

TITLE LXII

CRIMINAL CODE

CHAPTER 632-A

SEXUAL ASSAULT AND RELATED OFFENSES

Section 632-A:1

632-A:1 Definitions. – In this chapter:

I. "Actor" means a person accused of a crime of sexual assault.

I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.

I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.

I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.

II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:

(a) Physical or mental torment or abuse.

(b) Kidnapping, false imprisonment or extortion.

(c) Public humiliation or disgrace.

III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.

IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.

V. (a) "Sexual penetration" means:

(1) Sexual intercourse; or

(2) Cunnilingus; or

(3) Fellatio; or

(4) Anal intercourse; or

(5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or

(6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or

(7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)-(6) on the actor, on another person, or on himself.

(b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.

(c) "Objects" include animals as defined in RSA 644:8, II.

VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.

Source. 1975, 302:1. 1979, 127:1. 1981, 553:10. 1986, 132:2. 1992, 254:3-5. 1994, 185:1. 1998, 240:1. 1999, 177:1, eff. Aug. 30, 1999. 2008, 334:8, eff. Jan. 1, 2009.

Section 632-A:2

632-A:2 Aggravated Felonious Sexual Assault. –

I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:

(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or

(2) Uses this position as such provider to coerce the victim to submit.

(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(l) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who

has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

Source. 1975, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 254:6. 1994, 185:2. 1995, 66:1. 1997, 220:2. 1998, 240:2. 1999, 177:2. 2003, 226:1, 2, eff. Jan. 1, 2004. 2008, 334:13, eff. Jan. 1, 2009.

Section 632-A:3

632-A:3 Felonious Sexual Assault. – A person is guilty of a class B felony if such person:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.

Source. 1975, 302:1. 1981, 415:4. 1985, 228:4. 1997, 220:3. 2003, 226:3, 4. 2006, 162:1, eff. Jan. 1, 2007. 2008, 334:9, eff. Jan. 1, 2009.

Section 632-A:4

632-A:4 Sexual Assault. –

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.

(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.

III. A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person when the actor is in a position of authority over the person under any of the following circumstances:

(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph III shall not be considered a defense.

Source. 1975, 302:1. 1985, 228:5. 2003, 226:5; 316:7. 2005, 290:1, eff. Jan. 1, 2006. 2008, 334:14, eff. Jan. 1, 2009.

Section 632-A:5

632-A:5 Spouse as Victim; Evidence of Husband and Wife. – An actor commits a crime under this chapter even though the victim is the actor's legal spouse. Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this chapter.

Source. 1975, 302:1. 1981, 415:1, eff. Aug. 22, 1981.

Section 632-A:6

632-A:6 Testimony and Evidence. –

I. The testimony of the victim shall not be required to be corroborated in prosecutions under this chapter.

II. Prior consensual sexual activity between the victim and any person other than the actor shall not be admitted into evidence in any prosecution under this chapter.

III. Consent is no defense if, at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act. A jury is not required to infer consent from a victim's failure to physically resist a sexual assault.

III-a. The victim's manner of dress at the time of the sexual assault shall not be admitted as evidence in any prosecution under this chapter to infer consent.

IV. At the request of a party the court shall, in cases under RSA 632-A, order witnesses excluded so

that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. This does not authorize exclusion of a party who is a natural person or a victim of the crime, or a person whose presence is shown by a party to be essential to the presentation of the party's cause.

V. In any sexual assault case under RSA 632-A where the victim is 16 years of age or younger, and the defense has listed as a witness or subpoenaed a parent or parents to testify in the case and requested that the parent or parents be sequestered, the court shall appoint a guardian ad litem to determine the best interests of the minor victim. The guardian ad litem shall make a recommendation to the court, based on the preferences and best interests of the victim, as to whether the parent or parents should be permitted to sit with the victim in the court room during the duration of the trial.

Source. 1975, 302:1. 1992, 254:7. 1996, 5:1. 2005, 148:1, eff. Jan. 1, 2006.

Section 632-A:7

632-A:7 Limitations of Prosecutions. – [Repealed 1990, 213:3, eff. April 27, 1990.]

Section 632-A:8

632-A:8 In Camera Testimony. – In the cases where the victim is under 16 years of age, the victim's testimony shall be heard in camera unless good cause is shown by the defendant. The record of the victim's testimony shall not be sealed and all other testimony and evidence introduced during the proceeding shall be public.

Source. 1979, 195:1, eff. Aug. 7, 1979.

Section 632-A:9

632-A:9 Speedy Trial. – In any action under this chapter involving a victim 16 years of age or under or a victim 65 years of age or older, the court and the department of justice shall take appropriate action to ensure a speedy trial to minimize the length of time the victim must endure the stress of involvement in the proceeding. In ruling on any motion or request for a delay or continuance of proceedings, the court shall consider any adverse impact the delay or continuance may have on the well-being of the victim or any witness who is 16 years of age or under or 65 years of age or older. This provision establishes a right to a speedy trial for the victim and shall not be construed as creating any additional rights for the defendant.

Source. 1986, 225:2. 2003, 283:1, eff. Jan. 1, 2004.

Section 632-A:10

632-A:10 Prohibition From Child Care Service of Persons Convicted of Certain Offenses. –

I. A person is guilty of a class A felony if, having been convicted in this or any other jurisdiction of any felonious offense involving child pornography, or of a felonious physical assault on a minor, or of any sexual assault, he knowingly undertakes employment or volunteer service involving the care, instruction or guidance of minor children, including, but not limited to, service as a teacher, a coach, or worker of any type in child athletics, a day care worker, a boy or girl scout master or leader or worker, a summer camp counselor or worker of any type, a guidance counselor, or a school administrator of

any type.

II. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when applying or volunteering for service or employment of any type involving the care, instruction, or guidance of minor children, including, but not limited to, the types of services set forth in paragraph I.

III. A person is guilty of a class B felony if, having been convicted in this or any other jurisdiction of any of the offenses specified in paragraph I of this section, he knowingly fails to provide information of such conviction when making application for initial teacher certification in this state.

Source. 1988, 257:2, eff. Jan. 1, 1989.

Section 632-A:10-a

632-A:10-a Penalties. – Notwithstanding RSA 651:2, and except where an extended term is sought as provided in RSA 651:6:

I. A person convicted of aggravated felonious sexual assault under:

(a) RSA 632-A:2, I(1) shall be sentenced in accordance with subparagraph (b) and paragraphs II-V and may be sentenced to lifetime supervision under paragraph V.

(b) Any provision of RSA 632-A:2 shall be sentenced to a maximum sentence which is not to exceed 20 years and a minimum which is not to exceed 1/2 of the maximum.

II. If a court finds that a defendant has been previously convicted under RSA 632-A:2 or any other statute prohibiting the same conduct in another state, territory or possession of the United States, the defendant shall be sentenced to a maximum sentence which is not to exceed 40 years and a minimum which is not to exceed 1/2 of the maximum.

III. If the court finds that a defendant has been previously convicted of 2 or more offenses under RSA 632-A:2 or any other statute prohibiting the same conduct in another state, territory or possession of the United States, the defendant shall be sentenced to life imprisonment and shall not be eligible for parole at any time.

IV. In this section, the phrase ""previously convicted" shall mean any conviction obtained by trial on the merits, or negotiated plea with the assistance of counsel and evidencing a knowing, intelligent and voluntary waiver of the defendant's rights, provided, however, that previous imprisonment is not required.

V. (a) When a defendant pleads or is found guilty of aggravated felonious sexual assault under RSA 632-A:2, I(1), the judge may include in sentencing, in addition to any other penalties provided by law, a special sentence of lifetime supervision by the department of corrections. The defendant shall comply with the conditions of lifetime supervision which are imposed by the court or the department of corrections. Violation of any terms of lifetime supervisions shall be deemed contempt of court. The special sentence of lifetime supervision shall begin upon the release of the offender from incarceration, parole or probation.

(b) A person sentenced to lifetime supervision under subparagraph (a) may petition the court for release from lifetime supervision. The court shall grant a petition for release from a special sentence of lifetime supervision if:

(1) The person has not committed a crime for 15 years after his last conviction or release from incarceration, whichever occurs later; and

(2) The person is not likely to pose a threat to the safety of others if released from supervision.

(c) Prior to granting any petition pursuant to subparagraph V(b), the court shall provide notice to the county attorney who prosecuted the case, the victim advocate, and the victim or victim's family and

permit those parties to be heard on the petition. If the court denies the offender's petition, the offender may not file another application pursuant to this paragraph for 5 years from the date of the denial and shall include a risk assessment prepared at the offender's expense.

Source. 1992, 254:8. 1998, 7:1, 2; 240:5. 2006, 327:15, 16, eff. Jan. 1, 2007.

Section 632-A:10-b

632-A:10-b HIV Testing. –

I. The state shall administer to any person convicted of any offense under this chapter, except violations of RSA 632-A:10 or RSA 632-A:19, a test to detect in such person the presence of the etiologic agent for acquired immune deficiency syndrome.

I-a. The results of such test shall be disclosed to the person convicted and to the office of victim/witness assistance. The office of victim/witness assistance is authorized to disclose the test results to the county attorney victim/witness advocates and to the victim. The victim may be notified whether or not the victim has requested notification.

II. Notwithstanding RSA 141-F:7 and RSA 141-F:8, the state shall disclose results of a test administered pursuant to paragraph I and RSA 141-F:5, IV, to any person convicted, to the office of victim/witness assistance and may disclose the results to the victim.

III. The state shall provide counseling to the victim and the person convicted for such an offense regarding HIV disease, HIV testing for the victim in accordance with applicable law and referral for appropriate health care and support services.

IV. For purposes of this section:

- (a) "'HIV'" means "'human immune deficiency virus'" as defined in RSA 141-F:2, V.
- (b) "'Person convicted'" includes persons adjudicated under juvenile proceedings.
- (c) "'Victim'" means "'victim'" as defined in RSA 21-M:8-b, I(a).

Source. 1993, 138:1. 1994, 18:1, eff. June 21, 1994.

Section 632-A:10-c

632-A:10-c Limitations on Civil Actions. –

I. In this section "'victim'" means a person alleging to have been subjected to aggravated felonious sexual assault as defined in RSA 632-A:2, felonious sexual assault, as defined in RSA 632-A:3 or sexual assault as defined in RSA 632-A:4. The term "'victim'" shall include the parent, guardian, or custodian of such person if the person is less than 18 years of age or if the person is mentally incapable of meaningfully understanding or participating in the legal process.

II. Neither the defendant in an aggravated felonious sexual assault, felonious sexual assault or a sexual assault case nor the parent or legal guardian of such defendant shall commence or maintain a civil action against a victim of the crime for which the defendant is charged if both of the following circumstances exist:

(a) The criminal action is pending in a trial court of this state, of another state, or of the United States.

(b) The civil action is based upon statements or reports made by the victim that pertain to an incident from which the criminal action is derived.

III. The court shall dismiss without prejudice a civil action commenced or maintained in violation of paragraph II.

IV. The period of limitations for the bringing of a civil action described in paragraph II is tolled for

the period of time during which the criminal action is pending in a trial court of this state, or another state, or of the United States.

V. This section shall not apply:

(a) If the victim files a civil action based upon an incident from which the criminal action is derived against the defendant in the criminal action; or

(b) The court determines that there are reasonable grounds to believe that the delay would be prejudicial to the interest of justice.

Source. 1993, 356:1, eff. Aug. 5, 1993.

Registration of Sexual Offenders

Section 632-A:11-19

632-A:11 to 632-A:19 Repealed. – [Repealed 1996, 293:2, eff. Aug. 9, 1996.]

DNA Testing of Sexual Offenders

Section 632-A:20-20 to 24

632-A:20 to 632-A:24 Repealed. – [Repealed 2002, 183:2, eff. May 15, 2002.]