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□ Individuals who are *confidential* resources will not report crimes to law enforcement or other School staff without your permission, except for extreme circumstances, such as a health and/or safety emergency. At Metropolitan Learning Institute, this includes:

Campus Directors (any campus)

Main Campus:  
97-77 Queens Blvd., 9<sup>th</sup> Floor  
Rego Park, NY 11374  
Phone (718) 897-0482

Extension:  
440 89th Street, 4th Fl.  
Brooklyn, NY 11209  
Phone (718) 492-2120

or the Title IX Coordinator (718) 897-0482 ext. 13

□ Note that medical office and insurance billing practices may reveal information to the insurance policyholder, including medication and/or examinations paid for or administered. The New York State Office of Victim Services may be able to assist in compensating victims/survivors for health care and counseling services, including emergency compensation. More information may be found here: [https://www.ovs.ny.gov/files/ovs\\_rights\\_of\\_cv\\_booklet.pdf](https://www.ovs.ny.gov/files/ovs_rights_of_cv_booklet.pdf) or by calling 1-800-247-8035.

Options are explained here: <http://www.ovs.ny.gov/helpforcrimevictims.html>. Note that even individuals who can typically maintain confidentiality are subject to exceptions under the law, including when an individual is a threat to him/herself or others and the mandatory reporting of child abuse.

o Off-campus counselors and advocates. Crisis services offices will generally maintain confidentiality unless you request disclosure and sign a consent or waiver form. More information on an agency’s policies on confidentiality may be obtained directly from the agency.

□ Definitions

o Advisor: An individual chosen by the survivor/victim or the responding party to assist them the survivor/victim or the responding party through the School’s investigation process. The Advisor may provide private counsel to the survivor/victim or responding party, but may not speak on behalf of the individual.

o Business Days: Official working days when the school is open for business; does not include weekends and School recognized holidays.

o Clery Act: A federal law, codified at 20 U.S.C. § 1092(f), that requires all schools and universities who receive federal funding to share information about crime in or around campus and efforts to improve campus safety.

o Clery Act Crimes of Violence: Clery Act Crimes are codified at 20 U.S.C. § 1092(f)(1)(F)(i)(I)-(VIII), and include murder; sex offenses, forcible or nonforcible; robbery; aggravated assault; burglary; motor vehicle theft; manslaughter; and, arson.

***Higher Education Act 129-B Definition of “Affirmative Consent”***

“Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those

words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression.”

- Consent to any sexual act or prior consensual activity between or with any party does not necessarily constitute consent to any other sexual act.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time. When consent is withdrawn or cannot be given, sexual activity must stop.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by a lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- Consent cannot be given when it is the result of any coercion, intimidation, force, or threat of harm.
- When consent is withdrawn or can no longer be given, sexual activity must stop.
- o Force: The use of physical violence and/or imposing on someone physically to gain sexual access, including threats, intimidation, and/or coercion that overcome resistance or produce consent. Consent is not effective when forced.
- o Impact Statement: A statement drafted by a member of the School community explaining to the School how the underlying incident(s) has impacted his or her life.
- o Incapacitation: A state where an individual cannot make rational, reasonable decisions because he or she lacks the capacity to give knowing consent. Incapacitation may be caused by lack of consciousness, being asleep, being involuntarily restrained. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent.
- o Title IX: A federal law, codified at 20 U.S.C. § 1681 et seq., that prohibits discrimination on the basis of sex in educational programs and activities. Specifically, the law provides that “no person in the United States shall, on the basis of sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under an educational program or activity receiving federal financial assistance.”
- o Title IX Coordinator: The Title IX Coordinator is the Metropolitan Learning Institute employee responsible for ensuring that the School is complying with all Title IX regulations and is charged with the primary responsibility for coordinating the School’s Title IX compliance efforts.

### **Privacy versus Confidentiality: How Metropolitan Learning Institute Will Weigh the Request and Respond:**

If you disclose an incident to a Metropolitan Learning Institute employee who is responsible for responding to or reporting sexual violence or sexual harassment, but wish to maintain confidentiality or do not consent to the institution’s request to initiate an

investigation, the Title IX Coordinator must weigh your request against our obligation to provide a safe, non-discriminatory environment for all members of our community, including you.

Even if Metropolitan Learning Institute offices and employees cannot guarantee *confidentiality*, they will maintain your *privacy* to the greatest extent possible. The information you provide to a non-confidential resource will be relayed only as necessary to investigate and/or seek a resolution and to notify the Title IX Coordinator or designee, who is responsible under the law for tracking patterns and spotting systemic issues. Metropolitan Learning Institute will limit the disclosure as much as possible, even if the Title IX Coordinator determines that the request for confidentiality cannot be honored. We will assist you with academic, housing, transportation, employment, and other reasonable and available accommodations regardless of your reporting choices. We will protect your privacy insofar as it does not impede the necessary accommodations you require. We also may take proactive steps, such as training or awareness efforts to combat sexual violence in a general way that does not identify you or the situation you disclosed.

We may seek consent from you prior to conducting an investigation. You may decline to consent to an investigation, and that determination will be honored unless the School's failure to act may result in harm to you or other members of the MLI community. Honoring your request may limit our ability to meaningfully investigate and pursue conduct action against an accused individual. If we determine that an investigation is required, we will notify you and take immediate action as necessary to protect and assist you.

When you disclose an incident to someone who is responsible for responding to or reporting sexual assault, domestic violence, dating violence, stalking, or sexual harassment, but wish to maintain confidentiality, Metropolitan Learning Institute will consider many factors to determine whether to proceed despite that request. These factors include, but are not limited to:

- Whether the accused has a history of violent behavior or is a repeat offender;
- Whether the incident represents escalation, such as a situation that previously involved sustained stalking; the increased risk that the accused will commit additional acts of violence;
- Whether the accused used a weapon or force;
- Whether the victim/survivor is a minor; and
- Whether we possess other means to obtain evidence such as security footage, and whether the report reveals a pattern of perpetration at a given location or by a particular group.

**Public Awareness/Advocacy Events:**

If you disclose a situation through a public awareness event including candlelight vigils, protests, or other public events, the School is not obligated to begin an investigation.

Metropolitan Learning Institute may use the information you provide to inform the need for additional education and prevention efforts.

### **Confidentiality and Non-Retaliation**

Publicly available records involving any incidents will protect the identity of all parties involved to the extent permissible by law by referring to parties as “reporting individual 1, reporting individual 2, etc.,” “Witness 1, Witness 2, etc.,” and “Accused 1, Accused 2, etc.”

All allegations of sexual harassment will be taken seriously and thoroughly investigated with appropriate support for and respect of the alleged victim. If it is determined that an intentionally false accusation of sexual harassment has been made, this too will be investigated thoroughly and treated seriously.

**The School prohibits retaliation against persons who in good faith report violations of this policy or cooperates in an investigation. The School also prohibits the filing of knowingly false or misleading reports and providing knowingly false or misleading information in an investigation. Discipline or other action can result from either of these acts in violation of this policy.**

### **Institutional Crime Reporting**

Reports of crimes occurring in Clery geographic locations will be included in the Metropolitan Learning Institute Annual Security and Fire Safety Report in an anonymous manner that neither identifies the specifics of the crime or the identity of the victim/survivor.

Metropolitan Learning Institute is obligated to issue timely warnings of Clery Act crimes occurring within relevant geography that represent a serious or continuing threat to students and employees (subject to exceptions when potentially compromising law enforcement efforts and when the warning itself could potentially identify the victim/survivor). A victim/survivor will never be identified in a timely warning.

The Family Educational Rights and Privacy Act (FERPA) allows institutions to share information with parents when (1) there is a health or safety emergency, or (2) when the student is a dependent on either parent’s prior year federal income tax return.

Generally, Metropolitan Learning Institute will not share information about a report of sexual violence with parents without the permission of the victim/survivor.

### **Policy for Alcohol and/or Drug Use Amnesty in Sexual Violence Cases**

The health and safety of every student at Metropolitan Learning Institute is of utmost importance. Metropolitan Learning Institute recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Metropolitan Learning Institute strongly encourages students to report incidents of sexual violence to campus officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of

domestic violence, dating violence, stalking, or sexual assault to Metropolitan Learning Institute officials or law enforcement will not be subject to MLI's code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

### **Onboarding and Ongoing Education Guide**

Metropolitan Learning Institute will continue to educate all new and current students as well as employees, using a variety of best practices aimed at educating the entire school community in a way that decreases violence and promotes a culture where sexual assault and acts of violence are not tolerated.

#### ***Students***

All incoming students and transfer students will, during the course of their onboarding to Metropolitan Learning Institute, receive information on the following topics, using a method and manner appropriate to the institutional culture of each campus. Class Captains were also added to the list in 2018. Metropolitan Learning Institute prohibits sexual harassment, including sexual violence, domestic violence, dating violence, stalking, other violence or threats of violence, and will offer resources to any victims/survivors of such violence while taking administrative and conduct action regarding any accused individual within the jurisdiction of the Institute.

- Relevant definitions including, but not limited to, the definitions of sexual violence and consent.
- Policies apply equally to all students regardless of sexual orientation, gender identity, or gender expression.
- The role of the Title IX Coordinator, Campus Security, and other relevant offices that address violence prevention and response.
- Awareness of violence, its impact on reporting individuals (victims/survivors) and their friends and family, and its long-term impact.
- The Students' Bill of Rights and Sexual Violence Response Policy, including:
  - o How to report sexual violence and other crimes confidentially, and/or to school officials, campus security, and local law enforcement.
  - o How to obtain services and support.
  - o Bystander Intervention and the importance of taking action, when one can safely do so, to prevent violence.
  - o The protections of the Policy for Alcohol and/or Drug Use Amnesty in Sexual and Interpersonal Violence Cases.
  - o Risk assessment and reduction including, but not limited to, steps that potential victims/ survivors and bystanders to violence can take to lower the incidence of sexual violence.
  - o Consequences and sanctions for individuals who commit these crimes.

The onboarding process is not limited to the single day of orientation, but recognizes that students enroll at different times at different Metropolitan Learning Institute campuses and gives campuses the flexibility to best educate students at a time and manner that can

most effectively bring these points to light. Metropolitan Learning Institute will conduct these trainings for all new students, whether first-term or transfer. Each campus shall use multiple methods to educate students about sexual violence prevention. Metropolitan Learning Institute will also share information on sexual violence prevention with parents of enrolling students via the institution's website.

Students at Metropolitan Learning Institute campuses shall be offered general and specialized training in sexual violence prevention. Each institution will conduct a campaign, compliant with the requirements of the Violence Against Women Act, to educate the student population.

### ***Employees***

The first action of prevention occurs prior to commencement of employment. Applicants are required to complete and sign an employment application acknowledging and indicating agreement with the Metropolitan Learning Institute's policies.

New employees receive the Employee Handbook and sign that they have read and will abide by the School policies including policies about prevention of harassment and discrimination.

In addition, special training is given to individuals who hold responsibility for insuring compliance with Title IX.

### **Legislative Definitions**

- "Institution" shall mean any school or university chartered by the regents or incorporated by special act of the legislature that maintains a campus in New York.
- "Title IX Coordinator" shall mean the Title IX Coordinator and/or his or her designee or designees.
- "Bystander" shall mean a person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.
- "Code of Conduct" shall mean the written policies adopted by an Institution governing student behavior, rights, and responsibilities while such student is matriculated in the Institution.
- "Confidentiality" may be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with State and Federal law, including but not limited to 20 U.S.C. 1092 (f) and 20 U.S.C. 1681 (a).
- "Privacy" may be offered by an individual when such individual is unable to offer confidentiality under law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate Metropolitan Learning Institute officials.
- "Accused" shall mean a person accused of a violation who has not yet entered an Institution's judicial or conduct process.

- “Respondent” shall mean a person accused of a violation who has entered an Institution’s judicial or conduct process.
- “Reporting Individual” shall encompass the terms victim, survivor, complainant, claimant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.
- “Sexual activity” shall have the same meaning as “sexual act” and “sexual assault” as provided in 18 U.S.C. 46 ) and 18 U.S.C. 2246(3)
- “Domestic violence”, “dating violence”, “stalking” and “sexual assault” shall be defined by each Institution in its Code of Conduct in a manner consistent with applicable federal definitions.

### **Hate Crimes**

All students, staff, and faculty at Metropolitan Learning Institute have the right to live, work, study, and grow in an environment free from all forms of violence, whether physical or psychological. As kingdom people, members of the Metropolitan Learning Institute community are responsible to foster this environment by reporting any behavior in violation of this policy immediately to appropriate authorities, including the Campus Director’ Office and/or Human Resources.

Bias-related incidents are behaviors which constitute an expression of hostility, against the person or property of another because of perceived or actual personal characteristics, such as their race, religion, ethnicity, gender, sexual orientation, or disability. According to New York Penal Law Section 485 and the Clery Act, a person commits a hate crime when he or she commits a specified criminal offense and either:

- intentionally selects the person against whom the offense is committed or intended to be committed in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ethnicity, ancestry, gender or gender identity, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct, or
- intentionally commits the act or acts constituting the offense in whole or in substantial part because of a belief or perception regarding the race, color, national origin, ethnicity, ancestry, gender or gender identity, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

Metropolitan Learning Institute is required to report statistical incidence of bias crimes on or around campus annually as part of the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the Clery Act). Penalties for bias-related crimes are very serious and range from fines to imprisonment for lengthy periods, depending on the nature of the underlying criminal offense, the use of violence or previous conviction of the offender. Hate crimes are prohibited, in separate ways, by New York State law and Metropolitan Learning Institute policy. Thus, offenders may be prosecuted under New York State criminal statutes and subject to disciplinary action by Metropolitan Learning Institute. The School may pursue disciplinary action while criminal action is pending, or

even if criminal justice authorities choose not to prosecute. In addition to any criminal penalties, students, staff or faculty who commit bias crimes are also subject to School disciplinary procedures where a range of sanctions is available both up to and including suspension, expulsion or termination of employment.

In order to effectively handle and investigate incidents of bias related crimes and prevent future occurrences of such crimes, victims or witnesses of a hate crime are encouraged to immediately report incidents to the following offices depending on the severity and nature of the offense:

- Contact the local police precinct and file a police report
- Contact either the Campus Director (any campus)

**Main Campus:**  
97-77 Queens Blvd., 9<sup>th</sup> Floor  
Rego Park, NY 11374  
Phone (718) 897-0482

**Extension:**  
440 89th Street, 4th Fl.  
Brooklyn, NY 11209  
Phone (718) 492-2120

or the Campus Security Guard (Brooklyn) at (718) 492-2120 (Brooklyn) or Lefrak Security (RP) at (718) 896-7267.

- Employees:
  - o Contact Human Resources/Title IX Coordinator (718) 897-0482 ext. 13

Please remember that any evidence such as graffiti, e-mails, written notes or voice mail messages should be preserved.

Depending on the severity and offense committed the appropriate office in conjunction, when applicable, with local authorities will investigate and follow the appropriate school adjudication procedures.

### **Clery Definitions**

The following definitions are used for reporting crimes in compliance with The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 USC § 1092(f))

The following crime definitions are taken from the Federal Bureau of Investigation's Uniform Crime Reporting Handbook (UCR) as required by Clery Act regulations.

***Aggravated Assault:*** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accompanied by the use of a weapon or by means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used which could and probably would result in serious personal injury if the crime were successfully completed.)

**Arson:** Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another, etc.

**Burglary:** The unlawful entry of a structure to commit a felony or a theft. For reporting purposes this definition includes:

unlawful entry with intent to commit a larceny or felony; breaking and entering with intent to commit a larceny;

housebreaking; safecracking; and all attempts to commit any of the aforementioned.

**Criminal Homicide - Manslaughter by Negligence:** The killing of another person through gross negligence.

**Criminal Homicide - Murder and Non-negligent Manslaughter:** The willful (non-negligent) killing of one human being by another. Note: Deaths caused by negligence, attempts to kill, suicides, accidental deaths and justifiable homicides are excluded.

**Drug Abuse Violations:** The violation of laws prohibiting the production, distribution, and/or use of certain controlled substances and the equipment or devices utilized in their preparation and/or use. The unlawful cultivation, manufacture, distribution, sale, purchase, use, possession, transportation, or importation of any controlled drug or narcotic substance.

Arrests for violations of State and local laws, specifically those relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs.

**Liquor Law Violations:** The violation of State or local laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, or use of alcoholic beverages, not including driving under the influence and drunkenness.

**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. (Classify as motor vehicle theft all cases where automobiles are taken by persons not having lawful access even though the vehicles are later abandoned—including joyriding.)

**Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Weapons – Carrying, Possessing, Etc.:** The violation of laws or ordinances prohibiting the manufacture, sale, purchase, transportation, possession, concealment, or use of firearms, cutting instruments, explosives, incendiary devices, or other deadly weapons.

### **Hate Crimes**

**Race:** A preformed negative attitude toward a group of persons who possess common physical characteristics (e.g. color of skin, eyes, and/or hair; facial features, etc.) genetically transmitted by descent and heredity which distinguish them as a distinct division of humankind.

**Gender:** A preformed negative opinion or attitude toward a group of persons because those persons are male or female.

**Religion:** A preformed negative opinion or attitude toward a group of persons who share the same religious beliefs regarding the origin and purpose of the universe and the existence or nonexistence of a supreme being (e.g., Catholics, Jews, Muslims, atheists).

***Sexual Orientation:*** A preformed negative opinion or attitude toward a group of persons based on their sexual attraction toward, and responsiveness to, members of their own sex or members of the opposite sex (e.g., gays, lesbians, heterosexuals).

***Ethnicity/National Origin:*** A preformed negative opinion or attitude toward a group of persons of the same race or national origin who share common or similar traits, languages, customs and traditions (e.g., Arabs, Hispanics).

***Disability:*** A preformed negative opinion or attitude toward a group of persons based on their physical or mental impairments/challenges, whether such disability is temporary or permanent, congenital or acquired by heredity, accident, injury, advanced age or illness.

***Gender Identity:*** A preformed negative opinion or attitude toward a group of persons based on their gender identity and biological sex not being congruent; the individuals may identify as transsexual or as another transgender category.

**Additional Reportable Offenses if they are Hate Crimes:**

***Larceny-Theft (Except Motor Vehicle):*** The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another. Attempted larcenies are included. Embezzlement, confidence games, forgery, worthless checks, etc., are excluded.

***Simple Assault:*** An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration, or loss of consciousness.

***Intimidation:*** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct, but without displaying a weapon or subjecting the victim to actual physical attack.

***Destruction/Damage/Vandalism of Property:*** To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

***Weapon Law Violations:*** The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as:

manufacture, sale, or possession of deadly weapons; carrying deadly weapons, concealed or openly; furnishing deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned.

***Sex Offenses-Forcible***

Any sexual act directed against another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent.

***Forcible Rape***

The carnal knowledge of a person, forcibly and/or against the person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth). This offense includes the forcible rape of both males and females.

***Forcible Sodomy***

Oral or anal sexual intercourse with another person, forcibly and/or against that person's will; or not forcibly against the person's will where the victim is incapable of giving

consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity.

***Sexual Assault with an Object***

The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacity. An object or instrument is anything used by the offender other than the offender's genitalia.

***Forcible Fondling***

The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.

***Sex Offenses-Nonforcible***

Incidents of unlawful, nonforcible sexual intercourse.

***Incest***

Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

***Statutory Rape***

Nonforcible sexual intercourse with a person who is under the statutory age of consent.

***Rape***

The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

Hierarchy Rule: A requirement in the FBI's UCR program that, for purposes of reporting crimes in that system, when more than one criminal offense was committed during a single incident, only the most serious offense be counted.

**Newly Added Reporting categories: (Campus Sexual Violence Elimination Act (Campus SaVE), March 7, 2013).**

***Domestic Violence:***

- i. A felony or misdemeanor crime of violence committed—
  - a) By a current or former spouse or intimate partner of the victim;
  - b) By a person with whom the victim shares a child in common;
  - c) By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
  - d) By a person similarly situated to a spouse of the victim under the domestic or 35 family violence laws of the jurisdiction in which the crime of violence occurred; or
  - e) By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

ii. For the purposes of complying with the requirements of § 668.46 and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

**Dating Violence:** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim.

i. The existence of such a relationship shall be determined based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

ii. For the purposes of this definition—

a) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

b) Dating violence does not include acts covered under the definition of domestic violence.

iii. For the purposes of complying with the requirements of § 668.46 and § 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

### **Stalking**

i. Engaging in a course of conduct directed at a specific person that would cause a reasonable person to—

A. Fear for the person's safety or the safety of others; or

B. Suffer substantial emotional distress.

ii. For the purposes of this definition—

A. Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about a person, or interferes with a person's property.

B. Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.

### **Other Clery Act Definitions**

**Business Day:** Monday through Friday, excluding any day when the institution is closed.

**Bystander Intervention:** Safe and positive options that may be carried out by an individual or individuals to prevent harm or intervene when there is a risk of dating violence, domestic violence, sexual assault, or stalking.

### **Campus**

i. Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of, or in a manner related to, the institution's educational purposes, and

ii. Any building or property that is within or reasonably contiguous to the area identified in paragraph (i) of this definition, that is owned by the institution but controlled by another person, is frequently used by students, and supports institutional purposes (such as a food or other retail vendor).

***Campus Security Authority***

- i. A campus police department or a campus security department of an institution.
- ii. Any individual or individuals who have responsibility for campus security but who do not constitute a campus police department or a campus security department under paragraph (i) of this definition, such as an individual who is responsible for monitoring entrance into institutional property.
- iii. Any individual or organization specified in an institution's statement of campus security policy as an individual or organization to which students and employees should report criminal offenses.
- iv. An official of an institution who has significant responsibility for student and campus activities, including, but not limited to, student housing, student discipline, and campus judicial proceedings.

***Clery Geography***

***On-Campus-*** Defined as: (1) Any building or property owned or controlled by an institution within the same reasonably contiguous geographic area and used by the institution in direct support of or in a manner related to the institution's educational purposes, including residence halls; and (2) Any building or property that is within or reasonably contiguous to the area identified in paragraph (1), that is owned by the institution but controlled by another person, (2), that is frequently used by students and supports institutional purposes (such as a food or retail vendor).

***Non-Campus Building Or Property-*** Defined as: (1) Any building or property owned or controlled by a student organization that is officially recognized by the institution; or (2) Any building or property owned or controlled by an institution that is used in direct support of or in relation to the institution's educational purposes, is frequently used by students, and is not within the same reasonably contiguous geographic area of the institution.

***Public Property*** - Defined as: All public property, including thoroughfares, streets, sidewalks, and parking facilities, that is within the campus or immediately adjacent to and accessible from the campus.

o The Metropolitan Learning Institute Crime statistics do not include crimes that occur in privately owned homes or businesses within or adjacent to the campus boundaries.

***Federal Bureau of Investigation's (FBI) Uniform Crime Reporting (UCR) Program:*** A nationwide, cooperative statistical effort in which city, university and school, county, State, Tribal, and federal law enforcement agencies voluntarily report data on crimes brought to their attention. The UCR program also serves as the basis for the definitions of crimes in Appendix A to this subpart and the requirements for classifying crimes in this subpart.

***Pastoral Counselor:*** A person who is associated with a religious order or denomination is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor.

**Professional Counselor:** A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification.

**Programs to Prevent Dating Violence, Domestic Violence, Sexual Assault, and Stalking**

i. Comprehensive, intentional, and integrated programming, initiatives, strategies, and campaigns intended to end dating violence, domestic violence, sexual assault, and stalking that—

A. Are culturally relevant, inclusive of diverse communities and identities, sustainable, responsive to community needs, and informed by research or assessed for value, effectiveness, or outcome; and

B. Consider environmental risk and protective factors as they occur on the individual, relationship, institutional, community, and societal levels.

ii. Programs to prevent dating violence, domestic violence, sexual assault, and stalking include both primary prevention and awareness programs directed at incoming students and new employees and ongoing prevention and awareness campaigns directed at students and employees, as defined in paragraph (j)(2) of § 668.46.

**Referred for Campus Disciplinary Action:** The referral of any person to any campus official who initiates a disciplinary action of which a record is kept and which may result in the imposition of a sanction.

**Sexual Assault:** An offense that meets the definition of rape, fondling, incest, or statutory rape as used in the FBI's UCR program and included in Appendix A of Subpart D of § 668.

C. Substantial emotional distress means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

iii. For the purposes of complying with the requirements of this section and section 668.41, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting.

**Test:** Regularly scheduled drills, exercises, and appropriate follow-through activities, designed for assessment and evaluation of emergency plans and capabilities.

**Definitions from the New York State Education Law Article 129-B**

**Bystander:** A person who observes a crime, impending crime, conflict, potentially violent or violent behavior, or conduct that is in violation of rules or policies of an institution.

**Confidentiality:** May be offered by an individual who is not required by law to report known incidents of sexual assault or other crimes to institution officials, in a manner consistent with state and federal law, including but not limited to 20 U.S.C.

1092(f) and 20 U.S.C. 1681(a). Licensed mental health counselors, medical providers and pastoral counselors are examples of institution employees who may offer confidentiality.

**Privacy:** May be offered by an individual when such individual is unable to offer confidentiality under the law but shall still not disclose information learned from a reporting individual or bystander to a crime or incident more than necessary to comply with this and other applicable laws, including informing appropriate institution officials.

Institutions may substitute another relevant term having the same meaning, as appropriate to the policies of the institution.

**Accused:** A person accused of a violation who has not yet entered an institution's judicial or conduct process.

**Respondent:** A person accused of a violation who has entered an institution's judicial or conduct process.

**Reporting Individual:** Shall encompass the terms victim, survivor, complainant, witness with victim status, and any other term used by an institution to reference an individual who brings forth a report of a violation.

### New York State Penal Law Definitions

#### S 120.40 Definitions.

For purposes of sections 120.45, 120.50, 120.55 and 120.60 of this article:

1. "**Kidnapping**" shall mean a kidnapping crime defined in article one hundred thirty-five of this chapter.
2. "**Unlawful imprisonment**" shall mean an unlawful imprisonment felony crime defined in article one hundred thirty five of this chapter.
3. "**Sex offense**" shall mean a felony defined in article one hundred thirty of this chapter, sexual misconduct, as defined in section 130.20 of this chapter, sexual abuse in the third degree as defined in section 130.55 of this chapter or sexual abuse in the second degree as defined in section 130.60 of this chapter.
4. "**Immediate family**" means the spouse, former spouse, parent, child, sibling, or any other person who regularly resides or has regularly resided in the household of a person.
5. "**Specified predicate crime**" means:
  - a. a violent felony offense;
  - b. a crime defined in section 130.20, 130.25, 130.30, 130.40, 130.45, 130.55, 130.60, 130.70 or 255.25, 255.26 or 255.27;
  - c. assault in the third degree, as defined in section 120.00; menacing in the first degree, as defined in section 120.13; menacing in the second degree, as defined in section 120.14; coercion in the first degree, as defined in section 135.65; coercion in the second degree, as defined in section 135.60; aggravated harassment in the second degree, as defined in section 240.30; harassment in the first degree, as defined in section 240.25; menacing in the third degree, as defined in section 120.15; criminal mischief in the third degree, as defined in section 145.05; criminal mischief in the second degree, as defined in section 145.10; criminal mischief in the first degree, as defined in section 145.12; criminal tampering in the first degree, as defined in section 145.20; arson in the fourth degree, as defined in section 150.05; arson in the third degree, as defined in section 150.10; criminal contempt in the first degree, as defined in section 215.51; endangering the welfare of a child, as defined in section 260.10; or
  - d. stalking in the fourth degree, as defined in section 120.45;

stalking in the third degree, as defined in section 120.50;  
 stalking in the second degree, as defined in section 120.55;

or

e. an offense in any other jurisdiction which includes all of the essential elements of any such crime for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed.

**S 120.45 Stalking in the fourth degree.** (NB Effective October 21, 2014)

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

For the purposes of subdivision two of this section, "following" shall include the unauthorized tracking of such person's movements or location through the use of a global positioning system or other device.

Stalking in the fourth degree is a class B misdemeanor.

**S 120.50 Stalking in the third degree.**

A person is guilty of stalking in the third degree when he or she:

1. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against three or more persons, in three or more separate transactions, for which the actor has not been previously convicted; or
2. Commits the crime of stalking in the fourth degree in violation of section 120.45 of this article against any person, and has previously been convicted, within the preceding ten years of a specified predicate crime, as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or
3. With intent to harass, annoy or alarm a specific person, intentionally engages in a course of conduct directed at such person which is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex

offense against, or the kidnapping, unlawful imprisonment or death of such person or a member of such person's immediate family; or

4. Commits the crime of stalking in the fourth degree and has previously been convicted within the preceding ten years of stalking in the fourth degree.

Stalking in the third degree is a class A misdemeanor.

### **S 120.55 Stalking in the second degree.**

A person is guilty of stalking in the second degree when he or she:

1. Commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 of this article and

in the course of and in furtherance of the commission of such offense: (i) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, shotgun, machine gun, electronic dart gun, electronic stun gun, cane sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sandclub, slingshot, slungshot, shiruken, "Kung Fu Star", dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument or deadly weapon; or (ii) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun or other firearm; or

2. Commits the crime of stalking in the third degree in violation of subdivision three of section 120.50 of this article against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime as defined in subdivision five of section 120.40 of this article, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or

3. Commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree as defined in subdivision four of section 120.50 of this article against any person; or

4. Being twenty-one years of age or older, repeatedly follows a person under the age of fourteen or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of fourteen in reasonable fear of physical injury, serious physical injury or death; or

5. Commits the crime of stalking in the third degree, as defined in subdivision three of section 120.50 of this article, against more persons, in ten or more separate transactions, for which the actor has not been previously convicted.

Stalking in the second degree is a class E felony.

### **S 120.60 Stalking in the first degree.**

A person is guilty of stalking in the first degree when he or she commits the crime of stalking in the third degree as defined in subdivision three of section 120.50 or stalking in the second degree as defined in section 120.55 of this article and, in the course and furtherance thereof, he or she:

1. intentionally or recklessly causes physical injury to the victim of such crime; or

2. commits a class A misdemeanor defined in article one hundred thirty of this chapter, or a class E felony defined in section 130.25, 130.40 or 130.85 of this chapter, or a class D felony defined in section 130.30 or 130.45 of this chapter.

Stalking in the first degree is a class D felony.

**S 120.70 Luring a child.**

1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 of this chapter; an offense as defined in section 125.25 or 125.27 of this chapter; a felony offense that is a violation of article one hundred thirty of this chapter; an offense as defined in section 135.25 of this chapter; an offense as defined in sections 230.30, 230.33 or 230.34 of this chapter; an offense as defined in sections 255.25, 255.26, or 255.27 of this chapter; or an offense as defined in sections 263.05, 263.10, or 263.15 of this chapter. For purposes of this subdivision "child" means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.
2. Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense of luring a child in violation of this section shall be deemed respectively, a class C felony or class D felony.

**S 130.00 Sex offenses; definitions of terms.**

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 anus.
3. "Sexual contact" 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.
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.
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, rectum or anus, is capable of causing physical injury.

10. "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.

11. "Aggravated sexual contact" means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis, rectum or anus 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" shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.

#### **Lack of Consent (S 130.05)**

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)*

1. 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)*

2. 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 health care 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*)

i. a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes of this paragraph, “employee” means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, rehabilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably

should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult.

### **New York State Penal Law Definitions (Articles S 120.40 – S 130.96)**

#### **S 130.10 Sex offenses; limitation; 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.
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, a client or patient and the actor is a health care provider, or committed to the care and custody or supervision of the state department of corrections and community supervision or a hospital and the actor is an employee, 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.

#### **S 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

(b) Connect the defendant with the commission of the offense or attempted offense.

**S 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.

Sexual misconduct is a class A misdemeanor.

**S 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.

**S 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.

**S 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.

**S 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. Criminal sexual act in the third degree is a class E felony.

**S 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.

Criminal sexual act in the second degree is a class D felony.

**S 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:

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 first degree is a class B felony.

**S 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.

**S 130.53 Persistent sexual abuse.** (NB Effective until November 1, 2014)

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.5 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. Persistent sexual abuse is a class E felony.

**S 130.53 Persistent sexual abuse.** (NB Effective November 1, 2014)

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, 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.

**S 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.

**S 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.

**S 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.

**S 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, 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

(b) He or she 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.

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.

**S 130.66 Aggravated sexual abuse in the third degree.**

Aggravated sexual abuse in the third degree is a class D felony.

**S 130.67 Aggravated sexual abuse in the second degree.**

1. 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:

(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.

**S 130.70 Aggravated sexual abuse in the first degree.**

1. 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:

(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.

**S 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.

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.

**S 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.

**S 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 majora 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.

**S 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.

**S 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.

**S 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.

**S 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.

**S 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