

NEW YORK CRIME DEFINITIONS

Sexual Assault

New York Penal Law – Article 130 Sex Offenses

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§130.53 Persistent sexual abuse: 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.

§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.

§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.

§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.

§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.

§130.66 Aggravated sexual abuse in the third degree: (1) A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person: (a) By forcible compulsion; or (b) When the other person is incapable of consent by reason of being physically helpless; or (c) When the other person is less than eleven years old. (2) A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated. (3) Conduct performed for a valid medical purpose does not violate the provisions of this section. Aggravated sexual abuse in the third degree is a class D felony.

§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.

§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.

§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.

§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.

§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.

§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.

§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.

§130.86 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.

New York Penal Law – Article 255 Offenses Affecting the Marital Relationship

§255.25 Incest in the third degree. A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece. Incest in the third degree is a class E felony.

§255.26 Incest in the second degree. A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, as defined in section 130.30 of this part, or criminal sexual act in the second degree, as defined in section 130.45 of this part, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or the half blood, uncle, aunt, nephew or niece. Incest in the second degree is a class D felony.

§255.27 Incest in the first degree. A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, as defined in subdivision three or four of section 130.35 of this part, or criminal sexual act in the first degree, as defined in subdivision three or four of section 130.50 of this part, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother or sister of either the whole or half blood, uncle, aunt, nephew or niece. Incest in the first degree is a class B felony.

Consent

New York Penal Law – Article 130 Sex Offenses

§130.05(1): 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.

§130.05(2): Lack of consent results from: (a) Forcible compulsion; or (b) incapacity to consent; or (c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or (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, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.

§130.05(3): 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 or supervision of the state department of corrections and community supervision 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 who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. For purposes of this paragraph, "employee" means (i) an employee of the state department of corrections and community supervision who, as part of his or her employment, performs duties: (A) in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional parole services or direct supervision to inmates; or (B) of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or (ii) an employee of the office of mental health who, as part of his or her employment, performs duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law in which the inmate is confined at the time of the offense, consisting of providing custody, medical or mental health services, or direct supervision to such inmates; or (iii) a person, including a volunteer, providing direct services to inmates in a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of corrections and community supervision or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; 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. For purposes of this paragraph, "employee" shall also mean a person,

including a volunteer or a government employee of the state department of corrections and community supervision or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; 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 in which such person is committed to or placed at the time of the offense who, as part of his or her employment, performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, vocational training, or direct supervision to persons committed to or placed in a residential facility operated by the office of children and family services; 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; or
- (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 who has consented to such contact.

Domestic Violence

New York Social Services Law

§459-a(1): "Victim of domestic violence" means any person over the age of sixteen, any married person or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, or strangulation; and (i) such act or acts have resulted in actual physical or emotional injury or have created a substantial risk of physical or emotional harm to such person or such person's child; and (ii) such act or acts are or are alleged to have been committed by a family or household member.

§459-a(2): “Family or household members” mean the following individuals: (a) persons related by consanguinity or affinity; (b) persons legally married to one another; (c) persons formerly married to one another regardless of whether they still reside in the same household; (d) persons who have a child in common regardless of whether such persons are married or have lived together at any time; (e) unrelated persons who are continually or at regular intervals living in the same household or who have in the past continually or at regular intervals lived in the same household; (f) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors that may be considered in determining whether a relationship is an “intimate relationship” include, but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an “intimate relationship”; or (g) any other category of individuals deemed to be a victim of domestic violence as defined by the office of children and family services in regulation.

§459-a(3): “Parent” means a natural or adoptive parent or any individual lawfully charged with a minor child's care or custody.

Stalking

New York Penal Law – Article 120 Assault and Related Offenses

§120.45 Stalking in the fourth degree: 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 purposes of subdivision two of this section, “following” shall include the unauthorized tracking of such person's movements or location through the use of global positioning system or other device. Stalking in the fourth degree is a class B misdemeanor.

§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 been previously 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 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.

§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, shirken, "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, 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 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 ten or 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.

§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.