

# Sex Crimes: Definitions and Penalties

## New York

*Last Updated: March 2020*

### Rape in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Engaging in sexual intercourse with another person:               <ul style="list-style-type: none"> <li>• By forcible compulsion; or</li> <li>• Who is incapable of consent by reason of being physically helpless; or</li> <li>• Who is less than eleven years old; or</li> <li>• Who is less than thirteen years old and the actor is eighteen years old or more.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 5 to 25 years in prison (determinate sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• <b>“Forcible compulsion”</b> means to compel by either:               <ul style="list-style-type: none"> <li>• use of physical force; or</li> <li>• 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.</li> </ul> </li> <li>• <b>“Physically helpless”</b> means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. “Physical helplessness is present when a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act .... Of note, a person who is sleeping is “physically helpless” for the purposes of consenting to sexual intercourse, particularly where the sleep was drug and alcohol induced.” <i>People v. Dunham</i>, 172 A.D.3d 1462, 1463 (N.Y. App. Div. 2019) (internal citations omitted).</li> <li>• <b>“Sexual intercourse”</b> has its ordinary meaning and occurs upon any penetration, however slight.</li> <li>• <b>“Oral sexual conduct”</b> 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.</li> <li>• <b>“Anal sexual conduct”</b> means conduct between persons consisting of contact between the penis and anus.</li> <li>• <b>“Sexual conduct”</b> means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.</li> <li>• Rape in the First Degree is a class B felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.35; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Rape in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or               <ul style="list-style-type: none"> <li>• It shall be an affirmative defense to this crime if the defendant was less than four years older than the victim at the time of the act.</li> </ul> </li> <li>• Engaging in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• In general, 2 to 7 years in prison (determinate sentence).</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual intercourse</b>” under Rape – 1<sup>st</sup> Degree</li> <li>• “<b>Mentally disabled</b>” 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.</li> <li>• “<b>Mentally incapacitated</b>” 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.</li> <li>• Rape in the Second Degree is a class D felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.30; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Rape in the Third Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> <li>• Engaging in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old;</li> <li>• Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or</li> <li>• Engaging 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.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 1.5 to 4 years in prison.</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual intercourse</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• “<b>Lack of consent</b>” results from: <ul style="list-style-type: none"> <li>• forcible compulsion;</li> <li>• incapacity to consent;</li> <li>• where the offense charged is sexual abuse or 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</li> <li>• where the offense charged is rape in the third degree, or criminal sexual act in the third degree, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, 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.</li> </ul> </li> <li>• Rape in the Third Degree is a class E felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.25; <i>id.</i> § 130.05 (lack of consent); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Sexual Misconduct

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Engaging in sexual intercourse with another person without such person's consent; or</li> <li>• Engaging in oral sexual conduct or anal sexual conduct with another person without such person's consent; or</li> <li>• Engaging in sexual conduct with an animal or a dead human body.</li> </ul>

What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Maximum of 1 year in prison (definite sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual intercourse</b>,” “<b>sexual conduct</b>,” “<b>oral sexual conduct</b>” and “<b>anal sexual conduct</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• Sexual Misconduct is a class A misdemeanor.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.20; <i>id.</i> § 70.15 (penalty).</li> </ul>

## Criminal Sexual Act in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Engaging in oral sexual conduct or anal sexual conduct with another person: <ul style="list-style-type: none"> <li>• By forcible compulsion; or</li> <li>• Who is incapable of consent by reason of being physically helpless; or</li> <li>• Who is less than eleven years old; or</li> <li>• Who is less than thirteen years old and the actor is eighteen years old or more.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 5 to 25 years in prison (determinate sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>forcible compulsion</b>,” “<b>physically helpless</b>,” “<b>oral sexual conduct</b>” and “<b>anal sexual conduct</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• Criminal Sexual Act in the First Degree is a class B felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.50; <i>id.</i> § 70.80 (penalty).</li> </ul>

## Criminal Sexual Act in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• 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 <ul style="list-style-type: none"> <li>• It shall be an affirmative defense to this crime if the defendant was less than four years older than the victim at the time of the act.</li> </ul> </li> <li>• Engaging in oral sexual conduct or anal sexual conduct with another person who is incapable of consent</li> </ul>

	by reason of being mentally disabled or mentally incapacitated.
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 2 to 7 years in prison.</li> <li>• The court may impose a sentence of probation; if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>oral sexual conduct</b>” and “<b>anal sexual conduct</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• See definition of “<b>mentally disabled or mentally incapacitated</b>” under Rape – 2<sup>nd</sup> Degree</li> <li>• Criminal Sexual Act in the Second Degree is a class D felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.45; <i>see also id.</i> § 70.80 (penalty).</li> </ul>

### Criminal Sexual Act in the Third Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Engaging 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;</li> <li>• Being twenty-one years old or more, engaging in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or</li> <li>• Engaging 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.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 1.5 to 4 years in prison.</li> <li>• The court may impose a sentence of probation; if the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>oral sexual conduct</b>” and “<b>anal sexual conduct</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• See definition of “<b>lack of consent</b>” under Rape – 3<sup>rd</sup> Degree.</li> <li>• Criminal Sexual Act in the Third Degree is a class E felony</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.40; <i>see also id.</i> § 70.80 (penalty).</li> </ul>

## Forcible Touching - Misdemeanor

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Intentionally, and for no legitimate purpose:               <ul style="list-style-type: none"> <li>• forcibly touching 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; or</li> <li>• subjecting another person to sexual contact for the purpose gratifying the actor's sexual desire and with intent to degrade or abuse such other person while such other person is passenger on a bus, train, or subway car operated by any transit agency, authority or company, public or private, whose operation is authorized by New York state or any of its political subdivisions.</li> </ul> </li> <li>• For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Maximum of 1 year in prison (definite sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• Forcible Touching is a class A misdemeanor.</li> <li>• Inquiry as to whether a defendant was seeking sexual gratification, as element of offense of forcible touching, can be inferred from his or her conduct. <i>People v. Fuller</i>, 50 A.D.3d 1171, 1175 (N.Y. Sup. Ct. 2008).</li> <li>• Bodily contact alone, especially when it is effected by a mere touching, does not rise to the level of physical force contemplated by the forcible compulsion element of forcible touching statute; rather, physical force is found where there is some power or strength or violence exerted against a body. <i>People v. Parbhu</i>, 743 N.Y.S.2d 660, 665 (N.Y. Crim. Ct. 2002).</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.52; see <i>id.</i> § 70.15 (penalty)</li> </ul>

## Predatory Sexual Assault

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> <li>• Committing 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, and when: <ul style="list-style-type: none"> <li>• In the course of the commission of the crime or the immediate flight therefrom, he or she: <ul style="list-style-type: none"> <li>• Causes serious physical injury to the victim of such crime; or</li> <li>• Uses or threatens the immediate use of a dangerous instrument; or</li> </ul> </li> <li>• 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</li> <li>• He or she has previously been subjected to a conviction for a felony defined in this article, incest as or use of a child in a sexual performance.</li> </ul> </li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 10 to 25 years in prison (indeterminate sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• Predatory Sexual Assault is a class A-II felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.95; <i>see also id.</i> §§ 70.80, 70.00, 70.06, 70.08 (penalty).</li> </ul>

## Predatory Sexual Assault Against a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• Committing 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 13 years old, when the person is eighteen years old or more.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 10 to 25 years in prison (indeterminate sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• Predatory Sexual Assault Against a Child is a class A-II felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.96; <i>see also id.</i> §§ 70.80, 70.00, 70.06, 70.08 (penalty).</li> </ul>

## Course of Sexual Conduct Against a Child in the First Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• When, over a period of time not less than three months in duration, a person:               <ul style="list-style-type: none"> <li>• 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</li> <li>• who is 18 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.</li> </ul> </li> <li>• 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.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 5 to 25 years in prison (determinate sentence)</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual intercourse</b>,” “<b>oral sexual conduct</b>” and “<b>anal sexual conduct</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• Course of Sexual Contact Against a Child in the First Degree is a class B felony.</li> <li>• Crime of course of sexual conduct against a child is a continuing crime to which the usual requirements of specificity with respect to time do not pertain. <i>People v. McLoud</i>, 291 A.D.2d 867, 867 (N. Sup. Ct. 2002) (two-year period).</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.75; see also <i>id.</i> § 70.80 (penalty).</li> </ul>

## Course of Sexual Conduct Against a Child in the Second Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> <li>• When, over a period of time not less than three months in duration, a person: <ul style="list-style-type: none"> <li>• engages in two or more acts of sexual conduct with a child less than 11 years old; or</li> <li>• who is eighteen years old or more, engages in two or more acts of sexual conduct with a child less than 13 years old.</li> </ul> </li> <li>• 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.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 2 to 7 years in prison.</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• Course of Sexual Contact Against a Child in the Second Degree is a class D felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.80; <i>see also id.</i> § 70.80 (penalty).</li> </ul>

## Sexual Abuse in the First Degree

Question	Answer
How is it defined?	<p>When a person subjects another person to sexual contact:</p> <ul style="list-style-type: none"> <li>• By forcible compulsion;</li> <li>• When the other person is incapable of consent by reason of being physically helpless;</li> <li>• When the other person is less than eleven years old; or</li> <li>• When the other person is less than thirteen years old and the actor is twenty-one years old or older.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Two to seven years in prison (determinate sentence).</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>

Anything else I should know?	<ul style="list-style-type: none"> <li>• “<b>Sexual contact</b>” means any touching of the sexual or other intimate parts of a person 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, as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.</li> <li>• See definitions of “<b>physically helpless</b>” under Rape – 1<sup>st</sup> Degree and “<b>lack of consent</b>” under Rape – 3rd Degree.</li> <li>• Sexual Abuse in the First Degree is a class D felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.65; <i>see also id.</i> §§ 130.00, 130.05 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Sexual Abuse in the Second Degree

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• When a person subjects another person to sexual contact and when such other person is: <ul style="list-style-type: none"> <li>• incapable of consent by reason of some factor other than being less than seventeen years old; or</li> <li>• less than fourteen years old.</li> </ul> </li> </ul>
What are punishments for this crime?	<ul style="list-style-type: none"> <li>• Maximum of 1 year in prison.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual contact</b>” under Sexual Abuse in the First Degree.</li> <li>• See definitions of “<b>physically helpless</b>” and “<b>lack of consent</b>” under Rape – 3d Degree.</li> <li>• Sexual Abuse in the Second Degree is a class A misdemeanor.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.60; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.50 (penalty).</li> </ul>

## Sexual Abuse in the Third Degree

Question	Answer
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How is it defined?	<ul style="list-style-type: none"> <li>• 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 (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.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• Maximum sentence of 3 months.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>sexual contact</b>” under Sexual Abuse in the First Degree.</li> <li>• See definition of “<b>lack of consent</b>” under Rape – 3d Degree</li> <li>• Sexual Abuse in the Third Degree is a class B misdemeanor.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.55; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.15 (penalty).</li> </ul>

## Persistent Sexual Abuse

Question	Answer
How is it defined?	<ul style="list-style-type: none"> <li>• A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, sexual abuse in the third degree, or sexual abuse in the second degree, 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, sexual abuse in the third degree, sexual abuse in the second degree, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.</li> </ul>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 1.5 to 4 years in prison.</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• Persistent Sexual Abuse is a class E felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law § 130.53; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Aggravated Sexual Abuse in the First Degree

Question	Answer
How is it defined?	<p>A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:</p> <ul style="list-style-type: none"> <li>• By forcible compulsion;</li> <li>• When the other person is incapable of consent by reason of being physically helpless; or</li> <li>• When the other person is less than eleven years old.</li> </ul> <p>Conduct performed for a valid medical purpose does not violate the provisions of this section.</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 5 to 25 years in prison (determinate sentence).</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of “<b>physically helpless</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• “<b>Foreign object</b>” means any instrument or article which, when inserted in the vagina, urethra, penis, rectum or anus, is capable of causing physical injury. A finger does not constitute a “foreign object” for purposes of aggravated sexual abuse. <i>People v. Peet</i>, 101 A.D.2d 656, 656 (N.Y. App. Div. 1984), <i>aff'd</i>, 477 N.E.2d 620 (N.Y. 1985).</li> <li>• Aggravated Sexual Abuse in the First Degree is a class B felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.70; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Aggravated Sexual Abuse in the Second Degree

Question	Answer
How is it defined?	<p>A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:</p> <ul style="list-style-type: none"> <li>• By forcible compulsion;</li> <li>• When the other person is incapable of consent by reason of being physically helpless; or</li> <li>• When the other person is less than eleven years old.</li> </ul>

	Conduct performed for a valid medical purpose does not violate the provisions of this section.
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 3.5-15 years in prison.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definitions of “<b>forcible compulsion</b>” and “<b>physically helpless</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• Aggravated Sexual Abuse in the Second Degree is a class C felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.67; see <i>also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Aggravated Sexual Abuse in the Third Degree

Question	Answer
How is it defined?	<p>A person is guilty of aggravated sexual abuse in the third degree when he or she:</p> <ul style="list-style-type: none"> <li>• inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person: <ul style="list-style-type: none"> <li>• By forcible compulsion;</li> <li>• When the other person is incapable of consent by reason of being physically helpless; or</li> <li>• When the other person is less than eleven years old; or</li> </ul> </li> <li>• inserts a foreign object in the vagina, urethra, penis, rectum or anus 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.</li> </ul> <p>Conduct performed for a valid medical purpose does not violate the provisions of this section.</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 2 to 7 years in prison.</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definitions of “<b>forcible compulsion</b>” and “<b>physically helpless</b>” under Rape – 1<sup>st</sup> Degree.</li> <li>• “<b>Mentally disabled</b>” 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.</li> <li>• “<b>Mentally incapacitated</b>” 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.</li> </ul>

	<ul style="list-style-type: none"> <li>• Aggravated Sexual Abuse in the Third Degree is a class D felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.66; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>

## Aggravated Sexual Abuse in the Fourth Degree

Question	Answer
How is it defined?	<p>A person is guilty of aggravated sexual abuse in the fourth degree when he or she:</p> <ul style="list-style-type: none"> <li>• inserts a foreign object in the vagina, urethra, penis, rectum or anus 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</li> <li>• inserts a finger in the vagina, urethra, penis, rectum or anus 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.</li> </ul> <p>Conduct performed for a valid medical purpose does not violate the provisions of this section.</p>
What are the punishments for this crime?	<ul style="list-style-type: none"> <li>• 1.5 to 4 years in prison.</li> <li>• If the court, having regard to the nature and circumstances of the crime and to the history and character of the defendant, is of the opinion that a sentence of imprisonment is necessary but that it would be unduly harsh to impose a determinate sentence upon a person convicted of a class D or class E felony sex offense, the court may impose a definite sentence of imprisonment and fix a term of one year or less.</li> </ul>
Anything else I should know?	<ul style="list-style-type: none"> <li>• See definition of "<b>lack of consent</b>" under Rape - 3rd Degree.</li> <li>• Aggravated Sexual Abuse in the Fourth Degree is a class E felony.</li> </ul>
Statutory citation(s):	<ul style="list-style-type: none"> <li>• N.Y. Penal Law §130.65-a.; <i>see also id.</i> § 130.00 (definitions); <i>id.</i> § 70.80 (penalty).</li> </ul>