

## **The Definition of Sex Offenders Under The State of New York Penal Code**

### **Sexual Misconduct (Class A Misdemeanor, up to 1 year in prison) has occurred when:**

1. A person engages in sexual intercourse with another person without such person's consent; or
2. A person engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or
3. A person engages in sexual conduct with an animal or a dead human body.

### **Rape in the Third Degree (Class E Felony, not to exceed 4 years in prison) has occurred when:**

1. A person 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 Second Degree (Class D Felony, not to exceed 7 years in prison) has occurred when:**

1. being eighteen years old or more, a person 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 First Degree (Class B Violent Felony, not to exceed 25 years in prison) has occurred when: A person 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.

### **Criminal Sexual Act in the Third Degree (Class E Felony, not to exceed 4 years in prison) has occurred when:**

1. A person 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.

### **Criminal Sexual Act in the Second Degree (Class D Felony, not to exceed 7 years in prison) has occurred when:**

1. being eighteen years old or more, a person 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.

**Definition of Sex Offenders Under The  
State of New York Penal Code  
Page two**

**Criminal Sexual Act in the First Degree (Class B Violent Felony, not to exceed 25 years in prison) has occurred when a person engages in oral sexual conduct or anal sexual conduct 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.

**Forcible Touching (Class A misdemeanor, up to one year in prison) has occurred when a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person:**

1. for the purpose of degrading or abusing such person; or
2. for the purpose of gratifying the actor's sexual desire. For the purposes of this section, forcible touching includes the squeezing, grabbing or pinching of such other person's sexual or other intimate parts.

**Persistent Sexual Abuse (Class E Felony, not to exceed 4 years in prison) has occurred when a person stands convicted of sexual abuse in the third degree, or sexual abuse in the second degree, 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 sexual abuse in the third degree, or sexual abuse in the second degree.**

**Sexual Abuse in the Third Degree (Class B Misdemeanor, up to 3 months in prison) has occurred when a person 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:**

1. such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17-years-old;
2. such other person was more than 14-years-old; and
3. the defendant was less than five years older than such other person.

**Sexual Abuse in the Second Degree (Class A Misdemeanor, up to 1 year in prison) has occurred when a person 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 17-years-old; or
2. is less than 14-years-old.

**Sexual Abuse in the First Degree (Class D Violent Felony, not to exceed 7 years in prison) has occurred when a person subjects another person to sexual contact:**

1. by forcible compulsion;
2. when the other person is incapable of consent by reason of being physically helpless; or
3. when the other person is less than 11-years-old.

**Aggravated Sexual Abuse in the fourth degree (Class E Felony, not to exceed 4 years in prison) has occurred when:**

1. a person 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;
2. 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.
3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

**Definition of Sex Offenders Under The  
State of New York Penal Code  
Page three**

**Aggravated Sexual Abuse in the third degree (Class D Felony, not to exceed 7 years in prison) has occurred when:**

1. A person 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 second degree (Class C Felony, not to exceed 15 years in prison) has occurred when:**

1. A person 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 first degree (Class B Felony, not to exceed 25 years in prison) has occurred when a person inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person:**

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. Conduct performed for a valid medical purpose does not violate the provisions of this section.
4. When the other person is less than thirteen years of age and the actor is twenty-one years old or older.