability to participate in or benefit from the institution’s programs
or activities or creates an intimidating, hostile, or offensive environment for learning or participating in NYIT programs and activities.

Examples include:

- Unwanted flirtation, advances, or propositions of a sexual nature
- Insults, humor, jokes, or anecdotes (not legitimately related to the subject matter of a course, if one is involved) that belittle or demean an individual’s or a group’s sexuality or gender
- Unwelcome comments of a sexual nature about an individual’s body or clothing
- Physically threatening a person because of his or her gender identity or expression or sexual orientation

**Definition of Consent**

Consent means the active, knowing, and voluntary agreement to engage in a sexual activity without coercion or fear or threat of harm. Consent may be shown by words or through clear, unambiguous actions.

There is no consent where:

- A person is coerced to participate through force or threats of force.
- A person is unable to consent for reasons including but not limited to:
  - the person’s physical or mental inability to make an informed, rational judgment due to the person’s use of alcohol or other drugs
  - the person’s physical or mental disability or other incapacitation
  - the person’s age (being under age 17, the legal age of consent in New York)

Lack of consent will be found where the accused employee knew, or a reasonable person in the position of the accused employee should have known, of the other person’s incapacitation.

The accused employee’s impairment does not diminish that employee’s responsibility to obtain consent. The fact that a person has consented to one form of sexual activity does not mean that he or she consents to all forms of sexual activity. Furthermore, the fact that a person has given consent to a sexual activity in the past does not mean he or she consents to the activity in the future.

**EMPLOYEE RESOURCES**

Title IX of the Educations Act of 1972 (“Title IX”) prohibits discrimination on the basis of sex, including Sexual Misconduct. NYIT has a team of Title IX Coordinators who oversee compliance by the NYIT community, including investigations and disciplinary proceedings arising out of Sexual Misconduct complaints, and addressing any patterns or systemic problems that arise during the review of such complaints. The Title IX team members listed below are available to meet with employee as needed. If you feel that you are a victim of Sexual Misconduct, you should bring your complaint to Human Resources or Campus Security.

**Title IX Coordinator**

NYIT’s Title IX Coordinator is Carol Jablonsky, director of human resources; her responsibilities include overseeing all Title IX compliance, providing leadership to the Title IX support staff, and serving as the primary Title IX coordinator for employees.
Carol Jablonsky  
Director, Human Resources  
North House, Room 204, Old Westbury, NY 11568  
Phone: 516.686.1014  
Email: cjablons@nyit.edu

Other resources available to you include:

*The Office of Campus Security* is responsible for the safety and security of students, staff and faculty members, and property. Service is provided campus-wide 24 hours a day, 365 days a year at the Old Westbury and Central Islip locations. Security is provided at the Manhattan campus whenever the buildings are open. All security guards are trained in emergency response procedures (fire, bomb threat, and medical emergencies).

**In an emergency, call 911 first. Then call Campus Security at:**  
Old Westbury - 516.686.7789  
Manhattan – 646 273.7789  
Central Islip - 631.348.7789

**HOW COMMON IS RAPE/SEXUAL ASSAULT?**

- 44% of victims are under age 18  
- 80% are under age 30  
- Every 2 minutes, someone in the U.S. is sexually assaulted  
- There is an average of 207,754 victims (age 12 or older) of sexual assault each year  
- 54% of sexual assaults are not reported to the police  
- Approximately 2/3 of assaults are committed by someone known to the victim  
- 38% of rapists are a friend or acquaintance  
- 1 out of every 6 American women has been the victim of an attempted or completed rape in her lifetime (14.8% completed rape; 2.8% attempted rape)  
- 17.7 million American women have been victims of attempted or completed rape  
- About 3% of American men — or 1 in 33 — have experienced an attempted or completed rape in their lifetime  
- In 2003, 1 in every ten rape victims was male  
- 2.78 million men in the U.S. have been victims of sexual assault or rape

**MEN AS VICTIMS**

Men get raped too. Most often, they are raped by other men. However, there have been numerous recorded incidents where a man has been raped by a woman. Because of the socialization of what it means to be "a man," men raped by men are reluctant to disclose having been raped for fear of being labeled homosexual. Men raped by women fear being treated as less than a real man for allowing themselves to be overpowered by a woman. One survey found that 7% of men have experienced at least one episode of forced sexual contact.
**SEXUAL ASSAULT AND LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT COMMUNITIES)**

Sexual assault can happen to anyone regardless of their race, class, age, appearance, or sexual orientation. Lesbians, gay men, bisexuals, and transgender people are subject to the same spectrum of sexual assault as the general population. In fact, according to many statistics, they are subject to more. Approximately ten percent of hate crimes against gay men and lesbians include sexual assault (Comstock, Violence Against Lesbians and Gay Men, 1991). The actual percentage may be higher, since it is sometimes difficult for individuals to discern whether they were attacked because of being identified as a member of a LGBT community or as an individual.

Sexual assault is not defined by the gender of the offender or the victim: anyone is capable of assaulting a person of any gender.

**WHAT TO DO IF YOU HAVE BEEN RAPED/SEXUALLY ASSAULTED**

- Get to a safe place
- Contact someone who can help you: a friend, family member, campus security, residential services personnel, the Counseling and Wellness Center, the Office of Campus Life
- Do not shower, eat, drink, douche or change your clothes. These activities destroy important physical evidence in the event that you decide to prosecute the assailant
- Get medical attention. You may have injuries that may not be obvious to you and you may want to explore options for preventing pregnancy and sexually transmitted diseases
- Ask for an advocate or rape counselor to accompany you to the medical examination
- Ask that a rape examination kit be performed so that evidence can be stored should you decide to report the crime
- Write down everything you remember in as much detail as possible. This can help with your own healing and in any legal action you may decide to take
- Remember you are not to blame even if your attacker was an acquaintance, date, friend or spouse

**THE AFTERMATH...HOW AM I GOING TO FEEL?**

- Emotional Shock: I feel numb. Why am I so calm? Why can’t I cry?
- Disbelief: Why me? How did this happen?
- Embarrassment: What will people think?
- Shame: I feel so dirty. I want to wash or shower all the time
- Guilt: I feel it is my fault
- Depression: How am I going to get through this semester? I feel helpless. Maybe I would be better off dead. I want to be alone
- Powerlessness: Will I ever be in control again?
- Flashbacks
- Denial: It wasn’t really rape
- Fear: I am afraid to sleep, go out, be alone
- Anxiety: I can’t stop shaking. I am having panic attacks
- Anger: I want to kill the person who did this to me. I hate everyone
- Stress: I always have headaches, stomach aches, and backaches
**IMMEDIATE MEDICAL TREATMENT**

Within the first 72 hours after an assault, a special exam (rape kit) should be conducted that includes the collection of evidence that may be used in a criminal prosecution. The exam is necessary to evaluate your physical condition as well as maintain your legal options. New York State has established Sexual Assault Forensic Examiner programs (SAFE) in hospitals designated as 24 hour centers of excellence. Safe programs have specially trained health professionals, Sexual Assault Nurse Examiners (SANE) that will ensure that a victim of sexual assault is provided with compassionate, competent, and prompt care, while providing the most advanced technology associated with forensic evidence collection and preservation.

*What is S.A.N.E.?*

SANE is the Sexual Assault Nurse Examiner Program which provides victims of rape and sexual assault with expert, confidential medical care and emotional support.

*What is a S.A.N.E. Center?*

The center is a separate unit in the emergency department of a participating hospital, specifically designed for interviewing, examining, treating, counseling and comforting adult victims of sexual assault. It consists of a private entrance, sitting room, examination room, and bathroom, including shower.

*Who can use a S.A.N.E. Center?*

Females and males, at least 17 years of age, who do not require immediate medical attention, but have recently been sexually victimized.

*How does someone get to a S.A.N.E. Center?*

A person may go directly to a center, ask a member of the NYIT staff to accompany them, or request the assistance of the Nassau County Police or New York City Police.

*When does the center operate?*

The S.A.N.E. Center is available 24 hours, 7 days a week.

*How much does the exam cost?*

The exam will be done at NO COST to the victim.

*Do I have to go to the exam alone?*

You may go alone or have someone you trust accompany you. You may also request a sexual assault advocate to meet you at the hospital.

**Manhattan:**

Victims of Violent Assault Assistance  NY Police Department Rape Hotline  
212.562.3755  212.267.RAPE  
212.562.3435  
212.562.4730

**Nassau:**

Coalition Against Domestic Violence  Nassau County Rape Hotline  
516.542.0404  516.222.2293
Where is a S.A.N.E. Hospital located?

**Manhattan:**
- Bellevue Hospital
  - 462 1st Avenue
  - New York, NY 10010
  - 212.562.3019
- Crime Victims Treatment Center
  - 411 West 114th Street
  - New York, NY 10025
  - 212.523.4781
- Mount Sinai Medical Center
  - 1 Gustave L. Levy Place
  - New York, NY 10032
  - 212.305.2255
- Columbia Presbyterian Hospital
  - 622 West 168 Street
  - New York, NY 10025
  - 212.423.2140
- Harlem Hospital Center
  - 506 Lenox Avenue
  - New York, NY 10037
  - 212.939.2250
- St. Luke’s-Roosevelt Hospital
  - 1111 Amsterdam Avenue
  - New York, NY 10025
  - 212.523.3335

**Brooklyn:**
- Coney Island Hospital
  - 2601 Ocean Parkway
  - Brooklyn, NY 11235
  - 718.616.4349
- Kings County Hospital Center
  - 451 Clarkson Avenue
  - Brooklyn, NY 11203
  - 718.631.8113
- Woodhull Medical Center
  - 760 Broadway
  - Brooklyn, NY 11206
  - 718.963.6860

**Nassau:**
- North Shore University Hospital
  - 300 Community Drive
  - Manhasset, New York 11030
  - 516.562.4125

**Suffolk:**
- Victims Information Bureau of Suffolk
  - PO Box 346
  - Central Islip, NY 11722
  - 631.360.3730
RAPE TRAUMA SYNDROME AND WHAT THERAPY ENTAILS

Trauma occurs when an event is sudden, dangerous (either physically or psychologically or both) and overwhelming. Rape, be it stranger, acquaintance or date rape is traumatic. The term Rape Trauma Syndrome was coined as a function of the similar reactions of rape victims. Today the term is considered outdated as these reactions are consistent with the criteria that make up the diagnosis known as Post Traumatic Stress Disorder. Below you will find the specific criteria:

- The person has been exposed to a traumatic event in which both of the following were present.
  - The person experienced, witnessed, or was confronted with an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others
  - The person’s response involved intense fear, helplessness, or horror. Note: In children, this may be expressed instead by disorganized or agitated behavior
- The traumatic event is persistently experienced in one (or more) of the following ways:
  - Recurrent and intrusive distressing recollections of the event, including images, thoughts, or perceptions
  - Recurrent distressing dreams of the event
  - Acting or feeling as if the traumatic event were recurring (includes a sense of reliving the experience, illusions, hallucinations, and dissociate flashback episodes, including those that occur on awakening or when intoxicated)
  - Intense psychological distress at exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
  - Physiological reactivity on exposure to internal or external cues that symbolize or resemble an aspect of the traumatic event
- Persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness (not present before the trauma), as indicated by three (or more) of the following:
  - Efforts to avoid thoughts, feelings, or conversations associated with trauma
  - Efforts to avoid activities, places, or people that arouse recollections of the trauma
  - Inability to recall an important aspect of the trauma
  - Markedly diminished interest or participation in significant activities
  - Feeling of detachment or estrangement from others
  - Restricted range of affect (e.g., unable to have loving feelings)
  - Sense of a foreshortened future (e.g., does not expect to have a career, marriage, children, or a normal life span)
- Persistent symptoms of increased arousal (not present before the trauma), as indicated by two (or more) of the following:
  - Difficulty falling or staying asleep
  - Irritability or outbursts of anger
  - Difficulty concentrating
  - Hyper-vigilance
  - Exaggerated startle response
- Duration of the disturbance is more than 1 month.
- The disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.
  - Therapy to treat PTSD victims aims at ameliorating the painful symptoms
as well as assisting the victim in the transition from victim to survivor to a thriving person. Making sense of the trauma and its wake is an important part of the recovery process.

COUNSELING SERVICES OFF CAMPUS

Old Westbury/Central Islip:
- Nassau County Rape Hotline: 516.222.2293
- Coalition Against Domestic Violence: 516.542.0404
- Long Island Gay and Lesbian Youth, Inc.: 631.665.2300

Manhattan:
- Safe Horizon Rape Crisis Hotline: 212.227.3000
- NYC Gay and Lesbian Anti-Violence Project: 212.714.1141
- Victims Of Violent Assault Assistance Program: 212.562.3755
- Brooklyn Community Program: 718.928.6950
- DOVE (Domestic and Other Violence Emergencies) New York Presbyterian Hospital: 212.305.3569
- SAVI (Sexual Assault and Violence Intervention Program) Mt. Sinai Hospital:
  - 212.423.2140 Queens: 718.736.1288

LOCAL STATE SERVICES

Old Westbury/Central Islip:
- Nassau County Special Victim’s Squad: 516.573.8055
- Nassau County District Attorney’s Sex Crimes Unit: 516.571.1266

Manhattan:
- New York City Police Department Rape Hotline: 212.267.RAPE
- Victim Services 24 hour Hotline: 212.577.7777
- New York City District Attorney’s Special Victim’s Bureau: 212.335.9373
- Brooklyn (Sex Crimes Bureau): 718.250.3170
- Brooklyn (Counseling): 718.250.3820
- Bronx: 718.590.2115
- Queens: 718.286.6505
- Staten Island: 718.556.7125

Additional Help:
- New York State Crime Victim’s Board: 1(800) 247-8035
A Summary of New York State Penal Code 130 Sex Offenses

Sexual Offenses in New York State Penal Law
New York State Penal Code Article 130 – Sex Offences Section
  130.00 Sex offenses; definitions of terms.
  130.05 Sex offenses; lack of consent.
  130.10 Sex offenses; limitations; defenses.
  130.16 Sex offenses; corroboration.
  130.20 Sexual misconduct.
  130.25 Rape in the third degree.
  130.30 Rape in the second degree.
  130.35 Rape in the first degree.
  130.40 Criminal sexual act in the third degree.
  130.45 Criminal sexual act in the second degree.
  130.50 Criminal sexual act in the first degree.
  130.52 Forcible touching.
  130.53 Persistent sexual abuse.
  130.60 Sexual abuse in the second degree.
  130.65 Sexual abuse in the first degree.
  130.65-a Aggravated sexual abuse in the fourth degree.
  130.66 Aggravated sexual abuse in the third degree.
  130.67 Aggravated sexual abuse in the second degree.
  130.70 Aggravated sexual abuse in the first degree.
  130.75 Course of sexual conduct against a child in the first degree.
  130.80 Course of sexual conduct against a child in the second degree.
  130.85 Female genital mutilation.
  130.90 Facilitating a sex offense with a controlled substance.
  130.91 Sexually motivated felony.
  130.92 Sentencing.
  130.95 Predatory sexual assault.
  130.96 Predatory sexual assault against a child.

The following definitions are applicable to this article:
1. “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight.
2. (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 the anus. (Eff.11/1/03,Ch.264,L.2003)
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.
4. For the purposes of this article “married” means the existence of the relationship between the actor and the victim as spouses, which is recognized by law at the
time the actor commits an offense proscribed by this article against the victim. (Eff.11/1/03,Ch.264,L.2003).

5. “Mentally 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 or rectum, is capable of causing physical injury.

10. “Sexual conduct” means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact. (Eff.11/1/03,Ch.264,L.2003).

11. “Aggravated sexual contact” means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum 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.

13. “Mental 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 mental health services as if he or she were licensed or registered in the profession of medicine, psychology or social work under any of the following: article one hundred thirty-one, one hundred fifty-three, or one hundred fifty-four of the education law.

§130.05 Sex offenses; lack of consent.

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim. (Eff.11/1/03,Ch.264.L.2003)

2. Lack of consent results from:
   (a) Forcible compulsion; or
   (b) Incapacity to consent; or
   (c) Where the offense charged is sexual abuse of 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 (Eff.11/1/03,Ch.264.L.2003)
   (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 or deviate sexual intercourse, 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. (Eff.11/1/03,Ch.264.L.2003)

3. A person is deemed incapable of consent when he or she is:
   (a) less than seventeen years old; or
   (b) mentally disabled; or
   (c) mentally incapacitated; or
   (d) physically helpless; or
   (e) committed to the care and custody of the state department of correctional services 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, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital. For purposes of this paragraph, “employee” means (i) an employee of the state department of correctional services who performs professional duties in a state correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs, or vocational training for inmates; (ii) an employee of the division of parole who performs professional duties in a state correctional facility and who provides institutional parole services pursuant to section two hundred fifty-nine-e of the executive law; or (iii) an employee of the office of mental health who performs professional duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law, consisting of providing custody, or medical or mental health services for such inmates; 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; 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 who performs duties
consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for persons committed to or placed with the office of children and family services and in residential care; or

(h) a client or patient and the actor is a health care provider or mental healthcare 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. (Eff.11/1/03,Ch.264,L.2003).

§130.10 Sex offenses; limitations; 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 mentally 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, 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. (Eff.11/1/03,Ch.264,L.2003).

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, or a client or patient and the actor is a health care provider, 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. (Eff.11/1/03,Ch.264,L.2003).

§130.16 Sex offenses; corroboration.
A person shall not be convicted 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, oral sexual conduct, anal sexual conduct, or sexual contact, as the case may be, at the time of the occurrence; and (Eff.11/1/03, Ch.264, L.2003).
(b) Connect the defendant with the commission of the offense or attempted offense.

§130.20 Sexual misconduct.
A person is guilty of sexual misconduct when:
1. He or she engages in sexual intercourse with another person without such person’s consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person’s consent; or (Eff.11/1/03, Ch.264, L.2003)
3. He or she 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.
A person is guilty of rape in the third degree when:
1. He or she engages in sexual intercourse with another 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 sexual intercourse with another person less than seventeen years old; 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.

§130.30 Rape in the second degree.
A person is guilty of rape in the second degree when:
1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; 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.

§130.35 Rape in the first degree.
A person is guilty of rape in the first degree when he or she engages in 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; 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.

§130.40 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. (Eff.11/1/03,Ch.264,L.2003).
   Criminal sexual act in the third degree is a class E felony.

§130.45 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.
   (Eff.11/1/03,Ch.264,L.2003). Criminal sexual act in the second degree is a class D
   felony.

§130.50 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:
(Eff.11/1/03,Ch.264,L.2003)
1. By forcible compulsion; or
2. Who is incapable of consent by means 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.
   (Eff.11/1/03,Ch.264,L.2003).

§130.52 Forcible touching.
A person is guilty of forcible touching when such person intentionally, and for no
legitimate purpose, 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. For the purposes of this section,
forcible touching includes squeezing, grabbing or pinching. Forcible touching is a
class A misdemeanor. (Eff.11/1/03,Ch.264,L.2003).
§130.53 Persistent sexual abuse.
A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.(Eff.11/1/03,Ch.264,L.2003). Persistent sexual abuse is a class E felony.

§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. 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 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.

§130.65 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:
(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. Sexual abuse in the first degree is a class D felony.

§130.65-a 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 or rectum 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 or rectum 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.

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

§130.67 Aggravated sexual abuse in the second degree.
1. A person is guilty of aggravated sexual abuse in the second degree when he inserts a finger 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. Aggravated sexual abuse in the second degree is a class C felony.

§130.70 Aggravated sexual abuse in the first degree.
1. A person is guilty of aggravated sexual abuse in the first degree 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. Aggravated sexual abuse in the first degree is a class B felony.

§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. (Eff.11/1/03, Ch.264, L.2003)

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. Course of sexual conduct against a child in the first degree is a class B felony.

§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. Course of sexual conduct against a child in the second degree is a class D felony.

§130.85 Female genital mutilation.

1. A person is guilty of female genital mutilation when:
   (a) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or
   (b) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or infibulation of whole or part of such child's labia major or labia minora or clitoris.
2. Such circumcision, excision, or infibulation is not a violation of this section if such act is:
   (a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or
   (b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

3. For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual. Female genital mutilation is a class E felony.

§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 against such person conduct constituting a felony defined in this article; and
2. commits or attempts to commit such conduct constituting a felony defined in this article. Facilitating a sex offense with a controlled substance is a class D felony.

§130.91 Sexually motivated felony.
1. A person commits a sexually motivated felony when he or she commits a specified offense for the purpose, in whole or substantial part, of his or her own direct sexual gratification.
2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, strangulation in the second degree as defined in section 121.12, strangulation in the first degree as defined in section 121.13, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in
section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

§130.92 Sentencing.
1. When a person is convicted of a sexually motivated felony pursuant to this article, and the specified felony is a violent felony offense, as defined in section 70.02 of this chapter, the sexually motivated felony shall be deemed a violent felony offense.
2. When a person is convicted of a sexually motivated felony pursuant to this article, the sexually motivated felony shall be deemed to be the same offense level as the specified offense the defendant committed.
3. Persons convicted of a sexually motivated felony as defined in section 130.91 of this article, must be sentenced in accordance with the provisions of section 70.80 of this chapter.

§130.95 Predatory sexual assault.
A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and when:
1. In the course of the commission of the crime or the immediate flight therefrom, he or she:
   (a) Causes serious physical injury to the victim of such crime; or
   (b) Uses or threatens the immediate use of a dangerous instrument; or
2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or
3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter.
Predatory sexual assault is a class A-II felony.

§130.96 Predatory sexual assault against a child.
A person is guilty of predatory sexual assault against a child when,
being eighteen years old or more, he or she commits the crime of rape in
the first degree, criminal sexual act in the first degree, aggravated
sexual abuse in the first degree, or course of sexual conduct against a
child in the first degree, as defined in this article, and the victim is
less than thirteen years old.
Predatory sexual assault against a child is a class A-II felony.

The New York State Penal Law provides for the following possible penalties for
the various classifications of sexual assault offenses:
Class B Felony - Imprisonment for 5 to 25 years
Class C Felony - Imprisonment for 3 1/2 to 15 years
Class D Felony - Imprisonment for 2 to 7 years
Class E Felony - Imprisonment for 1 1/2 to 4 years
Class A Misdemeanor - Imprisonment for up to 1 year
Class B Misdemeanor - Imprisonment for up to 3 months