

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Alabama	AL ST §13A-6-60 §13A-6-61 §13A-6-62 §13A-6-63 §13A-6-64 §13A-6-65 §13A-6-65.1 §13A-6-66 §13A-6-67 §13A-6-70	<p><u>§ 13A-6-61 Rape 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>(1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or</li> <li>(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being physically helpless or mentally incapacitated; or</li> <li>(3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.</li> </ul> <p><u>Rape 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse when perpetrator is <math>\geq</math> 16 years old and victim is older than 12 and less than 16 and the perpetrator is <math>&gt;</math> 2 years older than the victim OR</li> <li>with person “incapable of consent by reason of being mentally defective”</li> </ul> <p><u>Sodomy 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviate sexual intercourse by forcible compulsion OR</li> <li>with a person “incapable of consent” because the person is “physically helpless” or</li> </ul>	<p><u>Rape 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Rape 2<sup>nd</sup> degree:</u> Class B felony</p> <p><u>Sodomy 1<sup>st</sup> degree:</u> Class A felony</p>	<p>no explicit mens rea requirement; general intent<sup>1</sup>; see <i>Stokes v. State</i>, 648 So.2d 1179 (Ala. Crim. App. 1994) (approving general intent as necessary mental state).</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible compulsion</u> FORCIBLE COMPULSION. Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.</p> <p><u>Incapacity:</u> MENTALLY DEFECTIVE. Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.</p> <p>MENTALLY INCAPACITATED. Such term means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other incapacitating act committed upon him without his consent.</p> <p>PHYSICALLY HELPLESS. Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</p> <p><u>Consent defined:</u> § 13A-6-70. Lack of consent.</p> <p>(a) Whether or not specifically stated, [lack of consent] is an element of every offense defined in this article, with the exception of [deviate sexual intercourse with another person under circumstances [not] covered by [§ 13A-6-63 Sodomy in the first degree] and [§ 13A-6-64. Sodomy in the second degree].]</p> <p>(b) Lack of consent results from: (1) Forcible compulsion; or (2) Incapacity to consent; or</p>

<sup>1</sup> When no mens rea appears explicitly in the statute there is a presumption that general intent applies where the actus reus proves the mens rea.



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Alabama continued		<p>old</p> <p><u>Sexual abuse 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>subjecting a person to sexual contact “by forcible compulsion” OR</li> <li>when a person is incapable of consent because “physically helpless or mentally incapacitated” OR</li> <li>when the victim is &lt; 12 years old and the perpetrator ≥ 16 years old</li> </ul> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>subjects a person to sexual contact and the person is incapable of consent for some reason other than being &lt;16 years OR</li> <li>when the perpetrator is ≥ 19 years old and the victim is &gt; 12 years old, but &lt; 16 years old</li> </ul>	<p><u>Sexual abuse 1<sup>st</sup> degree:</u> Class C felony</p> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u> Class A misdemeanor unless this offense is the second sexual offense committed within one year, then Class C felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	
Alaska	AK ST §11.41.410 §11.41.420 §11.41.425	<p><u>Sexual assault 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration without consent OR</li> <li>“causes serious physical injury” while attempting sexual penetration without consent OR</li> <li>sexual penetration with person the perpetrator knows is “mentally incapable” and is “in the offender’s care by authority of law” or in a facility/program required to be “licensed by the</li> </ul>	<p><u>Sexual assault 1<sup>st</sup> degree:</u> Unclassified felony</p>	<p>mens rea is not explicit and appears to be different for different subsections; in the first subsection, no explicit mens rea requirement; general intent; but see <i>Reynolds v. State</i>, 664 P.2d 621 (Alaska Ct. App. 1983) (holding recklessness to be necessary mental state where statute is silent); in the second subsection, it appears to be recklessness; in the third and</p>	<p><u>Consent</u> “sexual penetration without consent”</p> <p><u>Incapacity</u> “offender knows [the victim] is mentally incapable” “offender knows [the victim] is incapacitated” “who is in the offender’s care” “offender knows [the victim] is unaware that a sexual act is being committed”</p>



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Alaska continued		<p><u>Sexual assault 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact with a person the perpetrator knows is “mentally incapable; incapacitated; or unaware that a sexual act is being committed” OR</li> <li>• sexual penetration with a person committed to custody in the Department of Corrections and the perpetrator is employed in that facility</li> </ul>	<u>degree:</u> Class C felony		

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<b>Arkansas</b>	<p>AR ST §5-14-101 §5-14-102 §5-14-103 §5-14-124 §5-14-125 §5-14-126</p> <p>Arkansas Code of 1987 Annotated Official Edition © 1987-2012 by the State of Arkansas All rights reserved.</p> <p>*** Legislation is current through the 2012 Fiscal Session and updates *** *** received from the Arkansas Code Revision Commission through *** *** August 1, 2012. ***</p> <p>Title 5 Criminal Offenses Subtitle 2. Offenses Against The Person Chapter 14 Sexual Offenses Subchapter 1 -- General Provisions</p>	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse or deviate sexual activity by forcible compulsion OR</li> <li>• with someone who is incapable of consent because he is physically helpless, mentally defective, or mentally incapacitated OR</li> <li>• who is &lt; 14 years old</li> </ul> <p><u>Sexual Assault 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• “sexual intercourse or deviate sexual activity” with a person “not the person’s spouse” who is &lt; 18 years old AND</li> <li>• person in position of trust or authority or is employed by the DOC and the victim is in custody of the DOC</li> <li>• consent is not a defense to this section</li> </ul> <p><u>Sexual Assault 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• “sexual contact with sex organs of another person by forcible compulsion” OR</li> <li>• with someone who is incapable of consent because he is physically helpless, mentally defective, or mentally incapacitated OR</li> <li>• victim is &lt; 14 years old and the perpetrator is ≥ 18 years old</li> <li>• who is &lt; 18 years old and the perpetrator is in a position of</li> </ul>	<p><u>Rape:</u> Class Y felony</p> <p><u>Sexual Assault 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Sexual Assault 2<sup>nd</sup> degree:</u> Class B felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Consent</u> “when the criminality of the conduct depends on a victim being incapable of consent because he is mentally defective or mentally incapacitated, it is an affirmative defense that the actor reasonably believed that the victim was capable of consent”</p> <p><u>Forcible Compulsion</u> “forcible compulsion”: “physical force or a threat, express or implies, of death or physical injury to or kidnapping of any person”</p> <p><u>Incapacity</u> “mentally defective”: “person suffers from a mental disease or defect which renders the person incapable of understanding the nature and consequences of sexual acts or unaware the sexual act is occurring”</p> <p>“mentally incapacitated”: “temporarily incapable of appreciating or controlling the person’s conduct as a result of the influence of a controlled or intoxicating substance administered to the person without the person’s consent or which renders the person unaware the sexual act is occurring”</p> <p>“physically helpless”: “unconscious or physically unable to communicate lack of consent or rendered unaware the sexual act is occurring”</p>

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Arkansas continued	<p>A.C.A. § 5-14-124 (2012)</p> <p><b>5-14-124. Sexual assault in the first degree.</b></p> <p>(a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is:</p> <p>(1) Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county</p>	<p>trust or authority <u>Sexual Assault 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• “sexual intercourse or deviate sexual activity” with a person “not the person’s spouse” AND</li> <li>• person in position of trust or authority or is employed by the DOC and the victim is in custody of the DOC</li> <li>• consent is not a defense to this section</li> </ul>	<p><u>Sexual Assault 3<sup>rd</sup> degree:</u> Class C felony</p>	<p>no explicit mens rea requirement; general intent</p>	

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Arkansas continued	<p>jail or juvenile detention facility, or their contractors or agents;</p> <p>(2) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or</p> <p>(3) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim.</p> <p>(b) It is no defense to a prosecution under this section that the victim consented to the conduct.</p> <p>(c) It is an affirmative defense to a prosecution under subdivision (a)(3)</p>				



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<b>Arkansas continued</b>	<p>of this section that the actor was not more than three (3) years older than the victim.</p> <p><b>(d)</b> Sexual assault in the first degree is a Class A felony.</p>				
<b>Arizona</b>	<p>AZ ST §13-1401 §13-1404 §13-1406</p>	<p><u>Sexual Assault:</u></p> <ul style="list-style-type: none"> <li>“intentionally or knowingly engaging in sexual intercourse or oral sexual contact without consent”</li> </ul> <p><u>Sexual Abuse</u></p> <ul style="list-style-type: none"> <li>“intentionally or knowingly engaging in sexual contact with any person” ≥ 15 years old without consent OR</li> <li>with any person &lt; 15 “if the sexual contact involves only the female breast” (ignorance as to the victim’s age is a defense, as is not being motivated by sexual interest)</li> </ul>	<p><u>Sexual Assault:</u> Class 2 felony</p> <p><u>Sexual Abuse:</u> Class 5 felony</p>	<p>intentionally or knowingly</p> <p>intentionally or knowingly</p>	<p><u>Consent</u> “without consent includes”: “coerced by the immediate use or threatened use of force against a person or property,” “incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have been reasonably known to the defendant,” and “victim is intentionally deceived as to the nature of the act” or erroneously believes the perpetrator is her spouse</p> <p><u>Incapacity</u> “mental defect”: “unable to comprehend the distinctly sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct”</p>

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California	CA PENAL §243.4 §261 §261.6 §261.7 §263 §264 §264.1 §266c §286 §289	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>• “any penetration, however slight, is sufficient to complete the crime”</li> <li>• sexual intercourse with person not his spouse where:</li> <li>• person is incapable of giving legal consent</li> <li>• “accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another”</li> <li>• prevented from resistance by substance and defendant knew of condition</li> <li>• victim is unconscious or asleep</li> <li>• victim thought the accused was spouse</li> <li>• perpetrator threatened retaliation</li> </ul> <p><u>Sexual battery:</u></p> <ul style="list-style-type: none"> <li>• touching the intimate part of a person against the will of the person touched and is for the purpose of sexual gratification of the accused AND</li> <li>• the act occurred “while that person is unlawfully restrained by the accused or an accomplice” OR</li> <li>• the person is institutionalized for medical purposes and is seriously disabled or medically incapacitated OR</li> <li>• the victim is not aware of “the</li> </ul>	<p><u>Rape:</u> Unclassified</p> <p>Sentence enhanced if penetration was accomplished by using a foreign object</p> <p><u>Sexual battery:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent; but see <i>People v. Balcom</i>, 1 Cal. Rptr.2d 879 (Ct. App. 1991), aff’d on other grounds, 867 P.2 777 (Cal. 1994) (noting that a conviction requires proof of intent to penetrate and intent to use force or fear to achieve that end)</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible Compulsion</u> creating fear “that would cause a reasonable person in like circumstances to act contrary to the person’s free will” force, violence, duress, menace or fear of bodily injury “where the act is accomplished against the victim’s will by threatening to retaliate”</p> <p><u>Consent</u> “positive cooperation in act or attitude pursuant to an exercise of free will” and “the person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved”</p> <p>“current or previous dating or marital relationship shall not be sufficient to constitute consent”</p> <p>“evidence that the victim suggested, requested, or otherwise communicated to the defendant that [he] use a condom...is not sufficient to constitute consent”</p> <p>no consent where a “person is unable to give consent because of mental disorder or development or physical disability”</p> <p><u>Incapacity</u> unconscious, asleep or “not aware, knowing, perceiving or cognizant that the act occurred”</p>



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		against her free will			

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Colorado	CO ST §18-3-401 §18-3-402 §18-3-404	<u>Sex assault class 4:</u> <ul style="list-style-type: none"> <li>causes submission by acts “reasonably calculated to cause submission against the victim’s will”</li> <li>“victim is incapable”</li> <li>actor knows the victim submits erroneously, believing the actor is spouse</li> <li>actor in position of authority or law enforcement</li> </ul>	<u>Sex assault class 4:</u> Class 4 felony	knowingly	<u>Forcible Compulsion</u> sexual assault includes use of force  <u>Consent</u> “cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act”  “current or previous relationship shall not be sufficient to constitute consent”
		<u>Sex assault class 3:</u> <ul style="list-style-type: none"> <li>“actual application of physical force or physical violence”</li> <li>threats of “death, serious bodily injury” or retaliation</li> <li>“actor has substantially impaired the victim’s power to appraise or control the victim’s conduct” by intoxicants without consent</li> <li>“victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented”</li> </ul>	<u>Sex assault class 3:</u> Class 3 felony	knowingly	<u>Incapacity</u> “physically helpless”: “unconscious, asleep, or otherwise unable to indicate willingness to act” or “substantially impaired” from any drug or intoxicant
		<u>Sex assault class 2:</u> <ul style="list-style-type: none"> <li>actor is aided</li> <li>victim suffers serious bodily injury</li> <li>use of a weapon</li> </ul>	<u>Sex assault class 2:</u> Class 2 felony	knowingly	
		<u>Unlawful sexual contact class 4:</u> <ul style="list-style-type: none"> <li>victim compelled to consent to any sexual contact by “force, intimidation, or threat” AND</li> </ul>	<u>Unlawful sexual contact class 4:</u> Class 4 felony	knowingly	

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<b>Colorado continued</b>		<ul style="list-style-type: none"> <li>• actor knows the victim did not consent OR</li> <li>• actor knows victim is incapable of appraising conduct OR</li> <li>• victim is physically helpless and actor knows victim has not consented OR</li> <li>• “actor has substantially impaired the victim’s power to appraise or control the victim’s conduct” by intoxicants without consent OR</li> <li>• actor in position of authority or law enforcement</li> </ul> <p><u>Unlawful sexual contact class 4:</u></p> <ul style="list-style-type: none"> <li>• actor knows the victim did not consent OR</li> <li>• actor knows victim is incapable of appraising conduct OR</li> <li>• victim is physically helpless and actor knows victim has not consented OR</li> <li>• “actor has substantially impaired the victim’s power to appraise or control the victim’s conduct” by intoxicants without consent OR</li> <li>• actor in position of authority or law enforcement</li> </ul>	<p><u>Unlawful sexual contact class 4:</u> Class 1 misdemeanor</p>	knowingly	
<b>Connecticut</b>	CT ST §53a-65 §53a-70 §53a-70a §53a-71 §53a-72a §53a-72b §53a-73a	<p><u>Aggravated Sexual Assault 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• person commits sexual assault in the 1<sup>st</sup> degree AND</li> <li>• person uses, displays, represents deadly weapon OR</li> <li>• “intent to disfigure” OR</li> <li>• shows “extreme indifference to</li> </ul>	<p><u>Aggravated sexual assault 1<sup>st</sup> degree:</u> Class B felony</p>	no explicit mens rea requirement; general intent (individual subsection may require specified intent)	<p><u>Forcible Compulsion</u> “use of a dangerous instrument or use of actual physical force or violence or superior physical strength against the victim”</p> <p><u>Consent</u> lack of consent can be established by use of force or when the victim is mentally incapacitated or emotionally</p>

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Connecticut continued		human life” OR <ul style="list-style-type: none"> <li>• “person is aided by two or more”</li> </ul> <u>Sexual Assault 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>• compelling a person to have sexual intercourse by:</li> <li>• force or threat of force OR</li> <li>• commits sexual assault in the 2<sup>nd</sup> degree but is aided by 2 or more people</li> <li>• victim is mentally incapacitated to such an extent that she is unable to consent</li> <li>• with “extreme indifference to human life”</li> <li>• “person is aided by two or more”</li> </ul>	<u>Sexual assault 1<sup>st</sup> degree:</u> Class B felony	no explicit mens rea requirement; general intent	dependent on a psychotherapist  <u>Incapacity</u> “mentally defective”: person who suffers from a mental disease or defect rendering the person “incapable of appraising the nature of such person’s conduct”  “physically helpless”: unconscious or unable to communicate, for any reason, an unwillingness to act
		<u>Sexual Assault 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>• engaging in sexual intercourse with another AND</li> <li>• victim is mentally defective to such an extent that she is unable to consent OR</li> <li>• physically helpless OR</li> <li>• actor is in position of authority or law enforcement</li> </ul>	<u>Sexual assault 2<sup>nd</sup> degree:</u> Class C felony	no explicit mens rea requirement; general intent	
		<u>Sexual assault 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>• “compels another to submit to sexual contact”:</li> <li>• by force or threat of force OR</li> <li>• with related person</li> </ul>	<u>Sexual assault 3<sup>rd</sup> degree:</u> Class D felony  If firearm used: Class C felony	no explicit mens rea requirement; general intent	
		<u>Sexual assault 4<sup>th</sup> degree:</u> <ul style="list-style-type: none"> <li>• engaging in sexual contact with another AND</li> <li>• victim is mentally defective to</li> </ul>	<u>Sexual assault 4<sup>th</sup> degree:</u> Misdemeanor	no explicit mens rea requirement; general intent	

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<b>Connecticut continued</b>		<p>such an extent that she is unable to consent OR</p> <ul style="list-style-type: none"> <li>• physically helpless OR</li> <li>• actor is in position of authority or law enforcement</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>• subjecting another to sexual contact:</li> <li>• without consent</li> <li>• by person in position of authority or law enforcement</li> <li>• by false representation</li> <li>• it is an affirmative defense to 4<sup>th</sup> degree sexual assault that the defendant and the victim were cohabiting</li> </ul>			
<b>Delaware</b>	<p>DE ST Title 11 §761 Title 11 §767 Title 11 §768 Title 11 §769 Title 11 §770 Title 11 §771 Title 11 §772 Title 11 §773</p>	<p><u>Rape 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse without consent and, during the crime, the person causes “serious physical injury or serious mental or emotional injury to the victim” OR</li> <li>• sexual intercourse without consent during the commission of a felony or listed misdemeanors</li> <li>• use of deadly weapon while committing rape in the 2<sup>nd</sup> degree, rape in the 3<sup>rd</sup> degree, or rape in the 4<sup>th</sup> degree</li> </ul> <p><u>Rape 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse without consent, during commission of a crime, during any felony or the</li> </ul>	<p><u>Rape 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Rape 2<sup>nd</sup> degree:</u> Class B felony</p>	<p>intentionally</p> <p>intentionally</p>	<p><u>Consent</u></p> <p>“without consent”: “compelled the victim to submit by any act of coercion... by force, by gesture, or by threat of death, physical injury, pain or kidnapping” or “any other means which would compel a reasonable person under the circumstances to submit,” knowledge that the victim was “unconscious, asleep or otherwise unaware,” knowledge that victim “suffered from a mental illness or mental defect,” or “defendant had substantially impaired the victim’s power to appraise or control...conduct” by administering drugs or intoxicants without the victim’s knowledge or against her will “for the purpose of preventing resistance”</p> <p>“victim must resist... to the extent that it is reasonably necessary to make the victim’s refusal to consent known to the defendant”</p>



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Delaware continued		<p>following misdemeanors: “reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in second degree; coercion or criminal trespass in the first, second or third degree”</p> <p><u>Rape 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration without consent and, during the crime, the person causes “serious physical injury or serious mental or emotional injury to the victim”</li> </ul> <p><u>Rape 4<sup>th</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration without consent</li> <li>sexual penetration when victim &lt; 16 years old or &lt; 18 years old if perpetrator ≥ 30 years old</li> <li>victim is &gt; 16 years old but &lt; 18 years old and actor is person in position of authority or trust</li> </ul>	<p><u>Rape 3<sup>rd</sup> degree:</u> Class B felony</p> <p><u>Rape 4<sup>th</sup> degree:</u> Class C felony</p>	<p>intentionally</p> <p>intentionally</p>	

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District of Columbia	DC Code §22-3001 §22-3002 §22-3003 §22-3004 §22-3005 §22-3006 §22-3023 §22-3101	<u>Sexual abuse 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>• causing to engage in or submit to a sexual act by:</li> <li>• force OR</li> <li>• “threatening or placing... in reasonable fear that any person will be subjected to death, bodily injury or kidnapping” OR</li> <li>• rendering the victim unconscious OR</li> <li>• by administering intoxicants by use of force or threat of force</li> </ul>	<u>Sexual abuse 1<sup>st</sup> degree:</u> Class A felony	no explicit mens rea requirement; general intent	<u>Consent</u> “words or overt actions indicating a freely given agreement to the sexual act or contact in question,” or “lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent”  <u>Force</u> “use or threatened use of a weapon, the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person, or the use of a threat of harm sufficient to coerce or compel submission by the victim”
		<u>Sexual abuse 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>• causing to engage in or submit to a sexual act by:</li> <li>• “threatening or placing the person in reasonable fear” OR</li> <li>• where the actor knows or should have knowledge that the victim is “incapable of appraising the nature of the conduct” or “incapable of declining participation in that sexual act” or “incapable of communicating unwillingness to engage in that sexual act”</li> </ul>	<u>Sexual abuse 2<sup>nd</sup> degree:</u> Unclassified	no explicit mens rea requirement; general intent	
		<u>Sexual abuse 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>• “engages in or causes sexual contact by:</li> <li>• force OR</li> <li>• “threatening or placing... in reasonable fear that any person will be subjected to death, bodily injury or kidnapping” OR</li> </ul>	<u>Sexual abuse 3<sup>rd</sup> degree:</u> Unclassified	no explicit mens rea requirement; general intent	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
District of Columbia continued		<ul style="list-style-type: none"> <li>• after rendering the victim unconscious OR</li> <li>• by administering intoxicants by use of force or threat of force</li> </ul> <p><u>Sexual abuse 4<sup>th</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• “engages in or causes sexual contact by:</li> <li>• “threatening or placing the person in reasonable fear” OR</li> <li>• where the actor knows or should have knowledge that the victim is “incapable of appraising the nature of the conduct” or “incapable of declining participation in that sexual contact” or “incapable of communicating unwillingness to engage in that sexual contact”</li> </ul>	<p><u>Sexual abuse 4<sup>th</sup> degree:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Florida	FL ST §775.082 §775.083 §794.011	<p><u>Sexual battery in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>“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” on a victim who is ≥ 12 years old, without consent AND</li> <li>“victim is physically helpless” OR</li> <li>offender coerces the victim by force or threats of force “likely to cause serious personal injury” OR</li> <li>offender threatens retaliation OR</li> <li>offender gives or knows the victim was given, without consent, intoxicants “which mentally or physically incapacitates the victim” OR</li> <li>victim is mentally defective and offender knows OR</li> <li>offender is law enforcement officer and acting as such</li> </ul> <p><u>Sexual battery in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>“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” on a victim who is ≥ 12 years old, without consent AND</li> <li>NO force or threats of force “likely to cause serious personal injury” was used</li> </ul>	<p><u>Sexual battery in the 1<sup>st</sup> degree:</u> Felony in 1<sup>st</sup> degree</p> <p><u>Other</u> If victim &lt; 12 years old (and perpetrator ≥ 18 years old) and injury to sex organs occurs, capital felony</p> <p>If victim &lt; 12 years old (and perpetrator &lt; 18 years old) and injury to sex organs occurs, life felony</p> <p>If victim ≥ 12 years old and perpetrator “uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury,” life felony</p> <p><u>Sexual battery in the 2<sup>nd</sup> degree:</u> Felony in 2<sup>nd</sup> degree</p>	<p>no explicit mens rea requirement; general intent; see also <i>Wright v. State</i>, 675 So.2d 1009 (Fla. App. 2 Dist. 1996) (no specific intent required)</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Consent</u> “intelligent, knowing, and voluntary consent and does not include coerced submission”</p> <p>“shall not be deemed or construed to mean the failure of the alleged victim to offer physical resistance to the offender”</p> <p><u>Incapacity</u> “mentally defective”: “mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct”</p> <p>“mentally incapacitated”: “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”</p> <p>“physically helpless”: “unconscious, asleep, or for any other reason physically unable to communicate unwillingness to act”</p> <p>“physically incapacitated”: “bodily impaired or handicapped and substantially limited in ability to resist or flee”</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Georgia</b>	GA ST §16-6-1 §16-6-22.1 §16-6-22.2	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>“penetration of the female sex organ by the male sex organ”;</li> <li>“forcibly and against her will”</li> </ul> <p>OR</p> <ul style="list-style-type: none"> <li>if she is &lt; 10 years old</li> </ul> <p><u>Sexual battery:</u></p> <ul style="list-style-type: none"> <li>“physical contact with the intimate parts of the body” without consent</li> </ul> <p><u>Aggravated sexual battery:</u></p> <ul style="list-style-type: none"> <li>penetration of the sex organ or anus of any person with a foreign object without consent</li> </ul>	<p><u>Rape:</u> Unclassified felony</p> <p><u>Sexual battery:</u> Misdemeanor “of a high and aggravated nature”</p> <p><u>Aggravated sexual battery:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>intentionally</p> <p>intentionally</p>	
<b>Hawaii</b>	HI ST §702-233 §702-234 §702-235 §702-236 §707-700 §707-730 §707-731 (as amended) §707-732 (as amended) §707-733	<p><u>Sex assault 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>“knowingly subjects another person to an act of sexual penetration by strong compulsion”</li> </ul> <p><u>Sex assault 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>“knowingly subjects another person to an act of sexual penetration by compulsion;” OR</li> <li>“knowingly subjects to sexual penetration another person who is mentally defective, mentally incapacitated, or physically helpless;” OR</li> <li>by a law enforcement officer</li> </ul> <p><u>Sex assault 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>“person recklessly subjects another person to an act of</li> </ul>	<p><u>Sex assault 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Sex assault 2<sup>nd</sup> degree:</u> Class B felony</p> <p><u>Sex assault 3<sup>rd</sup> degree:</u> Class C felony</p>	<p>knowingly</p> <p>knowingly</p> <p>recklessly or knowingly</p>	<p><u>Forcible Compulsion</u> “compulsion”: “absence of consent, or threat, express implied”</p> <p>“strong compulsion”: use or attempt to use: “a threat, express or implied” that creates a fear of bodily injury or kidnapping, “a dangerous instrument,” or “physical force”</p> <p><u>Consent</u> consent is a defense if it “negatives an element of the offense or precludes the infliction of the harm or evil sought to be prevented by the law”</p> <p>consent is legally ineffective if a person is "legally incompetent" or given by a person who "by reason of youth, mental disease, disorder, or defect, or intoxication is manifestly unable . . . to make a reasonable judgment as to the nature or harmfulness of the conduct alleged; or it is induced by force, duress or deception”</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Hawaii continued		<p>sexual penetration by compulsion;" OR</p> <ul style="list-style-type: none"> <li>• "knowingly subjects to sexual contact another person who is &lt; 14 years old;" OR</li> <li>• "knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor; or . . . if person is employed at state correctional facility</li> </ul> <p><u>Sex assault 4<sup>th</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• - "person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;" OR</li> <li>• "the person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury;" OR</li> <li>• "knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor"</li> </ul>	<p><u>Sex assault 4<sup>th</sup> degree:</u> Misdemeanor</p>	<p>knowingly</p>	<p><u>Incapacity</u> "mentally defective": "suffering from a disease, disorder, or defect" rendering the person "incapable of appraising the nature of the person's conduct"</p> <p>"mentally incapacitated": "rendered temporarily incapable of appraising or controlling the person's conduct owing to the influence substance administered without the person's consent"</p> <p>"physically helpless": "unconscious or for any other reason physically unable to communicate unwillingness to an act"</p>
Idaho	ID ST §18-6101 §18-6103	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>• includes the "penetration, however slight, of the oral, anal</li> </ul>	<p><u>Rape:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent; <i>State v. Lopez</i>, 892 P.2d 898</p>	<p><u>Forcible Compulsion</u> where "resistance is overcome by force or violence" or "she is prevented from resistance"</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Idaho continued</b>	§18-6104 §18-6108 §18-6109	<ul style="list-style-type: none"> <li>or vaginal opening with the perpetrator’s penis” AND</li> <li>• victim is &lt; 18 years OR</li> <li>• where the victim is incapable of giving consent OR</li> <li>• “she resists but her resistance is overcome by force or violence” OR</li> <li>• “prevented from resistance by threats of immediate and great bodily harm” OR</li> <li>• nothing other than penis included in definition of rape under 18-6101</li> <li>• However, “Any sexual penetration, however slight, is sufficient to complete the crime”</li> </ul>		(Idaho Ct. App. 1995) (stating rape is not a specific intent crime)	<u>Incapacity</u> “incapable, through any unsoundness of mind, whether temporary or permanent, of giving legal consent” or “she is unconscious”
<b>Illinois</b>	IL ST CH 720 §5/12-12 §5/12-13 §5/12-14 §5/12-15 §5/12-16 §5/12-17 §5/12-18	<p><u>Criminal sexual assault:</u></p> <ul style="list-style-type: none"> <li>• penetration by “ use of force or threat of force” OR</li> <li>• knowledge that victim was “unable to understand the nature of the act or was unable to give knowing consent” OR</li> <li>• by a family member when victim &lt; 18 years old</li> </ul> <p><u>Aggravated sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual assault AND</li> <li>• used or threatened to use deadly weapon OR</li> <li>• caused bodily harm OR</li> <li>• threatened to endanger or endangered life OR</li> <li>• in the course of a felony OR</li> </ul>	<p><u>Criminal sexual assault:</u> Class 1 felony</p> <p><u>Aggravated criminal sexual assault:</u> Class X felony (time added for discharging a firearm)</p>	<p>no explicit mens rea requirement; general intent; see <i>People v. Simms</i>, 736 N.E.2d 1092 (Ill. 2000) (approving general intent requirement)</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible Compulsion</u> “use of force or violence, or threat of force or violence” and belief that perpetrator had “the ability to execute that threat” or victim is overcome by “superior strength or size, physical restraint or physical confinement”</p> <p><u>Consent</u> “victim was unable to understand the nature of the act or was unable to give knowing consent” or the accused “knew that the victim was unable to understand the nature of the act or was unable to give knowing consent”</p> <p><u>Incapacity</u> victim was physically handicapped, or the victim was institutionalized severely or profoundly mentally retarded person</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Illinois continued		<ul style="list-style-type: none"> <li>• victim is over 60 years OR</li> <li>• victim was physically handicapped OR</li> <li>• victim was “severely or profoundly mentally retarded”</li> <li>• perpetrator administered a controlled substance to the victim without consent OR</li> <li>• accused discharged a firearm during the offense</li> </ul> <p><u>Criminal sexual abuse:</u></p> <ul style="list-style-type: none"> <li>• “sexual conduct by the use of force or threat of force” OR</li> <li>• sexual conduct when perpetrator knew that victim was “unable to understand the nature of the act or was unable to give knowing consent”</li> </ul> <p><u>Aggravated criminal sexual abuse:</u></p> <ul style="list-style-type: none"> <li>• criminal sexual abuse AND</li> <li>• used or threatened to use deadly weapon OR</li> <li>• caused bodily harm OR</li> <li>• threatened to endanger or endangered life OR</li> <li>• in the course of a felony OR</li> <li>• victim is over 60 years OR</li> <li>• victim was physically handicapped OR</li> <li>• victim was “severely or profoundly mentally retarded”</li> <li>• perpetrator administered a controlled substance to the victim without consent</li> </ul>	<p><u>Criminal sexual abuse:</u> Class 4 felony</p> <p><u>Aggravated criminal sexual abuse:</u> Class 2 felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Indiana</b>	IN ST §35-42-4-1 §35-42-4-2 §35-42-4-8	<u>Rape:</u> <ul style="list-style-type: none"> <li>• “knowingly or intentionally has sexual intercourse” AND</li> <li>• victim is “compelled by force or imminent threat of force” OR</li> <li>• victim is unaware of act OR</li> <li>• victim is mentally disabled and cannot consent</li> </ul> <u>Criminal deviate conduct:</u> <ul style="list-style-type: none"> <li>• “knowingly or intentionally causes another person to perform or submit to deviate sexual conduct” AND</li> <li>• victim is “compelled by force or imminent threat of force” OR</li> <li>• victim is unaware of act OR</li> <li>• victim is mentally disabled and cannot consent</li> </ul>	<u>Rape:</u> Class B felony, Class A if threatened or use of force, armed with a deadly weapon, results in serious bodily injury, or victim was given drug without consent or knowledge  <u>Criminal deviate conduct:</u> Class B felony, Class A if threatened or use of force, armed with a deadly weapon, results in serious bodily injury, or victim was given drug without consent or knowledge  <u>Sexual battery:</u> Class	knowingly or intentionally           knowingly or intentionally           with intent to arouse	<u>Consent</u> no consent if: “the other person is unaware the sexual intercourse is occurring” or “the other person is so mentally disabled or deficient that consent to sexual intercourse cannot be given”

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<u>Sexual battery:</u> <ul style="list-style-type: none"> <li>victim is “compelled to submit to the touching” by use or threat of force OR</li> <li>victim is mentally disabled and cannot consent</li> </ul>	D felony, Class C if threatened or use of force, armed with a deadly weapon, or victim was given drug without consent or knowledge		
<b>Iowa</b>  <b>Iowa continued</b>	IA ST §709.1 §709.1A §709.2 §709.3 §709.4 §709.5	<u>Sex abuse 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>“any sex act between persons” accomplished by force or against a person’s will or the person suffers from a “mental defect or incapacity” AND</li> <li>act causes serious injury</li> </ul> <u>Sex abuse 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>“any sex act between persons” where the act is accomplished by force or against a person’s will or the person suffers from a “mental defect or incapacity” AND</li> <li>displays a dangerous weapon</li> <li>uses or threatens death or serious injury</li> <li>victim is &lt; 12 years old</li> <li>perpetrator is aided</li> </ul> <u>Sex abuse 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>sex act performed</li> <li>by force or against will of the victim OR</li> <li>between persons “who are not cohabitating” and victim has a mental defect, is 12-13 years old, is 14-15 and perpetrator is a</li> </ul>	<u>Sex abuse 1<sup>st</sup> degree:</u> Class A felony  <u>Sex abuse 2<sup>nd</sup> degree:</u> Class B felony  <u>Sex abuse 3<sup>rd</sup> degree:</u> Class C felony	no explicit mens rea requirement; general intent  no explicit mens rea requirement; general intent  no explicit mens rea requirement; general intent	<u>Force</u> “it shall not be necessary to establish physical resistance by a person in order to establish that an act of sexual abuse was committed by force or against the will of the person”  <u>Consent</u> no consent if: “procured by threats of violence . . . or if the act is done while the other is under the influence of a drug inducing sleep,” victim is unconscious, the act is done against the will of the victim or the victim has a mental defect, is incapacitated, or is a child  <u>Incapacity</u> “mentally incapacitated”: “temporarily incapable of apprising or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance”  “physically helpless”: “unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited”  “physically incapacitated”: “bodily impairment or handicap that substantially limits the person’s ability to resist or flee”

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		member of the same household, related by blood, in a position of authority, is more than 4 years older OR <ul style="list-style-type: none"> <li>• perpetrator knows victim is                              under influence of a controlled                              substance and this prevents                              consent OR</li> <li>• victim is mentally or physically                              incapacitated or physically                              helpless</li> </ul>			
<b>Kansas</b>	KS ST §21-3501 §21-3502 §21-3506 §21-3517 §21-3518	<u>Rape:</u> <ul style="list-style-type: none"> <li>• intercourse without consent                              AND</li> <li>• “victim is overcome by force or                              fear” OR</li> <li>• “unconscious or physically                              powerless” OR</li> <li>• incapable of consent because of                              “mental deficiency or disease” or                              because of the effect of an                              intoxicant and offender was                              aware of condition OR</li> <li>• consent granted through                              knowing misrepresentation by                              person in position of authority</li> </ul> <u>Sexual battery:</u> <ul style="list-style-type: none"> <li>• intentional touching of another                              who is ≥ 16 years old, without                              consent AND</li> <li>• “not a spouse of the offender”                              AND</li> <li>• “with the intent to arouse or                              satisfy the sexual desires of the                              offender or another” AND</li> </ul>	<u>Rape:</u> Person felony, severity level 1 or 2          <u>Sexual battery:</u> Class A personal misdemeanor	no explicit mens rea requirement; general intent          intentional	<u>Consent:</u> no consent “when the victim is unconscious or physically powerless,” “if he she is overcome by force or fear,” or if suffers from a mental deficiency or disease or is under the influence of controlled substance, which condition was known by the offender

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Kansas continued		<ul style="list-style-type: none"> <li>• “victim is overcome by force or fear” OR</li> <li>• “victim is unconscious or physically powerless” OR</li> <li>• victim is incapable of consent because of “mental deficiency or disease” or because of the effect of an intoxicant and offender was aware of condition</li> </ul> <p><u>Aggravated sexual battery:</u></p> <ul style="list-style-type: none"> <li>• intentional touching of another who is ≥ 16 years old, without consent AND</li> <li>• “not a spouse of the offender” AND</li> <li>• “with the intent to arouse or satisfy the sexual desires of the offender or another”</li> </ul> <p><u>Aggravated criminal sodomy:</u></p> <ul style="list-style-type: none"> <li>• sodomy without consent AND</li> <li>• “overcome by force or fear” OR</li> <li>• “unconscious or physically powerless” OR</li> <li>• incapable of consent because of “mental deficiency or disease” or because of the effect of an intoxicant and offender was aware of condition</li> </ul>	<p><u>Aggravated sexual battery:</u> Person felony, severity level 5</p> <p><u>Aggravated criminal sodomy:</u> Person felony, severity level 2</p>	<p>intentional</p> <p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Kentucky	KY ST §510.010 §510.020 §510.030 §510.040 §510.050 §510.070 §510.080 §510.110 §510.130	<u>Rape 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>“sexual intercourse by forcible compulsion” OR</li> <li>with person incapable of consent because physically helpless</li> </ul>	<u>Rape 1<sup>st</sup> degree:</u> Class B felony	no explicit mens rea requirement; general intent	<u>Forcible Compulsion</u> “physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person.... physical resistance on the part of the victim shall not be necessary to meet this definition.”  <u>Consent</u> “lack of consent results from forcible compulsion, incapacity to consent, or ... [in the case of sexual abuse.] any circumstance in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor’s conduct”  “a person is deemed incapable of consent when he is: less than 16 years old, mentally retarded or suffers from a mental illness, mentally incapacitated, or physically helpless”  <u>Incapacity</u> “mental illness”: “covers many clinical categories, typically including behavioral or psychiatric symptoms,” especially those covered in the DSM-III and any subsequent revisions  “mentally retarded”: “significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior”  “mentally incapacitated”: “rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of some other act committed upon him without his consent”
		<u>Rape 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>sexual intercourse with person who is mentally incapacitated OR</li> <li>perpetrator is ≥ 18 years old and victim is &lt; 14 years old</li> </ul>	<u>Rape 2<sup>nd</sup> degree:</u> Class C felony	no explicit mens rea requirement; general intent	
		<u>Rape 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>sexual intercourse with person incapable of consent because he is mentally retarded OR</li> <li>actor is ≥ 21 years old and victim is &lt; 16 years old</li> </ul>	<u>Rape 3<sup>rd</sup> degree:</u> Class D felony	no explicit mens rea requirement; general intent	
		<u>Sodomy 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>deviate sexual intercourse by forcible compulsion OR</li> <li>with person incapable of consent because physically helpless</li> </ul>	<u>Sodomy 1<sup>st</sup> degree:</u> Class B felony	no explicit mens rea requirement; general intent	
		<u>Sodomy 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>deviate sexual intercourse with person who is mentally incapacitated OR</li> <li>perpetrator is ≥ 18 years old and victim is &lt; 14 years old</li> </ul>	<u>Sodomy 2<sup>nd</sup> degree:</u> Class C felony	no explicit mens rea requirement; general intent	
		<u>Sodomy 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>deviate sexual intercourse with person incapable of consent</li> </ul>	<u>Sodomy 3<sup>rd</sup> degree:</u> Class D felony	no explicit mens rea requirement; general intent	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Kentucky continued		<p>because he is mentally retarded OR</p> <ul style="list-style-type: none"> <li>• actor is <math>\geq</math> 21 years old and victim is &lt; 16 years old</li> </ul> <p><u>Sexual abuse 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• “sexual contact by forcible compulsion” OR</li> <li>• with person incapable of consent because physically helpless or mentally incapacitated</li> </ul> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact with person incapable of consent because mentally retarded OR</li> <li>• with person &lt; 14 years old OR</li> <li>• actor is law enforcement and acting in such capacity</li> </ul> <p><u>Sexual abuse 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact without consent</li> </ul>	<p><u>Sexual abuse 1<sup>st</sup> degree:</u> Class D felony</p> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u> Class A misdemeanor</p> <p><u>Sexual abuse 3<sup>rd</sup> degree:</u> Class B misdemeanor</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p>“physically helpless”: “unconscious or for any other reason is physically unable to communicate unwillingness to act”</p> <p>it is a defense that the defendant did not know of the victim’s condition leading to his incapacity to consent</p>

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Louisiana	LA RS §14:41 §14:42 §14:42.1 §14:43 §14:43.1 §14:43.2	<p><u>Aggravated rape:</u></p> <ul style="list-style-type: none"> <li>• non-consensual anal, oral or vaginal penetration on a person <math>\geq</math> 65 years old OR</li> <li>• anal, oral or vaginal penetration without lawful consent AND</li> <li>• victim resists to the utmost, but is overcome by force OR</li> <li>• victim is prevented from resisting by threats of harm or weapon OR</li> <li>• victim is <math>&lt;</math> 12 years OR</li> <li>• two or more offenders OR</li> <li>• victim is prevented from resisting because of physical or mental infirmity</li> </ul> <p><u>Forcible rape:</u></p> <ul style="list-style-type: none"> <li>• anal, oral or vaginal penetration without lawful consent AND</li> <li>• “victim is preventing from resisting the act by force or threats of physical violence” and “reasonably believes that such resistance would not prevent the rape”</li> <li>• victim is prevented from resisting by abnormal condition resulting from controlled substance given to the victim by the offender and without the victim’s knowledge</li> </ul> <p><u>Simple rape:</u></p> <ul style="list-style-type: none"> <li>• anal, oral or vaginal penetration without lawful consent with</li> </ul>	<p><u>Aggravated rape:</u> Unclassified</p> <p><u>Forcible rape:</u> Unclassified</p> <p><u>Simple rape:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent; see <i>State v. Crawford</i>, 672 So.2d 197 (La. Ct. App. 1996) (stating that a finding of specific intent is not necessary for a conviction)</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Incapacity</u> “physical infirmity”: “quadriplegic or paraplegic”</p> <p>“mental infirmity”: “person with an intelligence quotient of seventy or lower”</p>

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Louisiana continued</b>		<p>person not the spouse of offender AND</p> <ul style="list-style-type: none"> <li>• victim is incapable of resisting because of abnormal condition or dangerous substance and offender knew of the condition</li> <li>• victim is incapable of understanding the nature of the act and the offender knows of incapacity</li> <li>• perpetrator impersonates spouse</li> </ul> <p><u>Aggravated sexual battery:</u></p> <ul style="list-style-type: none"> <li>• without consent and inflicting serious bodily injury</li> <li>• touching the anus or genitals of either the victim or the perpetrator using a body part or instrumentality</li> </ul> <p><u>Sexual battery:</u></p> <ul style="list-style-type: none"> <li>• without consent and with a person not the spouse</li> <li>• touching the anus or genitals of either the victim or the perpetrator using a body part or instrumentality</li> </ul>	<p><u>Aggravated sexual battery:</u> Unclassified</p> <p><u>Sexual battery:</u> Unclassified</p>	<p>Intentionally</p> <p>intentionally</p>	
<b>Maine</b>	ME ST T. 17-A §251 §253 §255 §255-A	<p><u>Gross sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual act that is a result of compulsion OR</li> <li>• person is not spouse and is &lt; 14 years old OR</li> <li>• actor has impaired victim's "power to appraise and control" by administering intoxicants or drugs OR</li> </ul>	<p><u>Gross sexual assault:</u> Class A felony; Class B felony; Class C felony</p>	<p>no explicit mens rea requirement; general intent</p>	<p><u>Compulsion</u> "the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious physical injury or kidnapping might be intentionally inflicted upon that person or another human being"</p>



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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Maine continued		<ul style="list-style-type: none"> <li>• sexual act is compelled by threat OR</li> <li>• victim suffers mental disability rendering him “substantially incapable of appraising the nature of the contact and offender knows OR</li> <li>• victim is unconscious or physically incapable of resisting and has not consented OR</li> <li>• act is committed by person in position of authority and is acting as such</li> </ul> <p><u>Unlawful sexual contact:</u></p> <ul style="list-style-type: none"> <li>• intentionally subjecting person to any sexual contact AND</li> <li>• person has not expressly or impliedly acquiesced OR</li> <li>• person is unconscious or incapable of resisting and has not consented OR</li> <li>• person is &lt; 14 years old and actor is 3 years older and not the spouse OR</li> <li>• victim suffers mental disability rendering him “substantially incapable of appraising the nature of the contact and offender knows OR</li> <li>• act committed by person in position of authority</li> <li>• submits as a result of compulsion</li> </ul>	<p><u>Unlawful sexual contact:</u> Class D felony; Class C felony</p>	intentionally	
Maryland	MD Code §3-301 §3-302	<p><u>Rape 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• vaginal intercourse by force or threat and without consent AND</li> </ul>	<p><u>Rape 1<sup>st</sup> degree:</u> Unclassified</p>	no explicit mens rea requirement in the statute; but see <i>State v. Rusk</i> , 424 A.2d	<p><u>Incapacity</u> “mentally defective”: mental retardation or a mental disorder which renders victim substantially incapable of</p>

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<p><b>Maryland continued</b></p>	<p>§3-303 §3-304 §3-305 §3-306 §3-307 §3-308</p>	<ul style="list-style-type: none"> <li>• use of a deadly weapon OR</li> <li>• inflicts injury OR</li> <li>• places in fear of imminent death, injury or kidnapping OR</li> <li>• aided and abetted OR</li> <li>• during the commission of a burglary</li> </ul> <p><u>Rape 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• vaginal intercourse by force or threat, without consent OR</li> <li>• victim is mentally defective, incapacitated or physically helpless and perpetrator reasonably should have known</li> <li>• victim is &lt; 14 years old and actor is ≥ 4 years older</li> </ul> <p><u>Sex offense 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual act by force or threat of force, without consent AND</li> <li>• use of a deadly weapon OR</li> <li>• inflicts injury OR</li> <li>• places in fear of imminent death, injury or kidnapping OR</li> <li>• aided and abetted OR</li> <li>• during the commission of a burglary</li> </ul> <p><u>Sex offense 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual act by force or threat, without consent OR</li> <li>• victim is mentally defective, incapacitated or physically helpless and perpetrator reasonably should have known</li> </ul>	<p><u>Rape 2<sup>nd</sup> degree:</u> Unclassified</p> <p><u>Sex offense 1<sup>st</sup> degree:</u> Unclassified</p> <p><u>Sex offense 2<sup>nd</sup> degree:</u> Unclassified</p>	<p>720 (Md.1981) (citing with approval <i>Hazel v. State</i>, 157 A.2d 922, 925 (Md. 1960), which held that when a defendant’s act is “reasonably calculated to create in the mind of the victim ... a real apprehension, due to fear, of imminent bodily harm, serious enough to impair or overcome her will to resist, then such acts and threats are the equivalent of force”)</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p>appraising the nature of the individual’s conduct, resisting, or communicating unwillingness to submit</p> <p>“mentally incapacitated”: victim is rendered substantially incapable of “appraising the nature of the individual’s conduct” or resisting because of an act committed on him or because he is under the influence of an intoxicating substance given to him without his consent</p> <p>“physically helpless”: victim is unconscious or does not consent and is physically unable to resist or communicate unwillingness</p>

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Maryland continued		<ul style="list-style-type: none"> <li>• victim is &lt; 14 years old and actor is ≥ 4 years older</li> </ul> <p><u>Sex offense 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact by force or threat of force, without consent AND</li> <li>• use of a deadly weapon OR</li> <li>• inflicts injury OR</li> <li>• places in fear of imminent death, injury or kidnapping OR</li> <li>• aided and abetted OR</li> <li>• sexual contact by force or threat, without consent OR</li> <li>• victim is mentally defective, incapacitated or physically helpless and perpetrator reasonably should have known</li> <li>• victim is &lt; 14 years old and actor is ≥ 4 years older</li> </ul> <p><u>Sex offense 4<sup>th</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact without consent</li> </ul>	<p><u>Sex offense 3<sup>rd</sup> degree:</u> Unclassified</p>          <p><u>Sex offense 4<sup>th</sup> degree:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent</p>       <p>no explicit mens rea requirement; general intent</p>	
Massachusetts	MA ST 265 §22	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse by force and against victim’s will OR</li> <li>• actor compels submission by threat of bodily injury OR</li> <li>• results in bodily injury OR</li> <li>• committed by joint enterprise OR</li> <li>• during commission of certain crimes</li> </ul>	<p><u>Rape:</u> Unclassified</p>	<p>no explicit mens rea requirement; general intent</p>	

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Michigan	MI ST §750.520a §750.520b §750.520c §750.520d §750.520e §750.520i	<p><u>1<sup>st</sup> degree criminal sexual conduct:</u></p> <ul style="list-style-type: none"> <li>sexual penetration AND</li> <li>victim is ≥ 13 years old but &lt; 16 years old and the actor is a member of the same household, is related by blood or in a position of authority OR</li> <li>act is committed during the commission of a felony OR</li> <li>actor is aided and either knows that victim is mentally incapable, incapacitated or physically helpless or actor uses force or coercion OR</li> <li>actor is armed OR</li> <li>causes personal injury and uses force or coercion to achieve penetration OR</li> <li>causes personal injury and knows the victim is mentally incapable, mentally incapacitated, or physically helpless</li> <li>victim is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and actor is related to the victim or is in a position of authority and uses it to coerce the victim to submit</li> </ul> <p><u>2<sup>nd</sup> degree criminal sexual conduct:</u></p> <ul style="list-style-type: none"> <li>sexual contact (“intentional touching of intimate parts that can be reasonably construed as being for the purpose of sexual arousal or gratification, done for</li> </ul>	<p><u>1<sup>st</sup> degree criminal sexual conduct:</u> Unclassified felony</p> <p><u>2<sup>nd</sup> degree criminal sexual conduct:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent; see <i>People v. Brown</i>, 495 N.W.2d 812 (Mich. Ct. App. 1992) (per curiam) (affirming general intent requirement)</p> <p>intentional and for the purpose of “revenge,” “to inflict humiliation,” or out of anger”</p>	<p><u>Forcible Compulsion</u> “force or coercion includes but is not limited to”: “actual application of physical force or physical violence” “threatening to use force or violence on the victim” “threatening to retaliate in the future against the victim, or any other person... ‘to retaliate’ includes threats of physical punishment, kidnapping, or extortion” “”actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable” “when the actor, through concealment or the element of surprise, is able to overcome the victim”</p> <p>resistance is not necessary element of crime</p> <p><u>Consent</u> no consent if under 13 years</p> <p><u>Incapacity</u> “developmental disability”: “impairment of general intellectual functioning or adaptive behavior” which “originated before the person became 18 years of age,” “has continued since its origination or can be expected to continue indefinitely,” “constitutes a substantial burden to the impaired person’s ability to perform in society,” and is attributable to “mental retardation, cerebral palsy, epilepsy or autism,” or another “condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services to those required for a person who is mentally retarded”</p> <p>“mental illness”: “substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life”</p> <p>“mentally disability”: “mental illness, is mentally retarded,</p>

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Michigan continued		<p>a sexual purpose, or in a sexual matter”) AND</p> <ul style="list-style-type: none"> <li>• victim is ≥ 13 years old but &lt; 16 years old and the actor is a member of the same household, is related by blood or in a position of authority OR</li> <li>• act is committed during the commission of a felony OR</li> <li>• actor is aided and either knows that victim is mentally incapable, incapacitated or physically helpless or actor uses force or coercion OR</li> <li>• actor is armed OR</li> <li>• causes personal injury and uses force or coercion to achieve the contact OR</li> <li>• causes personal injury and knows the victim is mentally incapable, mentally incapacitated, or physically helpless</li> <li>• victim is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless and actor is related to the victim or is in a position of authority and uses it to coerce the victim to submit</li> </ul> <p><u>3<sup>rd</sup> degree criminal sexual conduct:</u></p> <ul style="list-style-type: none"> <li>• sexual penetration AND</li> <li>• victim is ≥ 13 years old but &lt; 16 years old OR</li> <li>• force or coercion to achieve</li> </ul>	<p><u>3<sup>rd</sup> degree criminal sexual conduct:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent</p>	<p>or has a developmental disability”</p> <p>“mentally incapable”: “mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of his conduct”</p> <p>“mentally incapacitated”: “rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent”</p> <p>“mentally retarded”: “significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior”</p> <p>“physically helpless”: “unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act”</p>

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Michigan continued		penetration OR <ul style="list-style-type: none"> <li>• actor knows the victim is mentally incapable, mentally incapacitated, or physically helpless OR</li> <li>• actor is related to the victim</li> </ul> 4 <sup>th</sup> degree criminal sexual conduct: <ul style="list-style-type: none"> <li>• sexual contact AND</li> <li>• victim is ≥ 13 years old but &lt; 16 years old and actor is ≥ 5 years older than victim OR</li> <li>• force or coercion to achieve contact OR</li> <li>• actor knows the victim is mentally incapable, mentally incapacitated, or physically helpless OR</li> <li>• actor is related to the victim OR</li> <li>• actor is mental health professional and act occurs within treatment period or within the 2 years following termination</li> </ul>	4 <sup>th</sup> degree criminal sexual conduct: Misdemeanor	intentional and for the purpose of “revenge,” “to inflict humiliation,” or out of anger”	
Minnesota	MN ST §609.341 §609.342 §609.343 §609.344 §609.345 §609.3451	Criminal sexual conduct in the 1 <sup>st</sup> degree: <ul style="list-style-type: none"> <li>• sexual penetration AND</li> <li>• victim is ≥ 13 years old but &lt; 16 years old and actor is ≥ 4 years older and in a position of authority OR</li> <li>• victim has “reasonable fear of imminent great bodily harm”</li> <li>• actor is armed with a dangerous weapon OR</li> <li>• actor causes personal injury and actor used force or coercion in</li> </ul>	Criminal sexual conduct in the 1 <sup>st</sup> degree: Unclassified	with sexual or aggressive intent	Forcible compulsion “force”: “the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit”  “coercion”: “words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon, or hold in confinement, the complainant

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Minnesota continued		<p>penetration or actor knew victim was mentally impaired, mentally incapacitated, or physically helpless OR</p> <ul style="list-style-type: none"> <li>• actor is aided and the accomplice used force or coercion in penetration or accomplice is armed with a dangerous weapon OR</li> <li>• actor has a significant relationship with the victim and victim is &lt; 16 years old</li> </ul> <p><u>Criminal sexual conduct in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact AND</li> <li>• victim is ≥ 13 years old but &lt; 16 years old and actor is ≥ 4 years older and in a position of authority OR</li> <li>• victim has “reasonable fear of imminent great bodily harm”</li> <li>• actor is armed with a dangerous weapon OR</li> <li>• actor causes personal injury and actor used force or coercion in contact or actor knew victim was mentally impaired, mentally incapacitated, or physically helpless OR</li> <li>• actor is aided and the accomplice used force or coercion in contact or accomplice is armed with a dangerous weapon OR</li> <li>• actor has a significant relationship with the victim and victim is &lt; 16 years old</li> </ul>	<p><u>Criminal sexual conduct in the 2<sup>nd</sup> degree:</u> : Unclassified</p>	<p>with sexual or aggressive intent</p>	<p>or another, or force the complainant to submit to sexual penetration or contact, but proof of coercion does not require proof of a specific act or threat”</p> <p><u>Consent</u> “words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor” and “does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act”</p> <p>person who is mentally incapacitated or physically helpless cannot consent</p> <p>corroboration is not required to show that the victim did not consent</p> <p><u>Incapacity</u> “mentally impaired”: “person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration”</p> <p>“mentally incapacitated”: “under influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person’s agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration”</p> <p>“physically helpless”: “asleep or not unconscious, unable to withhold consent or to withdraw consent because of physical condition, or unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor”</p>

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Minnesota continued		<u>Criminal sexual conduct in the 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual penetration AND</li> <li>• actor uses force or coercion in penetration OR</li> <li>• actor knew victim was mentally impaired, mentally incapacitated, or physically helpless OR</li> <li>• actor is a psychotherapist, clergy, agent of a transportation service, or affiliated with a correctional facility in which the victim is confined</li> </ul>	<u>Criminal sexual conduct in the 3<sup>rd</sup> degree:</u> Unclassified	with sexual or aggressive intent	
		<u>Criminal sexual conduct in the 4<sup>th</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual conduct AND</li> <li>• actor uses force or coercion in the act OR</li> <li>• actor knew victim was mentally impaired, mentally incapacitated, or physically helpless OR</li> <li>• actor is a psychotherapist, clergy, agent of a transportation service, or affiliated with a correctional facility in which the victim is confined</li> </ul>	<u>Criminal sexual conduct in the 4<sup>th</sup> degree:</u> Unclassified	with sexual or aggressive intent	
		<u>Criminal sexual conduct in the 5<sup>th</sup> degree:</u> <ul style="list-style-type: none"> <li>• nonconsensual sexual contact</li> </ul>	<u>Criminal sexual conduct in the 5<sup>th</sup> degree:</u> Unclassified	with sexual or aggressive intent	
Mississippi	MS ST §97-3-95 §97-3-97	<u>Sexual battery:</u> <ul style="list-style-type: none"> <li>• sexual penetration AND</li> <li>• without consent OR</li> </ul>	<u>Sexual battery:</u> Unclassified	no explicit mens rea requirement; general intent <i>Sanders v. State</i> , 586 So.2d	<u>Incapacity</u> “mentally defective”: “suffers from a mental disease, defect or condition which renders that person temporarily



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	§97-3-101	<ul style="list-style-type: none"> <li>with a mentally defective, incapacitated or physically helpless person</li> <li>with a child ≥ 14 years old but &lt; 16 years old and actor is ≥ 3 years older</li> <li>with child &lt; 18 years old and actor is in a position of authority</li> </ul>		792 (Miss. 1991) (proof of force unnecessary)	<p>or permanently incapable of knowing the nature and quality of his or her conduct”</p> <p>“mentally incapacitated”: “incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent”</p> <p>“physically helpless”: “unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act”</p>
Missouri	MO ST §566.010 §566.030 §566.040 §566.060 §566.070 §566.090 §566.100	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion</li> <li>includes administering a drug or controlled substance which renders the victim impaired</li> </ul> <p><u>Sexual assault:</u></p> <ul style="list-style-type: none"> <li>sexual assault knowing that person has not consented</li> </ul> <p><u>Forcible sodomy:</u></p> <ul style="list-style-type: none"> <li>deviate sexual intercourse by forcible compulsion</li> </ul> <p><u>Deviate sexual assault:</u></p> <ul style="list-style-type: none"> <li>sexual assault knowing that person has not consented</li> </ul> <p><u>Sexual misconduct in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviate sexual intercourse with a person of the same sex without consent</li> </ul> <p><u>Sexual abuse:</u></p>	<p><u>Rape:</u> Unclassified felony</p> <p><u>Sexual assault:</u> Class C felony</p> <p><u>Forcible sodomy:</u> Unclassified felony</p> <p><u>Deviate sexual assault:</u> Class C felony</p> <p><u>Sexual misconduct in the 1<sup>st</sup> degree:</u> Class A misdemeanor</p> <p><u>Sexual abuse:</u> Class</p>	<p>no explicit mens rea requirement; general intent; but see <i>State v. Bryant</i>, 756 S.W.2d594 (Mo. Ct. App. 1988) (holding prosecution must prove recklessness or knowledge)</p> <p>knowing that the victim has not consented</p> <p>no explicit mens rea requirement; general intent</p> <p>knowing that the victim has not consented</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea</p>	<p><u>Forcible compulsion</u></p> <p>“includes the use of a substance administered without a victim’s knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse”</p>

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State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<ul style="list-style-type: none"> <li>sexual contact by forcible compulsion</li> </ul>	B; Class C felony		
<b>Montana</b>	MT ST §45-5-501 §45-5-502 §45-5-503 §45-5-511	<p><u>Sexual Assault:</u></p> <ul style="list-style-type: none"> <li>sexual contact without consent</li> </ul> <p><u>Sexual Intercourse without consent:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse without consent</li> </ul>	<p><u>Sexual assault:</u> Unclassified</p> <p><u>Sexual Intercourse without consent:</u> Unclassified</p>	<p>knowingly</p> <p>knowingly</p>	<p><u>Forcible compulsion</u> “the infliction, attempted infliction, or threatened infliction of bodily injury” or “the threat of substantial retaliatory action”</p> <p><u>Consent</u> no consent where “compelled to submit by force” or incapable of consent because “mentally defective or incapacitated, physically helpless, overcome by deception, coercion or surprise, or incarcerated”</p> <p>resistance is not necessary to prove lack of consent</p> <p><u>Incapacity</u> “incapable of consent because . . . mentally defective or incapacitated; physically helpless; overcome by deception, coercion, or surprise; &lt; 16 years old; or incarcerated”</p>
<b>Nebraska</b>	NE ST §28-318 §28-319 §28-320	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration without consent OR</li> <li>with someone who is mentally or physically unable to resist OR</li> <li>when actor is ≥ 19 years old and victim is &lt; 16 years old</li> </ul> <p><u>Sexual assault in the 2<sup>nd</sup> or 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration without consent OR</li> <li>with someone who is mentally or physically unable to resist</li> </ul>	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u> Class II felony</p> <p><u>Sexual assault in the 2<sup>nd</sup> or 3<sup>rd</sup> degree:</u> 2<sup>nd</sup> degree is Class III felony; 3<sup>rd</sup> degree is Class I misdemeanor</p>	<p>no explicit mens rea requirement; general intent</p> <p>intentional touching</p>	<p><u>Forcible compulsion</u> “use of physical force which overcomes the victim’s resistance or the threat of physical force, express or implied, against the victim or a third person”</p> <p><u>Consent</u> no consent where victim was compelled to submit through “use of force or threat of force or coercion,” “victim expressed a lack of consent through words,” “victim expressed a lack of consent through conduct”, consent was “the result of the actor’s deception”</p> <p>“victim need only resist, either verbally or physically, so as to make the victim’s refusal to consent genuine and real and so as to reasonably make known to the actor the victim’s refusal to consent” unless it would be “useless or futile to do so”</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
					<u>Incapacity</u> “mentally or physically incapable of resisting”
<b>Nevada</b>	NV ST §200.364 §200.366	<u>Sexual assault:</u> <ul style="list-style-type: none"> <li>• subjecting another to sexual penetration against the will of the victim OR</li> <li>• forcing “another person to make a sexual penetration on himself or another” OR</li> <li>• “under conditions in which the perpetrator knows ... the victim is mentally or physically incapable of resisting or understanding the nature of his conduct”</li> </ul>	<u>Sexual assault:</u> Category A felony	no explicit mens rea requirement; general intent  <i>McNair v. State</i> , 825 P.2d 571 (Nev. 1992) (proof of force unnecessary)	<u>Consent</u> “against the will of the victim” or when victim is incapacitated  <u>Incapacity</u> “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 conduct”
<b>New Hampshire</b>	NH ST §632-A:1 §632-A:2 §632-A:3 §632-A:4 §651:2	<u>Aggravated felonious sexual assault:</u> <ul style="list-style-type: none"> <li>• sexual penetration without where victim “indicates by speech or conduct” no consent OR</li> <li>• forcible compulsion OR</li> <li>• victim is physically helpless to resist OR</li> <li>• actor coerces victim OR</li> <li>• victim submits as a result of false imprisonment, kidnapping or extortion OR</li> <li>• victim is given intoxicant without knowledge or consent OR</li> <li>• actor (currently, or within one year of termination of treatment) provides therapy or medical treatment OR</li> <li>• victim is mentally defective and actor knows (unless married) OR</li> </ul>	<u>Aggravated felonious sexual assault:</u> Unclassified felony	no explicit mens rea requirement; general intent; but see <i>State v. Ayer</i> , 612 A.2d 923 (N.H. 1992) (holding that knowledge is required for conviction in order to adequately protect an innocent defendant from false conviction)	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<ul style="list-style-type: none"> <li>• actor uses concealment or surprise before victim can resist OR</li> <li>• actor in position of authority and uses it to coerce victim (consent irrelevant in this instance)</li> </ul> <p><u>Felonious sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual contact and causing serious personal injury and any of the circumstances listed in aggravated felonious assault are present OR</li> <li>• sexual penetration with victim who is ≥ 13 years old, but &lt; 16 years old OR</li> <li>• actor in position of authority and uses it to coerce victim</li> </ul> <p><u>Sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual contact with a person ≥ 13 years old and any of the circumstances listed in aggravated felonious assault are present</li> </ul>	<p><u>Felonious sexual assault:</u> Class B felony</p> <p><u>Sexual assault:</u> Misdemeanor</p>	<p>intentional touching</p> <p>intentional touching</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
New Jersey	NJ ST §2C:14-1 §2C:14-2 §2C:14-3 §2C:14-5 §2C:14-6	<u>Aggravated sexual assault:</u> <ul style="list-style-type: none"> <li>• sexual penetration committed during certain crimes OR</li> <li>• actor is armed with dangerous weapon OR</li> <li>• actor is aided or abetted OR</li> <li>• actor uses physical force or coercion resulting in severe personal injury OR</li> <li>• sexual penetration and victim was physically helpless, mentally defective, or mentally incapacitated and actor knew</li> </ul>	<u>Aggravated sexual assault:</u> Crime of the 1 <sup>st</sup> degree	no explicit mens rea requirement; general intent	<u>Forcible compulsion</u> criminal coercion: “inflict bodily injury on anyone or commit any other offense; Accuse anyone of an offense; Expose any secret which would tend to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; Take or withhold action as an official, or cause an official to take or withhold action; Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or Perform any other act which would not in itself substantially benefit the actor but which is calculated to substantially harm another person with respect to his health, safety, business, calling, career, financial condition, reputation or personal relationships” proof of resistance not required
New Jersey continued		<u>Sexual assault:</u> <ul style="list-style-type: none"> <li>• sexual penetration using physical force or coercion which does not result in severe personal injury OR</li> <li>• actor has authority over victim (because victim on parole/probation or is otherwise detained) and uses it to achieve penetration OR</li> <li>• victim is ≥ 16 years old but &lt;18 years old and the actor is in a position of authority OR</li> <li>• victim is ≥ 13 years old but &lt;16 years old and actor is ≥ 4 years older</li> </ul> <u>Aggravated criminal sexual contact:</u> <ul style="list-style-type: none"> <li>• sexual contact committed during certain crimes OR</li> <li>• actor is armed with dangerous</li> </ul>	<u>Sexual assault:</u> Crime of the 2 <sup>nd</sup> degree	no explicit mens rea requirement; general intent	<u>Incapacity</u> “physically helpless”: “unconscious or is physically unable to flee or is physically unable to communicate unwillingness to act”  “mentally defective”: “condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent”  “mentally incapacitated”: “condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of understanding or controlling his conduct due to the influence of a . . . substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct”
			<u>Aggravated criminal sexual contact:</u> Crime of the 3 <sup>rd</sup> degree	intentional touching	



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
New Mexico continued		personal injury OR <ul style="list-style-type: none"> <li>• “using force or coercion when perpetrator is aided or abetted” OR</li> <li>• on person ≥ 13 years old, but &lt; 18 years old when perpetrator is in position of authority and uses position to coerce OR</li> <li>• person is inmate and perpetrator in position of authority OR</li> <li>• during commission of felony OR</li> <li>• armed with deadly weapon</li> </ul>			
		<u>Criminal sexual penetration 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>• causing “a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration of the genital or anal openings of another” through force or coercion</li> </ul>		intentional	
		<u>Criminal sexual contact:</u> <ul style="list-style-type: none"> <li>• “touching of or application of force, without consent, to the unclothed intimate parts of another” who is ≥ 18 years old or causing another who is ≥ 18 years old “to touch one’s intimate parts” AND</li> <li>• using force or coercion</li> </ul>		intentional	
<u>Criminal sexual contact 4<sup>th</sup> degree:</u>	<u>Criminal sexual penetration 3<sup>rd</sup> degree:</u> Unclassified felony	intentional			

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<ul style="list-style-type: none"> <li>“touching of or application of force, without consent, to the unclothed intimate parts of another” who is ≥ 18 years old or causing another who is ≥ 18 years old “to touch one’s intimate parts” AND</li> <li>using force or coercion causing personal injury OR</li> <li>armed with deadly weapon</li> </ul>	contact 4 <sup>th</sup> degree: 4 <sup>th</sup> degree felony		
<b>New York</b>	NY PENAL §130.00 §130.05 §130.10 §130.20 §130.25	<u>Sexual misconduct:</u> <ul style="list-style-type: none"> <li>sexual intercourse or deviant sexual intercourse without consent</li> </ul>	<u>Sexual misconduct:</u> Class A misdemeanor	no explicit mens rea requirement; general intent	<u>Forcible Compulsion</u> “to compel by either: use of physical force; or a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped”
<b>New York continued</b>	§130.30 §130.35 §130.40 §130.45 §130.50 §130.52 §130.55 §130.60 §130.65 §130.65-a §130.66	<u>Rape 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion OR</li> <li>with someone who is incapable of consent due to physical helplessness</li> </ul> <u>Rape 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>sexual intercourse if perpetrator is ≥ 18 years old and person is &lt; 15 OR</li> </ul>	<u>Rape 1<sup>st</sup> degree:</u> Class B felony  <u>Rape 2<sup>nd</sup> degree:</u> Class D felony	no explicit mens rea requirement; general intent  no explicit mens rea requirement; general intent	<u>Consent</u> no consent where perpetrator uses forcible compulsion or when victim lacks capacity to consent  if charge is sexual abuse: force or lack of consent required in addition to “any circumstances ... in which the victim does not expressly or impliedly acquiesce in the actor’s conduct”  if charge is rape in the 3 <sup>rd</sup> degree or sodomy in the 3 <sup>rd</sup> degree: force and circumstances under which ... the



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity			
<b>New York continued</b>	§130.67 §130.70 §70.00 §70.02 §70.15	<ul style="list-style-type: none"> <li>where person is incapable of consent by reason of being mentally disabled or mentally incapacitated</li> </ul> <p><u>Rape 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse with person incapable of consent for reason other than being &lt; 17 years old OR</li> <li>if perpetrator is ≥ 21 years old and person is &lt; 17 OR</li> <li>if person lacks consent by reason of some factor other than incapacity to consent</li> </ul>	<u>Rape 3<sup>rd</sup> degree:</u> Class E felony	no explicit mens rea requirement; general intent	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  <u>Incapacity</u> a person lacks capacity when he or she suffers from a mental incapacity, mental disability, physical helplessness, when victim is under authority of perpetrator, when victim is < 17 years old, or when the perpetrator is in a position of authority or trust  "mentally disabled": "suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct"  "mentally incapacitated": "rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent"  "physically helpless": "unconscious or for any other reason is physically unable to communicate unwillingness to an act"			
		<p><u>Sodomy 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion OR</li> <li>with someone who is incapable of consent due to physical helplessness incapable of consent due to physical helplessness</li> </ul>				<u>Sodomy 1<sup>st</sup> degree:</u> Class B felony	no explicit mens rea requirement; general intent	
		<p><u>Sodomy 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviate sexual intercourse if perpetrator is ≥ 18 years old and person is &lt; 15 OR</li> <li>where person is incapable of consent by reason of being mentally disabled or mentally incapacitated</li> </ul>				<u>Sodomy 2<sup>nd</sup> degree:</u> Class D felony	no explicit mens rea requirement; general intent	it is an affirmative defense that the perpetrator did not know of victim's incapacity
		<p><u>Sodomy 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviant sexual intercourse with</li> </ul>				<u>Sodomy 3<sup>rd</sup> degree:</u> Class E felony	no explicit mens rea requirement; general intent	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
New York continued		<p>person incapable of consent for reason other than being &lt; 17 years old OR</p> <ul style="list-style-type: none"> <li>• if perpetrator is ≥ 21 years old and person is &lt; 17 OR</li> <li>• if person lacks consent by reason of some factor other than incapacity to consent</li> </ul> <p><u>Forcible touching:</u></p> <ul style="list-style-type: none"> <li>• “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”</li> </ul> <p><u>Sexual abuse 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact by forcible compulsion OR</li> <li>• when the other person is incapable of consent due to physical helplessness</li> </ul> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact with person incapable of consent due to mental disability, mental incapacity, or physical helplessness</li> </ul> <p><u>Sexual abuse 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual contact without consent</li> </ul>	<p><u>Forcible touching:</u> Class A misdemeanor</p> <p><u>Sexual abuse 1<sup>st</sup> degree:</u> Class D felony</p> <p><u>Sexual abuse 2<sup>nd</sup> degree:</u> Class A misdemeanor</p> <p><u>Sexual abuse 3<sup>rd</sup> degree:</u> Class B misdemeanor</p>	<p>intentionally and purposefully</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
New York continued		<p><u>Aggravated sexual abuse 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• inserting a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person AND</li> <li>• using forcible compulsion OR</li> <li>• when the other person is incapable of consent due to physical helplessness</li> </ul>	<p><u>Aggravated sexual abuse 1<sup>st</sup> degree:</u> Class B felony</p>	<p>no explicit mens rea requirement; general intent</p>	
		<p><u>Aggravated sexual abuse 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• inserting a finger in the vagina, urethra, penis or rectum of another person causing physical injury to such person AND</li> <li>• using forcible compulsion OR</li> <li>• when the other person is incapable of consent due to physical helplessness</li> </ul>	<p><u>Aggravated sexual abuse 2<sup>nd</sup> degree:</u> Class C felony</p>	<p>no explicit mens rea requirement; general intent</p>	
		<p><u>Aggravated sexual abuse 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• inserting a foreign object in the vagina, urethra, penis or rectum by forcible compulsion OR</li> <li>• when person is incapable of consent due to physical helplessness OR</li> <li>• when physical injury results and person is incapable of consent due to being mentally disabled or mentally incapacitated</li> </ul>	<p><u>Aggravated sexual abuse 3<sup>rd</sup> degree:</u> Class D felony</p>	<p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<u>Aggravated sexual abuse 4<sup>th</sup> degree:</u> <ul style="list-style-type: none"> <li>• inserting a foreign object in the vagina, urethra, penis or rectum when a person is incapable of consent for reason other than being &lt; 17 years old OR</li> <li>• inserting a foreign object in the vagina, urethra, penis or rectum causing physical injury when a person is incapable of consent for reason other than being &lt; 17 years old</li> </ul>	<u>Aggravated sexual abuse 4<sup>th</sup> degree:</u> Class E felony	no explicit mens rea requirement; general intent	
<b>North Carolina</b>                          <b>North Carolina continued</b>	NC ST §14-27.1 §14-27.2 §14-27.3 §14-27.4 §14-27.5	<u>Rape 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>• vaginal intercourse by force and against their will AND</li> <li>• uses a dangerous weapon OR</li> <li>• inflicts serious personal injury OR</li> <li>• is aided and abetted</li> </ul> <u>Rape 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>• vaginal intercourse by force and against their will OR</li> <li>• with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the perpetrator knows</li> </ul> <u>Sexual offense 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual act by force and against their will AND</li> <li>• uses a dangerous weapon OR</li> <li>• inflicts serious personal injury OR</li> <li>• is aided and abetted</li> </ul>	<u>Rape 1<sup>st</sup> degree:</u> Class B1 felony   <u>Rape 2<sup>nd</sup> degree:</u> Class C felony   <u>Sexual offense 1<sup>st</sup> degree:</u> Class B1 felony	no explicit mens rea requirement; general intent   no explicit mens rea requirement; general intent   no explicit mens rea requirement; general intent	<u>Incapacity</u> “mentally disabled”: a victim who suffers from mental retardation or a mental disorder, rendering the victim substantially incapable of appraising the nature of his or her conduct, resisting the act, or communicating unwillingness to submit to the act  “mentally incapacitated”: “a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct or resisting the act”  “physically helpless”: a victim who is unconscious or physically unable to resist an act or communicate unwillingness to submit to an act

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
		<p><u>Sexual offense 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual act by force and against their will OR</li> <li>with a person who is mentally disabled, mentally incapacitated, or physically helpless, and the perpetrator knows</li> </ul>	<p><u>Sexual offense 2<sup>nd</sup> degree:</u> Class C felony</p>	no explicit mens rea requirement; general intent	
North Dakota	ND ST §12.1-20-02 §12.1-20-03 §12.1-20-04 §12.1-20-07 §12.1-32-01	<p><u>Gross sexual imposition:</u></p> <ul style="list-style-type: none"> <li>sexual act with another, or causing another to engage in a sexual act due to forcible compulsion or incapacity OR</li> <li>sexual contact with or causing another to engage in sexual contact due to forcible compulsion</li> </ul> <p><u>Sexual imposition:</u></p> <ul style="list-style-type: none"> <li>sexual act or sexual contact with or causing another to engage in a sexual act or sexual contact AND</li> <li>compelling person to submit by any threat that would render a person of reasonable firmness incapable of resisting OR</li> <li>committing act as a part of “induction, initiation, ceremony, pledge, hazing, or qualification to become a member or an associate of any criminal street gang”</li> </ul> <p><u>Sexual assault:</u></p>	<p><u>Gross sexual imposition:</u> Class A felony if actor inflicts serious bodily injury or uses forcible compulsion</p> <p><u>Sexual imposition:</u> Class B felony</p> <p><u>Sexual assault:</u> Class</p>	<p>no explicit mens rea requirement; general intent; but see <i>State v. Cummins</i>, 347 N.W.2d 571 (N.D. 1984) (stating that where a statute is silent on the issue of culpability, the required mental state is willfully)</p> <p>no explicit mens rea requirement; general intent</p> <p>knowingly</p>	<p><u>Forcible compulsion</u> compelling the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being</p> <p><u>Incapacity</u> impairing the victim's power to appraise or controlling the victim's conduct by administering without the victim's knowledge intoxicants, or uses other means with intent to prevent resistance, victim is unaware that a sexual act is being committed, victim suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct, or victim is &lt; 15 years old</p>
North Dakota continued					



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Ohio continued		<p>submits because the other person is unaware that the act is being committed OR</p> <ul style="list-style-type: none"> <li>• knowing that the other person submits because the other person mistakenly identifies the offender as the other person's spouse OR</li> <li>• perpetrator has authority over victim</li> </ul> <p><u>Gross sexual imposition:</u></p> <ul style="list-style-type: none"> <li>• having, causing another to have, or causing two or more other persons to have sexual contact through forcible compulsion or incapacity</li> </ul> <p><u>Sexual imposition:</u></p> <ul style="list-style-type: none"> <li>• having, causing another to have, or causing two or more other persons to have sexual contact AND</li> <li>• knowing that the sexual contact is offensive to the other person OR</li> <li>• knowing that the other person's mental abilities are substantially impaired OR</li> <li>• knowing that the other person submits because of being unaware of the sexual contact</li> </ul>	<p><u>Gross sexual imposition:</u> 4<sup>th</sup> degree felony</p> <p><u>Sexual imposition:</u> 3<sup>rd</sup> degree misdemeanor</p>	<p>knowingly or purposefully</p> <p>knowingly</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Oklahoma	OK ST T.21 §1111 §1112 §1113 §1114 §1115 §1116	<p><u>Rape in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse by force or through incapacity OR</li> <li>• victim is &lt; 14 years old and actor is &gt; 18 years old OR</li> <li>• rape by instrumentation resulting in bodily harm</li> </ul> <p><u>Rape in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• in all other cases not mentioned above, sexual intercourse by force or through incapacity or penetration using any inanimate object or any part of the human body, not amounting to sexual intercourse, on another person without consent</li> </ul>	<p><u>Rape in the 1<sup>st</sup> degree:</u> Unclassified felony</p> <p><u>Rape in the 2<sup>nd</sup> degree:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible compulsion</u> force or violence is used or threatened</p> <p>any sexual penetration, however slight, is sufficient to complete the crime</p> <p><u>Incapacity</u> victim is &lt; 16 years old, incapable through mental illness or unsoundness of mind to give legal consent, intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit, at the time unconscious of the nature of the act and this fact is known to the accused, or submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused</p>



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Oregon</b>	OR ST §163.305 §163.315 §163.325 §163.355 §163.365 §163.375 §163.385 §163.395 §163.405 §163.408 §163.411 §163.415 §163.425 §163.427 §161.605 §161.615 §161.625 §161.635	<p><u>Rape in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion OR</li> <li>where victim is &lt; 12 years old OR</li> <li>victim is &lt; 16 years old and is the actor's whole or half sibling, child, or spouse's child OR</li> <li>victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness</li> </ul> <p><u>Rape in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse: victim is &lt; 14 years old</li> </ul> <p><u>Rape in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse: victim is &lt; 16 years old</li> </ul> <p><u>Sodomy in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviant sexual intercourse by forcible compulsion OR</li> <li>where victim is &lt; 12 years old OR</li> <li>victim is &lt; 16 years old and is the actor's whole or half sibling, child, or spouse's child OR</li> <li>victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness</li> </ul> <p><u>Sodomy in the 2<sup>nd</sup> degree:</u></p>	<p><u>Rape in the 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Rape in the 2<sup>nd</sup> degree:</u> Class B felony</p> <p><u>Rape in the 3<sup>rd</sup> degree:</u> Class C felony</p> <p><u>Sodomy in the 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Sodomy in the 2<sup>nd</sup> degree:</u> Class B felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible compulsion</u> to compel by physical force or by a threat, express or implied, that causes fear of immediate or future death, physical injury, or kidnapping to/of self or another</p> <p>lack of resistance alone does not establish consent, but may be considered in evidence</p> <p><u>Incapacity</u> “mentally defective”: person suffers from a mental disease or defect renders person incapable of appraising the nature of their conduct</p> <p>“mentally incapacitated”: person is rendered incapable of appraising or controlling their conduct at the time of the alleged offense because of the influence of a controlled or other intoxicating substance administered without their consent</p> <p>“physical helplessness”: person is unconscious or for any other reason is physically unable to communicate unwillingness to an act</p> <p>victim is under 18</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Oregon continued</b>		<ul style="list-style-type: none"> <li>deviant sexual intercourse with a person &lt; 14 years old</li> </ul> <p><u>Sodomy in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>deviant sexual intercourse with a person &lt; 16 years old</li> </ul> <p><u>Unlawful sexual penetration in 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>penetration with any object other than the penis or mouth of the actor by forcible compulsion OR</li> <li>where victim is &lt; 12 years old OR</li> <li>victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness</li> </ul> <p><u>Unlawful sexual penetration in 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>penetration with any object other than the penis or mouth of the actor and the victim is &lt; 14 years old</li> </ul> <p><u>Sexual abuse in 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual contact by forcible compulsion OR</li> <li>where victim is &lt; 14 years old OR</li> <li>victim is incapable of consent by</li> </ul>	<p><u>Sodomy in the 3<sup>rd</sup> degree:</u> Class C felony</p> <p><u>Unlawful sexual penetration in 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Unlawful sexual penetration in 2<sup>nd</sup> degree:</u> Class B felony</p> <p><u>Sexual abuse in 1<sup>st</sup> degree:</u> Class B felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Oregon continued</b>		reason of mental defect, mental incapacitation or physical helplessness  <u>Sexual abuse in 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual intercourse, deviate sexual intercourse or penetration with any object other than the penis or mouth of the actor without consent</li> </ul> <u>Sexual abuse in 3<sup>rd</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual contact without consent</li> <li>OR</li> <li>• where the victim is &lt; 18 years old</li> </ul>	   <u>Sexual abuse 2<sup>nd</sup> degree:</u> Class C felony          <u>Sexual abuse in 3<sup>rd</sup> degree:</u> Class A misdemeanor	no explicit mens rea requirement; general intent          no explicit mens rea requirement; general intent	



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<p><b>Pennsylvania continued</b></p>		<ul style="list-style-type: none"> <li>• victim is &lt; 16 years old and the actor is ≥ 4 years older than the victim and the victim (unless married)</li> </ul> <p><u>Sexual assault:</u></p> <ul style="list-style-type: none"> <li>• Except as provided above, a person commits sexual assault when that person engages in sexual intercourse or deviate sexual intercourse without consent</li> </ul> <p><u>Aggravated indecent assault:</u></p> <ul style="list-style-type: none"> <li>• Except as provided above, penetration without consent OR</li> <li>• by forcible compulsion OR</li> <li>• by threat of forcible compulsion OR</li> <li>• victim is unconscious or unaware of penetration OR</li> <li>• victim’s power to appraise or control her conduct is impaired by drugs, intoxicants or other means to prevent resistance OR</li> <li>• victim suffers from a mental disability which renders him or her incapable of consent OR</li> <li>• victim is &lt; 13 years old OR</li> <li>• victim is &lt; 16 years old and the actor is ≥ 4 years older than the victim and the victim (unless married)</li> </ul> <p><u>Indecent assault:</u></p> <ul style="list-style-type: none"> <li>• indecent contact or causing the</li> </ul>	<p><u>Sexual assault:</u> Felony in the 2<sup>nd</sup> degree</p> <p><u>Aggravated indecent assault:</u> Felony in the 2<sup>nd</sup> degree</p> <p><u>Indecent assault:</u> Misdemeanor in the 2<sup>nd</sup> degree; Misdemeanor in the 1<sup>st</sup></p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Pennsylvania continued</b>		victim to have indecent contact without consent OR <ul style="list-style-type: none"> <li>• by forcible compulsion OR</li> <li>• by threat of forcible compulsion OR</li> <li>• victim is unconscious or unaware of indecent contact OR</li> <li>• victim’s power to appraise or control her conduct is impaired by drugs, intoxicants or other means to prevent resistance OR</li> <li>• victim suffers from a mental disability which renders him or her incapable of consent OR</li> <li>• victim is &lt; 13 years old OR</li> <li>• victim is &lt; 16 and the actor is ≥ 4 years older than the victim and the victim (unless married)</li> </ul>	degree		
<b>Rhode Island</b>	RI ST §11-37-1 §11-37-2 §11-37-3 §11-37-4 §11-37-5 §11-37-6 §11-37-7 §11-37-8	<u>Sexual assault in the 1<sup>st</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual penetration where the accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless OR</li> <li>• by force or coercion OR</li> <li>• through concealment or by the element of surprise, is able to overcome the victim OR</li> <li>• medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation</li> </ul> <u>Sexual assault in the 2<sup>nd</sup> degree:</u> <ul style="list-style-type: none"> <li>• sexual contact where the accused knows or has reason to know that</li> </ul>	<u>Sexual assault in the 1<sup>st</sup> degree:</u> Unclassified   <u>Sexual assault in the 2<sup>nd</sup> degree:</u> Unclassified	no explicit mens rea requirement           no explicit mens rea requirement; general intent	<u>Forcible compulsion</u> use of a weapon or threat of a weapon, use of physical force or physical violence, threat of force or violence, threat to murder, inflict serious bodily injury upon, or kidnap the victim or any other person  <u>Incapacity</u> “mentally disabled”: having a mental impairment which renders him/her incapable of appraising the nature of the act  “mentally incapacitated”: temporarily incapable of appraising or controlling her conduct due to the influence of a narcotic, anesthetic, or other substance administered without her consent, or mentally unable to communicate unwillingness to engage in the act  “physically helpless”: unconscious, asleep, or physically unable to communicate unwillingness to an act

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Rhode Island continued</b>		the victim is mentally incapacitated, mentally disabled, or physically helpless OR <ul style="list-style-type: none"> <li>• by force or coercion OR</li> <li>• medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation</li> </ul> <p><u>Sexual assault in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual penetration when actor is &gt; 18 years old and victim ≤ 15 years old</li> </ul>	<p><u>Sexual assault 3<sup>rd</sup> degree:</u> Unclassified</p>	no explicit mens rea requirement; general intent	
<b>South Carolina</b>	SC ST §16-3-651 §16-3-652 §16-3-653 §16-3-654 §16-3-658 §16-1-20	<p><u>Criminal sexual conduct 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body- use of aggravated force AND</li> <li>• victim submits due to forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act OR</li> <li>• actor causes the victim, without consent, to become mentally incapacitated or physically helpless by a controlled substance or any intoxicating substance</li> </ul> <p><u>Criminal sexual conduct 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• using aggravated coercion to accomplish: sexual intercourse,</li> </ul>	<p><u>Criminal sexual conduct 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Criminal sexual conduct 2<sup>nd</sup> degree:</u> Class C felony</p>	no explicit mens rea requirement; general intent	<p><u>Forcible compulsion</u>                      “aggravated coercion”: threats to use force or violence of a high and aggravated nature to overcome the victim or threats to retaliate in the future</p> <p>“aggravated force”: use of physical force or physical violence of a high and aggravated nature to overcome the victim or threatening to use a deadly weapon</p> <p><u>Incapacity</u>                      “mentally defective”: suffering from a mental disease or defect which renders the victim temporarily or permanently incapable of appraising the nature of her conduct</p> <p>“mentally incapacitated”: rendered temporarily incapable of appraising or controlling her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause</p> <p>“physically helpless”: unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<p><b>South Carolina continued</b></p>		<p>cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body</p> <p><u>Criminal sexual conduct 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• using force or coercion to accomplish: sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body OR</li> <li>• actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless</li> </ul>	<p><u>Criminal sexual conduct 3<sup>rd</sup> degree:</u> Class E felony</p>	<p>no explicit mens rea requirement; general intent</p>	



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
South Dakota	SD ST §22-22-1 §22-22-2 §22-22-7.1 §22-22-7.2 §22-22-7.4 §22-22-30 §22-6-1 §22-6-2	<p><u>Rape in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration when the victim is &lt; 10 years old</li> </ul> <p><u>Rape in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration using force, coercion, or threats of immediate and great bodily harm OR</li> <li>victim is incapable, because of physical or mental incapacity, of giving consent OR</li> <li>victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis</li> </ul> <p><u>Rape in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual penetration when:</li> <li>victim ≥ 10 years old but &lt; 16 years old and the perpetrator is ≥ 3 years older than the victim OR</li> <li>act is incest OR</li> <li>victim ≥ 10 years old but &lt; 18 years old and is the child of a spouse or former spouse of the perpetrator</li> </ul> <p><u>Sexual contact with person incapable of consent:</u></p> <ul style="list-style-type: none"> <li>any touching, not amounting to rape, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either party by a person 15 or older against a person 16 or older</li> </ul>	<p><u>Rape in the 1<sup>st</sup> degree:</u> Class 1 felony</p> <p><u>Rape in the 2<sup>nd</sup> degree:</u> Class 2 felony</p> <p><u>Rape in the 3<sup>rd</sup> degree:</u> Class 3 felony</p> <p><u>Sexual contact with person incapable of consent:</u> Class 4 felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>“intent to arouse”</p>	



## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
<b>Tennessee continued</b>		<p>force or coercion OR</p> <ul style="list-style-type: none"> <li>• without consent OR</li> <li>• defendant the victim is mentally defective, mentally incapacitated or physically helpless OR</li> <li>• uses fraud</li> </ul> <p><u>Aggravated sexual battery:</u></p> <ul style="list-style-type: none"> <li>• unlawful sexual contact by force or coercion and the defendant is armed with a weapon or item that appears to be a weapon OR</li> <li>• defendant causes bodily injury to the victim OR</li> <li>• defendant is aided or abetted and either force or coercion is used or defendant knows the victim is mentally defective, mentally incapacitated or physically helpless OR</li> <li>• victim is &lt; 13 years old</li> </ul> <p><u>Sexual battery:</u></p> <ul style="list-style-type: none"> <li>• unlawful sexual contact by force or coercion OR</li> <li>• without consent OR</li> <li>• defendant knows the victim is mentally defective, mentally incapacitated or physically helpless OR</li> <li>• uses fraud</li> </ul>	<p>the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance</p> <p><u>Aggravated sexual battery:</u> Class B felony</p> <p><u>Sexual battery:</u> Class E felony; it is an aggravating factor that the defendant caused the victim to be mentally incapacitated or physically helpless by use of a controlled substance</p>	<p>intentional</p> <p>intentional</p>	<p>communicate unwillingness to do an act</p>
<b>Texas</b>	TX PENAL §22.011 §22.021	<p><u>Aggravated sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual penetration, oral sex, or sodomy without consent AND</li> <li>• actor causes serious bodily injury</li> </ul>	<p><u>Aggravated sexual assault:</u> Felony in the 1<sup>st</sup> degree</p>	<p>knowingly or intentionally</p>	<p><u>Consent</u> no consent if any of the following exist: use of physical force or violence; threat to use force or violence against the victim or another; victim has not consented and the</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Texas continued		<p>or attempted to cause the death of the victim or another person OR</p> <ul style="list-style-type: none"> <li>• actor placed the victim in fear that death, serious bodily injury, or kidnapping would be imminently inflicted on any person OR</li> <li>• actor used or exhibited a deadly weapon OR</li> <li>• actor acted in concert with another who engaged in same conduct toward victim OR</li> <li>• actor administered or provided flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense OR</li> <li>• victim is &lt; 14 years old or &gt; 64 years old</li> </ul> <p><u>Sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual penetration of the victim by any means without consent</li> <li>• oral sex without consent</li> <li>• sodomy without consent</li> </ul>	<p><u>Sexual assault:</u> Felony in the 2<sup>nd</sup> degree</p>	<p>knowingly or intentionally</p>	<p>actor knows the victim is unconscious or physically unable to resist; actor knows that as a result of mental disease or defect the victim is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it; victim has not consented and the actor knows the victim is unaware that sexual assault is occurring; actor has intentionally impaired the victim's power to appraise or control her conduct by administering any substance without the victim's knowledge; actor is a public servant who coerces the victim to submit or participate; actor is a mental health services provider or a health care services provider who causes the victim, who is a patient or former patient of the actor, to submit or participate by exploiting the victim's emotional dependency on the actor; or actor is a clergyman who causes the victim to submit or participate by exploiting the victim's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Utah	UT ST §76-5-402 §76-5-403 §76-5-404 §76-5-405 §76-5-406 §76-5-407 §76-3-203	<p><u>Rape:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse without the victim's consent</li> </ul> <p><u>Object rape:</u></p> <ul style="list-style-type: none"> <li>causing, without the victim's consent, the penetration, however slight, of the genital or anal opening of the victim who is at least 14, by any foreign object or substance, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the victim or with the intent to gratify the sexual desire of any person</li> </ul> <p><u>Sodomy:</u></p> <ul style="list-style-type: none"> <li>any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant</li> </ul> <p><u>Forcible sodomy:</u></p> <ul style="list-style-type: none"> <li>committing sodomy upon another without their consent</li> </ul> <p><u>Forcible sexual abuse:</u></p> <ul style="list-style-type: none"> <li>occurs if the victim is at least 14 and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the</li> </ul>	<p><u>Rape:</u> Felony in the 1<sup>st</sup> degree</p> <p><u>Object rape:</u> Felony in the 1<sup>st</sup> degree</p> <p><u>Sodomy:</u> Class B misdemeanor</p> <p><u>Forcible sodomy:</u> Felony in the 1<sup>st</sup> degree</p> <p><u>Forcible sexual abuse:</u> Felony in the 2<sup>nd</sup> degree</p>	<p>no explicit mens rea requirement; general intent; but see <i>State v. Calamity</i>, 735 P.2d 39 (Utah 1987) (holding that because the statute does not specify necessary mental state, rape may be proven by either intentional, knowing or reckless mental state)</p> <p>“intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person”</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>“intent to cause substantial emotional or bodily pain to any person or [or] with the intent to gratify the sexual desire of any person”</p>	<p><u>Forcible compulsion/lack of consent:</u> victim expresses lack of consent through words or conduct; actor overcomes the victim through the actual application of physical force or violence; actor is able to overcome the victim through concealment or by the element of surprise; actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person</p> <p><u>Incapacity/lack of consent:</u> victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist; actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it; actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse; actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge; victim is under 14; victim is under 18 and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim; victim is between 14 and 17, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat; actor is a health professional or religious counselor, the act is committed under the guise of providing professional treatment, and the victim reasonably believed that the act was for medically or professionally appropriate treatment</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Utah continued		<p>genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to gratify the sexual desire of any person, without the consent of the other</p> <p><u>Aggravated sexual assault:</u></p> <ul style="list-style-type: none"> <li>• if in the course of a rape or attempted rape, object rape or attempted object rape, forcible sodomy or attempted forcible sodomy, or forcible sexual abuse or attempted forcible sexual abuse the actor:</li> <li>• causes bodily injury to the victim OR</li> <li>• uses or threatens the victim with use of a dangerous weapon OR</li> <li>• compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person OR</li> <li>• is aided or abetted by one or more persons</li> </ul>	<p><u>Aggravated sexual assault:</u> Felony in the 1<sup>st</sup> degree</p>		
Vermont	VT ST T.13 §3251 §3252 §3253	<p><u>Sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual act without consent OR</li> <li>• by threatening or coercing the victim OR</li> </ul>	<p><u>Sexual assault:</u> Unclassified</p>	no explicit mens rea requirement; general intent	<p><u>Incapacity/lack of consent:</u> exists when the actor knows that the victim is one of the following: mentally incapable of understanding the nature of the sexual act or lewd and lascivious conduct, not</p>

## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Vermont continued	§3254	<ul style="list-style-type: none"> <li>• placing the victim in fear that any person will suffer imminent bodily injury OR</li> <li>• substantially impairing the ability of the victim to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the victim OR</li> <li>• victim is &lt; 16 years old OR</li> <li>• victim is &lt; 18 years old and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child or step-child OR</li> </ul> <p><u>Aggravated sexual assault:</u></p> <ul style="list-style-type: none"> <li>• sexual assault AND</li> <li>• actor causes serious bodily injury to the victim or to another OR</li> <li>• actor is joined or assisted by one or more persons OR</li> <li>• actor commits the sexual act under circumstances which constitute the crime of kidnapping OR</li> <li>• actor was armed with a deadly weapon OR</li> <li>• actor threatened imminent serious bodily injury OR</li> <li>• used applied deadly force</li> <li>• victim was subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or as part of the</li> </ul>	<p><u>Aggravated sexual assault:</u> Unclassified</p>	no explicit mens rea requirement; general intent	physically capable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, unaware that a sexual act or lewd and lascivious conduct is being committed, mentally incapable of resisting, or declining consent to, the sexual act or lewd and lascivious conduct, due to mental illness or mental retardation





## Sexual Assault Statutes in the United States

State	Statute	Physical Contact: Element Breakdown	Classification of Crime	Mental State Required	Forcible Compulsion / Consent / Incapacity
Virginia continued		<ul style="list-style-type: none"> <li>with a child 12 or under</li> </ul> <p><u>Aggravated sexual battery:</u></p> <ul style="list-style-type: none"> <li>sexually abusing against the victim's will by force, threat, or intimidation against the victim or another or through use of the victim's mental incapacity or physical helplessness AND</li> <li>actor causes serious bodily or mental injury to the victim OR</li> <li>actor uses or threatens to use a dangerous weapon</li> </ul> <p><u>Sexual battery:</u></p> <ul style="list-style-type: none"> <li>sexually abusing against the victim's will by force, threat, intimidation, or ruse OR</li> <li>through use of the victim's mental incapacity or physical helplessness</li> </ul>	<p><u>Aggravated sexual battery:</u> Unclassified felony</p> <p><u>Sexual battery:</u> Class 1 misdemeanor</p>	<p>"intent to sexually molest, arouse, or gratify any person"</p> <p>"intent to sexually molest, arouse, or gratify any person"</p>	
Washington	WA ST §9A.44.010 §9A.44.040 §9A.44.050 §9A.44.060	<p><u>Rape in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion AND</li> <li>using or threatening to use a deadly weapon OR</li> <li>kidnapping the victim OR</li> <li>inflicting serious physical injury OR</li> <li>feloniously entering into the building or vehicle where the victim is situated</li> </ul> <p><u>Rape in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse by forcible compulsion OR</li> </ul>	<p><u>Rape in the 1<sup>st</sup> degree:</u> Class A felony</p> <p><u>Rape in the 2<sup>nd</sup> degree:</u> Class A felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p>	<p><u>Forcible compulsion</u> physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or another person, or in fear that she or another person will be kidnapped</p> <p><u>Consent</u> actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact</p> <p><u>Incapacity</u> "mental incapacity": condition that prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause</p>

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<b>Washington continued</b>		<ul style="list-style-type: none"> <li>• when victim cannot consent due to physical helplessness or mental incapacitation OR</li> <li>• when victim is developmentally disabled and the actor is not married to the victim and has supervisory authority over the victim OR</li> <li>• when perpetrator is a health care provider, victim is a client or patient, and sexual intercourse occurs during a professional session OR</li> <li>• when victim is a resident of a facility for mentally disordered or chemically dependent persons and perpetrator is not married to victim and has supervisory authority over victim OR</li> <li>• when victim is a frail elder or vulnerable adult and perpetrator is not married to victim and who has a significant relationship with victim</li> </ul> <p><u>Rape in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse without consent and lack of consent was clearly expressed by the victim's words or conduct OR</li> <li>• where there is threat of substantial unlawful harm to property rights of the victim</li> </ul>	<p><u>Rape in the 3<sup>rd</sup> degree:</u> Class C felony</p>	no explicit mens rea requirement; general intent	“physical helplessness”: when a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act

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West Virginia	WV ST §61-8B-1 §61-8B-2 §61-8B-3 §61-8B-4 §61-8B-5 §61-8B-6 §61-8B-7 §61-8B-8 §61-8B-9	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse or sexual intrusion where actor inflicts serious bodily injury OR</li> <li>employs a deadly weapon in the commission of the act</li> </ul> <p><u>Sexual assault in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse or sexual intrusion without consent, and the lack of consent results from forcible compulsion OR</li> <li>engaging in sexual intercourse or sexual intrusion with another person who is physically helpless</li> </ul> <p><u>Sexual assault in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated OR</li> <li>actor, age 16 or older, engaging in sexual intercourse or sexual intrusion with another person who is under 16 and is at least 4 years younger than the actor</li> </ul> <p><u>Sexual abuse in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual contact without consent, and the lack of consent results from forcible compulsion; <i>or</i></li> <li>subjecting a physically helpless person to sexual contact; <i>or</i></li> <li>subjecting a person 11 or under to sexual contact when the actor is 14 or older</li> </ul>	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u> Unclassified felony</p> <p><u>Sexual assault in the 2<sup>nd</sup> degree:</u> Unclassified felony</p> <p><u>Sexual assault in the 3<sup>rd</sup> degree:</u> Unclassified felony</p> <p><u>Sexual abuse in the 1<sup>st</sup> degree:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>no explicit mens rea requirement; general intent</p> <p>intentional</p>	<p><u>Forcible compulsion</u> physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances, threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to herself or another person or in fear that she or another person will be kidnapped, or fear by a person under 16 caused by intimidation, expressed or implied, by another person who is at least 4 years older than the victim</p> <p>“resistance” includes physical resistance or any clear communication of the victim's lack of consent</p> <p><u>Consent</u> lack of consent results from: forcible compulsion, incapacity to consent, or if the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct</p> <p>a person is deemed incapable of consent when under 16 years old, mentally defective, mentally incapacitated, or physically helpless</p> <p><u>Incapacity</u> “mentally defective”: when a person suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct</p> <p>“mentally incapacitated”: when a person is rendered temporarily incapable of appraising or controlling her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without her consent or as a result of any other act committed upon that person without her consent</p>

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<b>West Virginia continued</b>		<p><u>Sexual abuse in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>subjecting another person to sexual contact who is mentally defective or mentally incapacitated</li> </ul> <p><u>Sexual abuse in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>subjecting another person to sexual contact without the latter's consent, when lack of consent is due to the victim's incapacity to consent by reason of being under 16, <i>unless</i>: (a) actor is under 16; or (b) actor is &lt; 4 years older than victim</li> </ul>	<p><u>Sexual abuse in the 2<sup>nd</sup> degree:</u> Misdemeanor</p> <p><u>Sexual abuse in the 3<sup>rd</sup> degree:</u> Misdemeanor</p>	<p>intentional</p> <p>intentional</p>	<p>“physically helpless”: when a person is unconscious or for any reason is physically unable to communicate unwillingness to an act</p>
<b>Wisconsin</b>	WI ST §940.255 §939.50	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual contact or sexual intercourse without consent AND</li> <li>causing pregnancy or great bodily harm to them OR</li> <li>by use or threat of use of a dangerous weapon OR</li> <li>being aided or abetted and threatening force or violence</li> </ul> <p><u>Sexual assault in the 2<sup>nd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>sexual contact or sexual intercourse without consent by using or threatening force or violence OR</li> <li>causing injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim OR</li> </ul>	<p><u>Sexual assault in the 1<sup>st</sup> degree:</u> Class B felony</p> <p><u>Sexual assault in the 2<sup>nd</sup> degree:</u> Class BC felony</p>	<p>no explicit mens rea requirement; general intent (“sexual contact” must be intentional)</p> <p>no explicit mens rea requirement; general intent (“sexual contact” must be intentional)</p>	<p><u>Consent</u> Words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or contact</p> <p><u>Incapacity</u> when suffering from a mental illness or defect which impairs capacity to appraise personal conduct when unconscious or for any other reason is physically unable to communicate unwillingness to an act</p>

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Wisconsin continued		<ul style="list-style-type: none"> <li>• with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition OR</li> <li>• with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition OR</li> <li>• with a person who the defendant knows is unconscious OR</li> <li>• when aided or abetted by one or more other persons OR</li> <li>• when an employee of a specific facility or program has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program</li> </ul> <p><u>Sexual assault in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intercourse without consent OR</li> <li>• intentional penile ejaculation or intentional emission of urine or feces upon the victim without her consent if for the purpose of sexually degrading or sexually humiliating the victim or for sexually arousing or gratifying the defendant</li> </ul>	<p><u>Sexual assault in the 3<sup>rd</sup> degree:</u> Class D felony</p>	<p>no explicit mens rea requirement; general intent</p>	



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Wyoming continued		<p>someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control her conduct OR</p> <ul style="list-style-type: none"> <li>• actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse OR</li> <li>• actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit OR</li> <li>• actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices</li> <li>• OR</li> <li>• sexual contact causing serious bodily injury to the victim under any of the elements of sexual assault in the 1<sup>st</sup> degree</li> </ul> <p><u>Sexual assault in the 3<sup>rd</sup> degree:</u></p> <ul style="list-style-type: none"> <li>• sexual intrusion on a victim under 16 years old when actor is at least 4 years older OR</li> <li>• sexual contact without causing serious bodily injury to the victim by physical force or forcible confinement OR</li> <li>• by threat to anyone of death,</li> </ul>	<p><u>Sexual assault in the 3<sup>rd</sup> degree:</u> Unclassified felony</p>	<p>no explicit mens rea requirement; general intent (“sexual contact” is “with the intention of sexual arousal, gratification or abuse”)</p>	

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Wyoming continued		serious bodily injury, extreme physical pain or kidnapping OR <ul style="list-style-type: none"> <li>• victim is physically helpless, and the actor knows or reasonably should have known and the victim has not consented OR</li> <li>• actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct OR</li> <li>• by threatening to retaliate against the victim or the victim's family OR</li> <li>• by any means that would prevent resistance by a victim of ordinary resolution OR</li> <li>• actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control her conduct OR</li> <li>• actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse OR</li> <li>• actor is in a position of authority over the victim and uses this position to cause victim to submit</li> </ul>			



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Wyoming continued		<u>Sexual battery:</u> <ul style="list-style-type: none"> <li>• unlawfully subjecting another person to any sexual contact</li> </ul>	<u>Sexual battery:</u> Misdemeanor	“with the intention of sexual arousal, gratification or abuse”	