

# STATE OF NEW YORK

1606

2023-2024 Regular Sessions

## IN ASSEMBLY

January 17, 2023

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Codes

AN ACT to amend the penal law, in relation to establishing the crime of forcible touching of a correction officer, and to increase criminal penalties for certain sexual offenses committed against correction officers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The penal law is amended by adding a new section 130.52-a to read as follows:

§ 130.52-a Forcible touching of a correction officer.

A person is guilty of forcible touching of a correction officer when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of a correction officer for the purpose of degrading or abusing such officer, or for the purpose of gratifying the actor's sexual desire, when such correction officer is acting in the course of their employment.

For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.

Forcible touching of a correction officer is a class E felony.

§ 2. Section 130.20 of the penal law, as amended by chapter 1 of the laws of 2000, subdivision 2 as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 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

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

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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Sexual misconduct is a class A misdemeanor, provided, however, that when a person is guilty of sexual misconduct against a correction officer when such correction officer is acting in the course of their employment, sexual misconduct is a class E felony.

§ 3. Section 130.25 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 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, provided, however, that when a person is guilty of rape in the third degree against a correction officer when such correction officer is acting in the course of their employment, rape in the third degree is a class D felony.

§ 4. Section 130.30 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 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, provided, however, that when a person is guilty of rape in the second degree against a correction officer when such correction officer is acting in the course of their employment, rape in the second degree is a class C felony.

§ 5. Section 130.35 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 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, provided, however, that when a person is guilty of rape in the first degree against a correction officer when such correction officer is acting in the course of their employment, rape in the first degree is a class A-II felony.

§ 6. Section 130.40 of the penal law, as amended by chapter 264 of the laws of 2003, is amended to read as follows:

§ 130.40 Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when:

1 1. He or she engages in oral sexual conduct or anal sexual conduct  
2 with a person who is incapable of consent by reason of some factor other  
3 than being less than seventeen years old;

4 2. Being twenty-one years old or more, he or she engages in oral sexu-  
5 al conduct or anal sexual conduct with a person less than seventeen  
6 years old; or

7 3. He or she engages in oral sexual conduct or anal sexual conduct  
8 with another person without such person's consent where such lack of  
9 consent is by reason of some factor other than incapacity to consent.

10 Criminal sexual act in the third degree is a class E felony, provided,  
11 however, that when a person is guilty of criminal sexual act in the  
12 third degree against a correction officer when such correction officer  
13 is acting in the course of their employment, criminal sexual act in the  
14 third degree is a class D felony.

15 § 7. Section 130.45 of the penal law, as amended by chapter 264 of the  
16 laws of 2003, is amended to read as follows:

17 § 130.45 Criminal sexual act in the second degree.

18 A person is guilty of criminal sexual act in the second degree when:

19 1. being eighteen years old or more, he or she engages in oral sexual  
20 conduct or anal sexual conduct with another person less than fifteen  
21 years old; or

22 2. he or she engages in oral sexual conduct or anal sexual conduct  
23 with another person who is incapable of consent by reason of being  
24 mentally disabled or mentally incapacitated.

25 It shall be an affirmative defense to the crime of criminal sexual act  
26 in the second degree as defined in subdivision one of this section that  
27 the defendant was less than four years older than the victim at the time  
28 of the act.

29 Criminal sexual act in the second degree is a class D felony,  
30 provided, however, that when a person is guilty of criminal sexual act  
31 in the second degree against a correction officer when such correction  
32 officer is acting in the course of their employment, criminal sexual act  
33 in the second degree is a class C felony.

34 § 8. Section 130.50 of the penal law, as amended by chapter 264 of the  
35 laws of 2003, is amended to read as follows:

36 § 130.50 Criminal sexual act in the first degree.

37 A person is guilty of criminal sexual act in the first degree when he  
38 or she engages in oral sexual conduct or anal sexual conduct with anoth-  
39 er person:

40 1. By forcible compulsion; or

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

43 3. Who is less than eleven years old; or

44 4. Who is less than thirteen years old and the actor is eighteen years  
45 old or more.

46 Criminal sexual act in the first degree is a class B felony, provided,  
47 however, that when a person is guilty of criminal sexual act in the  
48 first degree against a correction officer when such correction officer  
49 is acting in the course of their employment, criminal sexual act in the  
50 first degree is a class A-II felony.

51 § 9. Section 130.53 of the penal law, as amended by chapter 192 of the  
52 laws of 2014, is amended to read as follows:

53 § 130.53 Persistent sexual abuse.

54 A person is guilty of persistent sexual abuse when he or she commits  
55 the crime of forcible touching, as defined in section 130.52 of this  
56 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, excluding any time during which such person was incarcerated for any reason, 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.

Persistent sexual abuse is a class E felony, provided, however, that when a person is guilty of persistent sexual abuse against a correction officer when such correction officer is acting in the course of their employment, persistent sexual abuse is a class D felony.

§ 10. Section 130.55 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 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, provided, however, that when a person is guilty of sexual abuse in the third degree against a correction officer when such correction officer is acting in the course of their employment, sexual abuse in the third degree is a class A misdemeanor.

§ 11. Section 130.60 of the penal law, as amended by chapter 1 of the laws of 2000, is amended to read as follows:

§ 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, provided, however, that when a person is guilty of sexual abuse in the second degree against a correction officer when such correction officer is acting in the course of their employment, sexual abuse in the second degree is a class E felony.

§ 12. Section 130.65 of the penal law, as amended by chapter 26 of the laws of 2011, is amended to read as follows:

§ 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:

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; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony, provided, however, that when a person is guilty of sexual abuse in the first degree against a correction officer when such correction officer is acting in

1 the course of their employment, sexual abuse in the first degree is a  
2 class C felony.

3 § 13. Section 130.65-a of the penal law, as added by chapter 1 of the  
4 laws of 2000, subdivision 1 as amended by chapter 485 of the laws of  
5 2009, is amended to read as follows:

6 § 130.65-a Aggravated sexual abuse in the fourth degree.

7 1. A person is guilty of aggravated sexual abuse in the fourth degree  
8 when:

9 (a) He or she inserts a foreign object in the vagina, urethra, penis,  
10 rectum or anus of another person and the other person is incapable of  
11 consent by reason of some factor other than being less than seventeen  
12 years old; or

13 (b) He or she inserts a finger in the vagina, urethra, penis, rectum  
14 or anus of another person causing physical injury to such person and  
15 such person is incapable of consent by reason of some factor other than  
16 being less than seventeen years old.

17 2. Conduct performed for a valid medical purpose does not violate the  
18 provisions of this section.

19 Aggravated sexual abuse in the fourth degree is a class E felony,  
20 provided, however, that when a person is guilty of aggravated sexual  
21 abuse in the fourth degree against a correction officer when such  
22 correction officer is acting in the course of their employment, aggra-  
23 vated sexual abuse in the fourth degree is a class D felony.

24 § 14. Section 130.66 of the penal law, as added by chapter 181 of the  
25 laws of 1996, subdivision 1 as amended by chapter 647 of the laws of  
26 2022, subdivision 2 as amended by chapter 485 of the laws of 2009, and  
27 subdivision 3 as renumbered by chapter 1 of the laws of 2000, is amended  
28 to read as follows:

29 § 130.66 Aggravated sexual abuse in the third degree.

30 1. A person is guilty of aggravated sexual abuse in the third degree  
31 when he or she inserts a foreign object or a finger in the vagina,  
32 urethra, penis, rectum or anus of another person:

33 (a) By forcible compulsion; or

34 (b) When the other person is incapable of consent by reason of being  
35 physically helpless;

36 (c) When the other person is less than eleven years old; or

37 (d) When the other person is less than thirteen years old and the  
38 actor is eighteen years of age or older.

39 2. A person is guilty of aggravated sexual abuse in the third degree  
40 when he or she inserts a foreign object in the vagina, urethra, penis,  
41 rectum or anus of another person causing physical injury to such person  
42 and such person is incapable of consent by reason of being mentally  
43 disabled or mentally incapacitated.

44 3. Conduct performed for a valid medical purpose does not violate the  
45 provisions of this section.

46 Aggravated sexual abuse in the third degree is a class D felony,  
47 provided, however, that when a person is guilty of aggravated sexual  
48 abuse in the third degree against a correction officer when such  
49 correction officer is acting in the course of their employment, aggra-  
50 vated sexual abuse in the third degree is a class C felony.

51 § 15. Section 130.67 of the penal law, as added by chapter 450 of the  
52 laws of 1988, the opening paragraph of subdivision 1 as amended by chap-  
53 ter 485 of the laws of 2009, is amended to read as follows:

54 § 130.67 Aggravated sexual abuse in the second degree.

1 1. A person is guilty of aggravated sexual abuse in the second degree  
2 when he or she inserts a finger in the vagina, urethra, penis, rectum or  
3 anus of another person causing physical injury to such person:

4 (a) By forcible compulsion; or

5 (b) When the other person is incapable of consent by reason of being  
6 physically helpless; or

7 (c) When the other person is less than eleven years old.

8 2. Conduct performed for a valid medical purpose does not violate the  
9 provisions of this section.

10 Aggravated sexual abuse in the second degree is a class C felony,  
11 provided, however, that when a person is guilty of aggravated sexual  
12 abuse in the second degree against a correction officer when such  
13 correction officer is acting in the course of their employment, aggra-  
14 vated sexual abuse in the second degree is a class B felony.

15 § 16. Section 130.70 of the penal law, as amended by chapter 450 of  
16 the laws of 1988, the opening paragraph of subdivision 1 as amended by  
17 chapter 485 of the laws of 2009, is amended to read as follows:

18 § 130.70 Aggravated sexual abuse in the first degree.

19 1. A person is guilty of aggravated sexual abuse in the first degree  
20 when he or she inserts a foreign object in the vagina, urethra, penis,  
21 rectum or anus of another person causing physical injury to such person:

22 (a) By forcible compulsion; or

23 (b) When the other person is incapable of consent by reason of being  
24 physically helpless; or

25 (c) When the other person is less than eleven years old.

26 2. Conduct performed for a valid medical purpose does not violate the  
27 provisions of this section.

28 Aggravated sexual abuse in the first degree is a class B felony,  
29 provided, however, that when a person is guilty of aggravated sexual  
30 abuse in the first degree against a correction officer when such  
31 correction officer is acting in the course of their employment, aggra-  
32 vated sexual abuse in the first degree is a class A-II felony.

33 § 17. Section 130.85 of the penal law, as added by chapter 618 of the  
34 laws of 1997, is amended to read as follows:

35 § 130.85 Female genital mutilation.

36 1. A person is guilty of female genital mutilation when:

37 (a) a person knowingly circumcises, excises, or infibulates the whole  
38 or any part of the labia majora or labia minora or clitoris of another  
39 person who has not reached eighteen years of age; or

40 (b) being a parent, guardian or other person legally responsible and  
41 charged with the care or custody of a child less than eighteen years  
42 old, he or she knowingly consents to the circumcision, excision or infi-  
43 bulation of whole or part of such child's labia majora or labia minora  
44 or clitoris.

45 2. Such circumcision, excision, or infibulation is not a violation of  
46 this section if such act is:

47 (a) necessary to the health of the person on whom it is performed, and  
48 is performed by a person licensed in the place of its performance as a  
49 medical practitioner; or

50 (b) performed on a person in labor or who has just given birth and is  
51 performed for medical purposes connected with that labor or birth by a  
52 person licensed in the place it is performed as a medical practitioner,  
53 midwife, or person in training to become such a practitioner or midwife.

54 3. For the purposes of paragraph (a) of subdivision two of this  
55 section, no account shall be taken of the effect on the person on whom  
56 such procedure is to be performed of any belief on the part of that or



1 any other person that such procedure is required as a matter of custom  
2 or ritual.

3 Female genital mutilation is a class E felony, provided, however, that  
4 when a person is guilty of female genital mutilation against a  
5 correction officer when such correction officer is acting in the course  
6 of their employment, female genital mutilation is a class D felony.

7 § 18. Section 130.90 of the penal law, as added by chapter 1 of the  
8 laws of 2000, subdivisions 1 and 2 as amended by chapter 264 of the laws  
9 of 2003, is amended to read as follows:

10 § 130.90 Facilitating a sex offense with a controlled substance.

11 A person is guilty of facilitating a sex offense with a controlled  
12 substance when he or she:

13 1. knowingly and unlawfully possesses a controlled substance or any  
14 preparation, compound, mixture or substance that requires a prescription  
15 to obtain and administers such substance or preparation, compound,  
16 mixture or substance that requires a prescription to obtain to another  
17 person without such person's consent and with intent to commit against  
18 such person conduct constituting a felony defined in this article; and

19 2. commits or attempts to commit such conduct constituting a felony  
20 defined in this article.

21 Facilitating a sex offense with a controlled substance is a class D  
22 felony, provided, however, that when a person is guilty of facilitating  
23 a sex offense with a controlled substance against a correction officer  
24 when such correction officer is acting in the course of their employ-  
25 ment, facilitating a sex offense with a controlled substance is a class  
26 C felony.

27 § 19. Section 130.95 of the penal law, as added by chapter 107 of the  
28 laws of 2006, is amended to read as follows:

29 § 130.95 Predatory sexual assault.

30 A person is guilty of predatory sexual assault when he or she commits  
31 the crime of rape in the first degree, criminal sexual act in the first  
32 degree, aggravated sexual abuse in the first degree, or course of sexual  
33 conduct against a child in the first degree, as defined in this article,  
34 and when:

35 1. In the course of the commission of the crime or the immediate  
36 flight therefrom, he or she:

37 (a) Causes serious physical injury to the victim of such crime; or

38 (b) Uses or threatens the immediate use of a dangerous instrument; or

39 2. He or she has engaged in conduct constituting the crime of rape in  
40 the first degree, criminal sexual act in the first degree, aggravated  
41 sexual abuse in the first degree, or course of sexual conduct against a  
42 child in the first degree, as defined in this article, against one or  
43 more additional persons; or

44 3. He or she has previously been subjected to a conviction for a felo-  
45 ny defined in this article, incest as defined in section 255.25 of this  
46 [~~chapter~~] part or use of a child in a sexual performance as defined in  
47 section 263.05 of this [~~chapter~~] part.

48 Predatory sexual assault is a class A-II felony, provided, however,  
49 that when a person is guilty of predatory sexual assault against a  
50 correction officer when such correction officer is acting in the course  
51 of their employment, predatory sexual assault is a class A-I felony.

52 § 20. This act shall take effect immediately.