

XII. APPENDIX A: STATUTORY DEFINITIONS

State of Florida Statutes

Dating Violence (Fla. Stat. 784.046(d)): Violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

- (1) A dating relationship must have existed within the past 6 months;
- (2) The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
- (3) the frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

Domestic Violence (Fla. Stat. 741.28): Any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.

Family or household member means spouses, former spouses, persons related by blood or marriage, persons who are presently residing together as if a family or who have resided together in the past as if a family, and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, family or household members must be currently residing or have in the past resided together in the same single dwelling unit.

Sexual Assault (i.e., Sexual Battery as defined in Fla. Stat. 794.011):

(1) As used in this chapter:

(a) “Consent” means intelligent, knowing, and voluntary consent and does not include coerced submission. “Consent” shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) “Mentally defective” means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) “Mentally incapacitated” means temporarily incapable of appraising or controlling a person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) “Offender” means a person accused of a sexual offense in violation of a provision of this chapter.

(e) “Physically helpless” means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) “Retaliation” includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) “Serious personal injury” means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) “Sexual battery” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) “Victim” means a person who has been the object of a sexual offense.

(j) “Physically incapacitated” means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)-(d):

1. The victim is physically helpless to resist.
2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.
3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.
4. The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.
5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.
6. The victim is physically incapacitated.
7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.
 - (5)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.
 - (b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.
 - (c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(d) A person commits a felony of the first degree, punishable as provided in s. 775.082, s.775.083, s. 775.084, or s. 794.0115 if the person commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of a violation of:

1. Section 787.01(2) or s. 787.02(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. 800.04 or s. 847.0135(5);

2. Section 787.01(3)(a)2. or 3.;

3. Section 787.02(3)(a)2. or 3.;

4. Section 800.04;

5. Section 825.1025;

6. Section 847.0135(5); or

7. This chapter, excluding subsection (10) of this section.

(6)(a) The offenses described in paragraphs (5)(a)-(c) are included in any sexual battery offense charged under subsection (3).

(b) The offense described in paragraph (5)(a) is included in an offense charged under paragraph (4)(a).

(c) The offense described in paragraph (5)(b) is included in an offense charged under paragraph (4)(b).

(d) The offense described in paragraph (5)(c) is included in an offense charged under paragraph (4)(c).

(e) The offense described in paragraph (5)(d) is included in an offense charged under paragraph (4)(d).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s.775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. 775.082, s.775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an offense committed under any of the circumstances listed in subparagraph (4)(e)7., acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) A person who falsely accuses a person listed in subparagraph (4)(e)7. or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Stalking (Fla. Stat. 784.048):

(1) As used in this section, the term:

a) “Harass” means to engage in a course of conduct directed at a specific person which causes substantial emotional distress to that person and serves no legitimate purpose.

b) “Course of conduct” means a pattern of conduct composed of a series of acts over a period of time, however short, which evidences a continuity of purpose. The term does not include constitutionally protected activity such as picketing or other organized protests.

c) “Credible threat” means a verbal or nonverbal threat, or a combination of the two, including threats delivered by electronic communication or implied by a pattern of conduct, which places the person who is the target of the threat in reasonable fear for his or her safety or the safety of his or her family members or individuals closely associated with the person, and which is made with the apparent ability to carry out the threat to cause such harm. It is

not necessary to prove that the person making the threat had the intent to actually carry out the threat. The present incarceration of the person making the threat is not a bar to prosecution under this section.

d) “Cyberstalk” means to engage in a course of conduct to communicate, or to cause to be communicated, words, images, or language by or through the use of electronic mail or electronic communication, directed at a specific person, causing substantial emotional distress to that person and serving no legitimate purpose.

(2) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of stalking, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(3) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person and makes a credible threat to that person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who, after an injunction for protection against repeat violence, sexual violence, or dating violence pursuant to s. 784.046, or an injunction for protection against domestic violence pursuant to s. 741.30, or after any other court-imposed prohibition of conduct toward the subject person or that person’s property, knowingly, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks another person commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) A person who willfully, maliciously, and repeatedly follows, harasses, or cyberstalks a child under 16 years of age commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.

(7) A person who, after having been sentenced for a violation of s. 794.011, s. 800.04, or s. 847.0135(5) and prohibited from contacting the victim of the offense under s. 921.244, willfully, maliciously, and repeatedly follows, harasses, or cyberstalks the victim commits the offense of aggravated stalking, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) The punishment imposed under this section shall run consecutive to any former sentence imposed for a conviction for any offense under s. 794.011, s. 800.04, or s. 847.0135(5).

(9) (a) The sentencing court shall consider, as a part of any sentence, issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any such order be based upon the seriousness of the facts before the court, the probability of future violations by the perpetrator, and the safety of the victim and his or her family members or individuals closely associated with the victim.

(b) The order may be issued by the court even if the defendant is sentenced to a state prison or a county jail or even if the imposition of the sentence is suspended and the defendant is placed on probation.

State of Nevada Statutes

NRS 200.366 Sexual assault: A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or herself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his or her conduct, is guilty of sexual assault.

NRS 33.018 Domestic violence: Domestic violence occurs when a person commits one of the following acts against or upon the person's spouse or former spouse, any other person to whom the person is related by blood or marriage, any other person with whom the person is or was actually residing, any other person with whom the person has had or is having a dating relationship, any other person with whom the person has a child in common, the minor child of any of those persons, the person's minor child or any other person who has been appointed the custodian or legal guardian for the person's minor child:

(a) A battery.

(b) An assault.

(c) Compelling the other person by force or threat of force to perform an act from which the other person has the right to refrain or to refrain from an act which the other person has the right to perform.

(d) A sexual assault.

(e) A knowing, purposeful or reckless course of conduct intended to harass the other person. Such conduct may include, but is not limited to:

(1) Stalking.

- (2) Arson.
- (3) Trespassing.
- (4) Larceny.
- (5) Destruction of private property.
- (6) Carrying a concealed weapon without a permit.
- (7) Injuring or killing an animal.

(f) A false imprisonment.

(g) Unlawful entry of the other person's residence, or forcible entry against the other person's will if there is a reasonably foreseeable risk of harm to the other person from the entry.

NRS 200.575 Stalking: A person who, without lawful authority, willfully or maliciously engages in a course of conduct that would cause a reasonable person to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, and that actually causes the victim to feel terrorized, frightened, intimidated, harassed or fearful for the immediate safety of a family or household member, commits the crime of stalking.

Note: There are no definitions for consent or dating violence in Nevada.

Territory of Puerto Rico Statutes

Chapter 29, Subchapter I, Section 602 - Domestic abuse - A constant pattern of conduct involving physical force or psychological violence, intimidation or persecution against a person by his/her spouse, former spouse, a person with whom he/she cohabits, or has cohabited, with whom he/she has, or has had a consensual relationship, or a person with whom a son or daughter has been procreated, to cause physical harm to their self, their property, or another's self, or to cause him/her grave emotional harm.

Chapter 300, Subchapter I, Section 4770 - Sexual Assault - Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the

following circumstances shall incur a severe second degree felony:

- (a) If the victim has not yet reached the age of sixteen (16) at the time of the event.
- (b) If due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission.
- (c) If the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm.
- (d) If the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.
- (e) When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused.
- (f) If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused.
- (g) If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties.
- (h) If the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (i) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.

If the conduct typified in subsection (a) of this section is committed by a minor who has not yet reached the age of eighteen (18), the offender shall incur a third degree felony if prosecuted as an adult.

Chapter 251, Section 4013 - Stalking - Means a pattern of behavior of vigilance, over a person; unwanted verbal or written communications are sent repeatedly to a specific person; written, verbal or implicit threats are made against a specific person; repeated acts of vandalism are directed to a specific person; repeated harassment through words, gestures or actions intended to intimidate, threaten or pursue the victim or members of his/her family.

Note: There are no definitions for consent or dating violence in Puerto Rico.

“Domestic Violence” :

Includes physical, sexual, emotional or psychological or financial abuse committed by a person against a spouse, partner, child, any other person who is a member of the household or dependant.

Chapter 99A(2), *Domestic Violence (Protection Orders), Interpretation*

“Indecent Assault”:

(1) Any person who:

(a) indecently assaults any other persons;

(b) does anything to any other person with the consent of that person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act;

Is guilty of an offence and liable to a term of imprisonment of three years

(2) It is no defence to a charge of an indecent assault committed on a person under sixteen years of age, to prove that the person consented to the act of indecency.

Chapter 99(5D), *Sexual Offence, Summary Sexual Offenses, Indecent Assault*

also

(1) Any person who:

(a) indecently assaults any other person;

(b) does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act, is guilty of an offence and liable to imprisonment for eight years.

(2) It is no defence to a charge of an indecent assault committed on a person under fourteen years of age, to prove that that person consented to the act of indecency.

Chapter 99(17), *Sexual Offence, Indictable Sexual Offenses, Indecent Assault*

also

(1) Whoever commits an indecent assault upon any person, whether male or female, shall be liable to imprisonment for six months.

(2) When any person shall be charged before a magistrate with an assault or battery upon any male or child or upon any female, either upon the complaint of the party aggrieved or otherwise, the said magistrate, if the assault or battery is of such an aggravated nature that it cannot in his opinion be sufficiently punished under the provisions hereinbefore contained as to common assaults and batteries, may proceed to hear and determine the same in a summary way, and, if the same be proved, the accused person shall be liable to imprisonment for six months.

Chapter 84(134), *Title x, Common Assaults and Harm to the Person, Indecent, etc., assaults*

“Rape”

(3) Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse —

(a) without the consent of that other person;

(b) without consent which has been extorted by threats or fear of bodily harm;

(c) with consent obtained by personating the spouse of that other person; or

(d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.

Chapter 99(3), *Sexual Offence, Definitions, Definition of Rape*

“Consent”

(15) In construing any provision of this Code by which it is required for a criminal act or criminal intent that an act should be done or intended to be done without a person’s consent, or

by which it is required for a matter of justification or exemption that an act should be done with a person's consent, the following rules shall be observed, namely —

(1) a consent shall be void if the person giving it is under ten years of age, or is, by reason of insanity, or of immaturity, or of any other permanent or temporary incapacity, whether from intoxication or any other cause, unable to understand the nature or consequences of the act to which he consents;

(2) a consent shall be void if it is obtained by means of deceit or of duress;

(3) a consent shall be void if it is obtained by the undue exercise of any official, parental, or other authority; and any such authority which is exercised otherwise than in good faith for the purposes for which it is allowed by law, shall be deemed to be unduly exercised;

(4) a consent given on behalf of a person by his parent, guardian or any other person authorised by law to give or refuse consent on his behalf, shall be void if it is given otherwise than in good faith for the benefit of the person on whose behalf it is given;

(5) a consent shall be of no effect if it is given by reason of a mistake of fact;

(6) a consent shall be deemed to have been obtained by means of deceit or of duress, or of the undue exercise of authority, or to have been given by reason of a mistake of fact, if it would have been refused but for such deceit, duress, exercise of authority or mistake, as the case may be; and

(7) for the purposes of this section, exercise of authority is not limited to exercise of authority by way of command, but includes influence or advice purporting to be used or given by virtue of an authority:

Provided that no person shall be prejudiced by the invalidity of any consent if he did not know, and could not by the exercise of reasonable diligence have known, of such invalidity.

Chapter 84(15) Penal Code, Title ii, General and Special Rules of Criminal Law, Provisions Relating to Consent

Note: There are no definitions for dating violence or stalking in the Commonwealth of the Bahamas.