

Sexual Abuse or Exploitation 18 Pa. C.S. Definitions

- a. Rape: A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:
 - i. By forcible compulsion
 - ii. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
 - iii. Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring
 - iv. Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance
 - v. Who suffers from a mental disability which renders the complainant incapable of consent
 - vi. Rape of a child: a person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age
 - vii. Rape of a child with serious bodily injury: a person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense (18 Pa. C.S. §3121).

- b. Statutory sexual assault
 - i. Felony of the second degree: except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either:
 1. Four years older but less than eight years older than the complainant
 2. Eight years older but less than 11 years older than the complainant
 - ii. Felony of the first degree: a person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older than the complainant and the complainant and the person are not married to each other (18 Pa. C.S. §3122.1)

- c. Involuntary deviate sexual intercourse: a person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:
 - i. By forcible compulsion
 - ii. By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
 - iii. Who is unconscious or where the person knows that the complainant is aware that the sexual intercourse is occurring
 - iv. Where the person has substantially impaired the complainant's power to appraise or control his or her conducts by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance
 - v. Who suffers from a mental disability which renders him or her incapable of consent

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- vi. Who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.
 - vii. Involuntary deviate sexual intercourse with a child: a person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age
 - viii. Involuntary deviate sexual intercourse with a child with serious bodily injury: a person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.
 - ix. Definition: as used in this section, the term “forcible compulsion” includes, but is not limited to, compulsion resulting in another person’s death, whether the death occurred before, during, or after the sexual intercourse (18 Pa. C.S. §3123)
- d. Sexual assault: except in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant’s consent (18 Pa. C.S. §3124.1)
- e. Institutional sexual assault: except as provided under subsection (a.1) and in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient, or resident.
- i. Institutional sexual assault of a minor: a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident who is under 18 years of age.
 - ii. Schools: Except as provided in section 3121, 3122.1, 3123, 3124.1, and 3125, a person who is a volunteer or an employee of a school or any other person who has direct contact with a student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.
 - 1. As used in this subsection, the following terms shall have the meanings given to them in this paragraph:

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- a. Direct contact: care, supervision, guidance, or control
- b. Employee:
 - i. Includes a teacher, a supervisor, a supervising principal, a principal, an assistant principal, a vice principal, a director of vocational education, a dental hygienist, a visiting teacher, a home and school visitor, a school counselor, a child nutrition program specialist, a school librarian, a school secretary the selection of whom is on the basis of merit as determined by eligibility lists, a school nurse, a substitute teacher, a janitor, a cafeteria worker, a bus driver, a teacher aide and any other employee who has direct contact with school students.
 - ii. An independent contractor who has a contract with a school for the purpose of performing a service for the school, a coach, an athletic trainer, a coach hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association or an athletic trainer hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association.
 - iii. The term does not include: a student employed at the school, an independent contractor or any employee of an independent contractor who has no direct contact with school students
- c. School: a public or private school, intermediate unit, or area vocational-technical school
- d. Volunteer: the term does not include a school student
 - iii. Child care: except as provided in sections 3121, 3122.1, 3123, 3124.1, and 3125, a person who is a volunteer or an employee of a center for children commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse, or indecent contact with a child who is receiving services at the center (18 Pa. C.S. §3124.2).
- f. Aggravated indecent assault: except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:
 - i. The person does so without the complainant's consent
 - ii. The person does so by forcible compulsion
 - iii. The person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
 - iv. The complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring
 - v. The person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance

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- vi. The complainant suffers from a mental disability which renders him or her incapable of consent
 - vii. The complainant is less than 13 years of age
 - viii. The complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other
 - ix. Aggravated indecent assault of a child: a person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5), or (6) and the complainant is less than 13 years of age (18 Pa. C.S. §3125)
- g. Indecent assault: a person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine, or feces for the purpose of arousing sexual desire in the person or the complainant and:
- i. The person does so without the complainant's consent
 - ii. The person does so by forcible compulsion
 - iii. The person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution
 - iv. The complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring
 - v. The person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance
 - vi. The complainant suffers from a mental disability which renders the complainant incapable of consent
 - vii. The complainant is less than 13 years of age
 - viii. The complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other (18 Pa. C.S. §3126)
- h. Indecent exposure: a person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront, or alarm (18 Pa. C.S. §3127)
- i. Incest: except as provided under subsection (b), a person is guilty of incest, a felony of the second degree, if that person knowingly marries or cohabits or has sexual intercourse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew, or niece of the whole blood.
- i. Incest of a minor: a person is guilty of incest of a minor, a felony of the second degree, if that person knowingly marries, cohabits with, or has sexual intercourse with a complainant who is an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew, or niece of the whole blood and is under the age of 13 years *or* is 13 to 18 years of age and the person is four or

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- more years older than the complainant.
- ii. The relationships referred to in this section include blood relationships without regard to legitimacy, and relationship of parent and child by adoption.
- j. Prostitution: a person is guilty of prostitution if he or she is an inmate of a house of prostitution or otherwise engages in sexual activity as a business *or* loiters in or within view of any public place for the purpose of being hired to engage in sexual activity
- i. Promoting prostitution: a person who knowingly promotes prostitution of another commits a misdemeanor or felony as provided in subsection (c) of this section. The following acts shall, without limitation of the foregoing, constitute promoting prostitution:
 1. Owning, controlling, managing, supervising or otherwise keeping, along or in association with others, a house of prostitution or a prostitution business
 2. Procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate
 3. Encouraging, inducing, or otherwise intentionally causing another to become or remain a prostitute
 4. Soliciting a person to patronize a prostitute
 5. Procuring a prostitute for a patron
 6. Transporting a person into or within this Commonwealth with intent to promote the engaging in prostitution by that person, or procuring or paying for transportation with that intent
 7. Leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means
 8. Soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection
 - ii. Living off prostitutes: a person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is knowingly supported in whole or substantial part by the proceeds of prostitution is promoting prostitution in violation of subsection (b) of this section
 - iii. Patronizing prostitutes: a person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity (18 Pa. C.S. §5902)
- k. Sexual abuse of children: as used in this section, "prohibited sexual act" means sexual intercourse as defined in 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.
- i. Photographing, videotaping, depicting on computer or filming sexual acts: any person who causes or knowingly permits a child under the age of 18 years to

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- engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.
- ii. Dissemination of photographs, videotapes, computer depictions and films
 1. Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.
 2. A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree
 - iii. Possession of child pornography
 1. Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense
 2. A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.
 - iv. Evidence of age: in the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person
 - v. Mistake as to age: under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense
 - vi. Exceptions: this section does not apply to any material that is possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental, or judicial purpose (18 Pa. C.S. §6312)
 - I. Unlawful contact with a minor: a person commits an offense if he is intentionally in contact with a minor, or a law enforcement acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth
 - i. Any of the offenses enumerated in Chapter 31 (relating to sexual offenses)
 - ii. Open lewdness as defined in section 5901 (relating to open lewdness)
 - iii. Prostitution as defined in section 5902 (relating to prostitution and related offenses)

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- iv. Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances)
 - v. Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children)
 - vi. Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children) (18 Pa. C.S. §6318)
- m. Sexual exploitation of children: a person commits the offense of sexual exploitation of children if he procures for another person a child under 18 years of age for the purpose of sexual exploitation (18 Pa. C.S. §6320)