



Assistant Secretary for Health
Office of Public Health and Science
Office of Population Affairs
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From: Deputy Assistant Secretary for Population Affairs

Subject: OPA Program Instruction Series, OPA 99-1: Compliance with State Reporting Laws

To: Regional Health Administrators, Regions I-X

The Fiscal Year 1999 Omnibus Appropriations bill (P.L. 105-277) contains new language governing the use of Title X funds. Specifically section 219 states,

Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification, or reporting of child abuse, child molestation, sexual abuse, rape, or incest.

This memorandum is intended to serve as a formal notice to the regional offices, as well as Title X grantees, concerning compliance with State reporting laws. A copy of this memorandum should be provided to all Title X grantees in your region, and Title X providers should refer to this memorandum as needed, if questions in this area arise.

The language of section 219 means that Title X providers must report such incidents to the appropriate State authority in accordance with requirements imposed by State laws. The reporting and notification requirements referenced in section 219 concern State laws; the authority to enforce compliance with such laws lies with the States. It is therefore important that grantees review and be familiar with the relevant reporting requirements in their individual State. Because State laws vary, it is not possible for this office to provide more specific guidance as to the requirements of particular States' laws; grantees are urged to consult with their own attorneys for specific guidance.

Identified instances of child abuse, child molestation, sexual abuse, rape, or incest present serious medical and psychological situations for patients and their families. Findings of such instances coming within the applicable State law should be documented in the medical record and reported as required by the applicable State requirements. The Office of Population Affairs encourages efforts to augment existing training programs for Title X providers to ensure optimal medical assistance in such situations. Grantees should fully understand their obligations under State law related to reporting when such acts or actions are disclosed, and they should review current protocols for responding to such reports. We

also encourage enhanced counseling and education efforts targeted to the unique needs of adolescents. Title X providers are encouraged to continue to work at the local level in an interdisciplinary manner with other local health care providers who may also have reporting obligations under State law, law enforcement officials, child protective services, social service experts and others in order to explore how best to respond to these situations. To accomplish this, regional offices and Title X grantees are encouraged to utilize resources available through the regional training centers and the technical assistance contractor, as well as other available resources.

We appreciate your continued cooperation in assuring that grantees are aware of their obligations and hope this memorandum provides clarification on this matter.

/s/

Denese Shervington, M.D., M.P.H.

cc: Regional Program Consultants, Regions I-X



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FACTsheet

MANDATORY REPORTING

NEW YORK

Mandatory Reporting In Title X Funded Family Planning Settings NEW YORK

Ciatelli Associates Inc.
Region II Family Planning Training Center

September 2008

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Disclaimer:

This manual has been prepared by Ciatelli Associates Inc., to serve as a general guide for mandatory reporters. It provides information and does not constitute legal advice or representation. For legal advice, readers should consult their own counsel. This manual presents the state of the law as of September 2008. We cannot guarantee the accuracy of the contents after publication.

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Introduction

The purpose of this manual is to help program staff to understand if reportable activity has occurred; whether it should be reported, to whom and how; and the consequences of reporting. To this end, program staff must be familiar with two sets of laws: criminal and civil codes, of New York State and the federal government. Criminal codes define the legality of sexual activities involving minors, while civil codes describe individuals' reporting responsibilities, including those regarding the confidentiality of patient health information.

A. Who are Mandatory Reporters?

Mandated reporters include:

- Physicians, physician assistants, surgeons, medical examiners, coroners, dentists, dental hygienists, osteopaths, optometrists, chiropractors, podiatrists, residents, interns, psychologists, registered nurses, social workers, or emergency medical technicians;
- Licensed creative arts therapists, marriage and family therapists, mental health counselors, or psychoanalysts;
- Hospital personnel;
- Christian Science practitioners;
- School officials, including but not limited to, teachers, guidance counselors, school psychologists, school social workers, school nurses, or administrators;
- Social services workers, daycare center workers, providers of family or group family daycare, or employees or volunteers in a residential care facility or any other child care or foster care worker;
- Mental health professionals, substance abuse counselors, or alcoholism counselors;
- Peace officers, police officers, district attorneys or assistant district attorneys, investigators employed in the office of a district attorney, or other law enforcement officials.

N.Y. Soc. Serv. Law § 413.

B. When is a Mandatory Reporter Required to Report?

When must abuse be reported?

A report is required:

- When the mandated reporter has **reasonable cause to suspect** that a child coming before him or her in his or **her professional or official capacity** is an **abused** or **maltreated child**; or
- The parent, guardian, custodian, or other person legally responsible for the child comes before the mandated reporter and states from personal knowledge facts, conditions, or circumstances that, if correct, would render the child an abused or maltreated child.

N.Y. Soc. Serv. Law § 413(1)(a).¹

In addition, the New York reporting law now requires **social service workers** to report suspected abuse they hear about **from a third party**, in addition to suspected cases they observe firsthand or learn about from contact with a child's parents or legal caregiver.

Reasonable cause is not defined under the law, so agencies generally counsel reporters to use their observations, common sense, professional training, and experience in making their judgment. N.Y. Soc. Serv. Law § 413(1)(d).

What should a mandatory reporter do when they are not certain abuse occurred?

The majority of questions arise where mandatory reporters are not **certain** that reportable activity has occurred. The civil and criminal codes of New York State provide little guidance on this point. Courts have determined “reasonable cause” to be a suspicion grounded in objective facts that would lead others to the same conclusion. *People v. Brooks*, 88 A.D.2d 451, 453.

A guide developed by the New York State Office of Children & Family Services explains:

“Reasonable cause to suspect child abuse or maltreatment means that, based on your rational observations, professional training and experience, you have a suspicion that the parent or other person legally responsible for a child is responsible for harming that child or placing that child in imminent danger of harm. Your suspicion can be as simple as distrusting an explanation for an injury.” Summary Guide for Mandated Reporters in New York State, NYS OCFS, Pub. 1159 (Rev. 12/06).

What does it mean for a reporter to be in their official or professional role?

This requirement is meant to limit the liability of mandatory reporters to times when they are practicing their profession. For example, if during an office visit a doctor notices there is evidence of abuse, then he or she must make a report. However, if that same doctor were at his/her child’s school and noticed the same evidence of abuse, then he or she would not be required to report.

C. What Type of Activity Must be Reported?

Activity that would result in a child being considered an abused or maltreated child under New York State law must be reported.

“Abused child” is defined as a child under the age of 18 whose **parent or other person legally responsible** for his care (“legal caregiver”)²:

¹ In New York, different requirements apply to school employees and to abuse that occurs in the educational setting. Those requirements are not covered in this manual.

² "Person legally responsible" includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child. N.Y. Family Ct. Act § 1012(g).

1. **inflicts or allows to be inflicted** upon such child **physical injury** by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
2. **creates or allows to be created a substantial risk of physical injury** to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
3. **commits or allows to be committed a sexual offense** against such child, as defined in the penal law;
4. allows, permits or encourages such child to **engage in prostitution** as defined in the penal law;
5. commits **incest** as defined in the penal law; or allows such child to engage in **sexual performance** as described in the penal law provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age requirement shall not apply to proceedings under this article.

N.Y. Soc. Serv. Law § 411(1); Family Ct. Act § 1012(e), N.Y. Penal Code §§ 130,230.25, 230.30, 230.32, 255.25-7, 263.

The word **allows** is intended to address the situation involving abuse of a child by a third party where the parent or legal caregiver knew or should have known about the abuse and did nothing to prevent or stop it. For example, the Richmond County Family Court found a mother guilty of neglect because she should have known her daughter was being sexually abused by her stepfather and because the mother did nothing to protect her). In the matter of Katherine C., 471 N.Y.S.2d 216 (1984). Allowing a child to be abused has been interpreted to include taking no appropriate protective or preventive action after being warned of the danger to a child. See, Besharov, Practice commentaries, McKinney's Cons. L. N.Y., Book 29A, Family Ct. Act § 1012, at 314 (2008).

A "**maltreated child**" is a child under the age of 18:

1. whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or legal caregiver to exercise a minimum degree of care:
 - (a) in supplying the child with adequate food, clothing, shelter or education, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
 - (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious

nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired.

2. who has been abandoned by his parents or legal caregiver; or
3. has serious injury inflicted upon him/her other than by accidental means.

N.Y. Soc. Serv. Law § 384(b), 411(1); N.Y. Fam. Ct. Act § 1012(f).

D. What Sexual Activity Must be Reported?

What sexual activity must be reported?

Under the New York Penal Code, the age of consent for sexual activity is 17 years. An individual less than 17 years old **may not** be able to legally consent to sexual activity, and thus his or her sexual activity may be a reportable sexual offense, so long as it is:

- **committed** by a parent or person legally responsible for the child's care, or
- **allowed** to be committed by a parent or person legally responsible for the child's care.

Reportable sexual offenses include:

(a) Sexual intercourse and oral or anal sexual conduct if:

- A child is less than **17 years old** and the partner is **over 21 years old**
- A child is less than **15 years old** and the partner is **over 18 years old** if s/he is **more than 4 years older** than the child;
- A child is less than **13 years old** and the partner is **over 18 years old**; or
- A child is **less than 11 years old**.

N.Y. Penal Code §§ 130.25,30,35,40,45,50.

(b) Sexual contact if the child is **less than 14 years old**. N.Y. Penal Code §§ 130.55,60,65.

Under the New York Penal Code, sexual activity is defined as the following:

1. **Sexual intercourse** "has its ordinary meaning and occurs upon and penetration, however slight."
2. **Oral sexual conduct** means "conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina."
3. **Anal sexual conduct** means "conduct between persons consisting of contact between the penis and anus."

4. **Sexual contact** means “any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.”

N.Y. Penal Code §§ 130.00(1),(2)(a),(2)(b),(3).

Does a minor’s sexual activity require a report, even if they consented?

Under New York State law, the ability of children 17 years or younger to legally consent to sexual activity is limited by law, as described above. If the child cannot legally consent to sexual activity and if the sexual activity was committed or allowed to be committed by a parent or other person legally responsible for the child’s care, then it is reportable, even if it force or intimidation were not involved.

To what extent are parents or legal caregivers liable for reporting the consensual sexual activity of their minor child?

To date, New York Courts have rejected finding parents liable for child abuse where their minor child has voluntarily chosen to be sexually active and they do nothing to stop it. Parental liability for a third party’s sexual offense against a minor has been limited to situations where the parent or caregiver failed to intervene in a forced sexual relationship of which they had knowledge.

For example, where parents knew a 15-year-old girl was sexually active with her 20-year-old boyfriend, the court found there was no basis for holding the parents liable, since the sexual activity was consensual. The court stated that holding parents liable in such circumstances “fails to take into account the reality that the degree of supervision a parent is able to exert diminishes as a child’s freedom, independence, age and privacy increases.” *In re Leslie*, 614 N.Y.S. 855, at 861.

Does pregnancy or an STD require an abuse report?

New York State law does not state explicitly that pregnancy or an STD of a child constitutes suspicion of reportable abuse. Therefore, the mandatory reporter must use their discretion, based upon their own background, training and experience, to determine whether pregnancy or an STD are grounds to suspect that a child is being abused.

Do a patient’s criminal acts require an abuse report?

Both New York State and federal law protect the confidentiality of information received in the course of providing medical care. This information cannot be shared with the authorities unless a specific statutory requirement allows that sharing. New York State law requires mandatory reporters to share information about child abuse and neglect. It does not require mandated reporters to report information about any other crimes. Indeed, no state or federal law requires medical practitioners to report every criminal act of their patients.

Thus, even though the New York Penal Code makes some consensual sexual activity between minors illegal, this activity must not be reported unless the activity also meets the definition of sexual abuse as described above.

What sexual activity by a minor does not require reporting?

As stated above, most consensual and nonconsensual sexual activity by a minor will not require reporting. Because both state and federal law protect the confidentiality of information received in the course of providing care, mandatory reporters should not report any sexual activity unless:

- (a) the minor's sexual partner is their parent or legal caregiver, or
- (b) the minor's parent or legal caregiver allows the sexual conduct to occur.

Does a mandated reporter have a duty to ascertain the ages of the minor's partners?

No statute or case obligates mandatory reporters to ask their minor patients about the age of the minors' sexual partners. However, the reporter does not have to know for certain a partner's age for their duty to report to arise. Rather, the duty arises where a reporter has reasonable suspicion to believe that the minors' partner is of an age where sexual activity between the two would be considered reportable child abuse.

E. How is a Report Made?

To whom should reports be made?

Reports are made to State Central Registry for Child Abuse and Mistreatment (known as the "HOTLINE"), at the following numbers:

- TDD: (800) 369-2437
- Toll-Free: (800) 342-3720
- Local (toll): (518) 474-8740

Mandatory reporters can also call child abuse hotlines in Onondaga County (315-422-9701) or Monroe County (585-461-5690). In some localities, oral reports may be made to the local child protective service ("CPS"); therefore, reporters should be familiar with the policies and procedures for their locality. Where reports are made to the local CPS, the service must immediately make an oral or written report to the "HOTLINE."

N.Y. Social Serv. § Law 415.

How are reports made?

An oral report must be made immediately to the hotline followed with a written report within 48 hours of the oral report. N.Y. Soc. Serv. Law § 415.

Reports shall include Information required is specified on Form LDSS-2221A, the form that a reporter must use.

However, any disclosure of information shall not identify the source of the report. N.Y. Soc. Serv. Law § 422-a.

F. What Happens After a Report is Made?

What will the Department of Social Welfare do after receiving a report?

The Department of Social Services is immediately notified for investigation and follow-up. A local Child Protective Services caseworker will initiate an investigation within 24 hours.

Can individuals be held liable for making reports?

NO, mandatory reporters are immune from all civil and criminal liability if acting in good faith. Good faith is presumed if acting in professional capacity in discharge of duties, unless liability stems from gross negligence or willful misconduct. N.Y. Soc. Serv. Law § 419.

Can individuals be held liable for not making reports?

YES, if a mandatory reporter **willfully** fails to report, the reporter is guilty of Class A misdemeanor. If a mandatory reporter **knowingly and willfully** fails to report, then can also be civilly liable for damages proximately caused by such failure. N.Y. Soc. Serv. Law § 420.

G. How do Confidentiality Laws and Title X Regulations Effect a Mandated Report?

Federal regulations establish special protections for family planning information and records. Providers delivering services funded in full or in part with Title X monies must comply with the federal regulations.

For agencies delivering services funded in full or in part by Title X, federal law mandates that “[a]ll information as to personal facts and circumstances obtained by the project staff about individuals receiving services must be held confidential and must not be disclosed without the individual’s documented consent, except as may be necessary to provide services to the patient or as required by law, with appropriate safeguards for confidentiality.” 42 C.F.R. Chpt. 1 § 59.11. Providers can only share information without client authorization if an exception in state or federal law specifically permits such sharing. Otherwise information may be disclosed only in summary, statistical, or other form, which does not identify particular individuals.³

HIPAA regulations are intended to protect the confidentiality of patient health information. They give the Department of Health and Human Services the authority to enforce HIPAA confidentiality regulations and to impose sanctions on providers who breach those rules. See 45 C.F.R. § 160. Thus,

³ See, U.S. Dep’t Health Human Serv., Program Guidelines for Project Grants for Family Planning Services, 2001, available at: http://www.dhhs.gov/opa/familyplanning/toolsdocs/2001_ofp_guidelines_complete.pdf.

providers who breach confidentiality laws may expose themselves to legal liability under state and federal law.

Since the passage of the federal HIPAA, confusion has arisen regarding the obligation of a mandated reporter to provide copies of written records that underlie the report. The recently amended statute makes clear that obligation extends to the provision of the records necessary to investigate the report, as has always been the case. N.Y. Soc. Serv. Law §415. The amendment to SSL §415 only applies to the records of the mandated reporter who made the report of suspected child abuse or maltreatment. However, where employed by an institution, this requirement applies to all of the records of the institution that pertain to the report, regardless of who actually made the report. Additionally, the records requests should be limited only to information that directly pertains to the report.

In sum, while HIPAA and state laws protect the confidentiality of health information, neither excuse the failure of mandatory reporters to report child abuse and neglect.

H. Resources

ChildHelp	www.childhelp.org
Child Welfare Information Gateway	www.childwelfare.gov www.childwelfare.gov/systemwide/laws_policies/state (formerly known as National Clearinghouse on Child Abuse and Neglect)
Child Welfare League of America	www.cwla.org
National Center for Youth Law	www.youthlaw.org
Prevent Child Abuse America	www.childabuse.org
Parents United, International	www.parentsunited.info
Office of Population Affairs	www.hhs.gov/opa
Office of Civil Rights, HIPAA	http://hhs.gov/ocr/hipaa
New York State Child Protective Services	www.ocfs.state.ny.us

APPENDIX A – Applicable New York Law

N.Y. Soc. Serv. Law § 412 (Definitions)

1. An "abused child" means:

(a) a child under eighteen years of age not in "residential care," as defined in subdivision four of section four hundred twelve-a of this title, and who is defined as an abused child by the family court act; or

(b) a child under the age of eighteen years who is defined as an abused child in residential care pursuant to subdivision one of section four hundred twelve-a of this title;

2. A "maltreated child" includes:

(a) a child under eighteen years of age not in "residential care" as defined in subdivision four of section four hundred twelve-a of this title:

(i) defined as a neglected child by the family court act, or

(ii) who has had serious physical injury inflicted upon him or her by other than accidental means; or

(b) a child who is a neglected child in residential care as defined in subdivision two of section four hundred twelve-a of this title;

3. "Person legally responsible" for a child means a person legally responsible as defined by the family court act.

6. An "unfounded report" means any report made pursuant to this title unless an investigation determines that some credible evidence of the alleged abuse or maltreatment exists;

§ 413. Persons and officials required to report cases of suspected child abuse or maltreatment.

(b) Whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall make the report as required by this title and immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent. Such person in charge, or the designated agent of such person, shall be responsible for all subsequent administration necessitated by the report. Any report shall include the name, title and contact information for every staff person of the institution who is believed to have direct knowledge of the allegations in the report.

Nothing in this section or title is intended to require more than one report from any such institution, school or agency.

(c) A medical or other public or private institution, school, facility or agency shall not take any retaliatory personnel action, as such term is defined in paragraph (e) of subdivision one of section seven hundred forty of the labor law, against an employee because such employee believes that he or

she has reasonable cause to suspect that a child is an abused or maltreated child and that employee therefore makes a report in accordance with this title. No school, school official, child care provider, foster care provider, residential care facility provider, hospital, medical institution provider or mental health facility provider shall impose any conditions, including prior approval or prior notification, upon a member of their staff specifically required to report under this title. At the time of the making of a report, or at any time thereafter, such person or official may exercise the right to request, pursuant to paragraph (A) of subdivision four of section four hundred twenty-two of this title, the findings of an investigation made pursuant to this title or section 45.07 of the mental hygiene law.

(d) Social services workers are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child is an abused or maltreated child where a person comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child.

2. Any person, institution, school, facility, agency, organization, partnership or corporation which employs persons mandated to report suspected incidents of child abuse or maltreatment pursuant to subdivision one of this section shall provide consistent with section four hundred twenty-one of this chapter, all such current and new employees with written information explaining the reporting requirements set out in subdivision one of this section and in sections four hundred fifteen through four hundred twenty of this title. The employers shall be responsible for the costs associated with printing and distributing the written information.

3. Any state or local governmental agency or authorized agency which issues a license, certificate or permit to an individual to operate a family day care home or group family day care home shall provide each person currently holding or seeking such a license, certificate or permit with written information explaining the reporting requirements set out in subdivision one of this section and in sections four hundred fifteen through four hundred twenty of this title.

4. Any person, institution, school, facility, agency, organization, partnership or corporation, which employs persons who are mandated to report suspected incidents of child abuse or maltreatment pursuant to subdivision one of this section and whose employees, in the normal course of their employment, travel to locations where children reside, shall provide, consistent with section four hundred twenty-one of this title, all such current and new employees with information on recognizing the signs of an unlawful methamphetamine laboratory. Pursuant to section 19.27 of the mental hygiene law, the office of alcoholism and substance abuse services shall make available to such employers information on recognizing the signs of unlawful methamphetamine laboratories.

§ 416. Obligations of persons required to report.

Any person or official required to report cases of suspected child abuse and maltreatment may take or cause to be taken at public expense photographs of the areas of trauma visible on a child who is subject to a report and, if medically indicated, cause to be performed a radiological examination on the child. Any photographs or x-rays taken shall be sent to the child protective service at the time the written report is sent, or as soon thereafter as possible. Whenever such person is required to report under this title in his capacity as a member of the staff of a medical or other public or private institution, school, facility, or agency, he shall immediately notify the person in charge of such institution, school, facility or agency, or his designated agent, who shall

then take or cause to be taken at public expense color photographs of visible trauma and shall, if medically indicated, cause to be performed a radiological examination on the child.

§ 419. Immunity from liability.

Any person, official, or institution participating in good faith in the providing of a service pursuant to section four hundred twenty-four of this title, the making of a report, the taking of photographs, the removal or keeping of a child pursuant to this title, or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall have immunity from any liability, civil or criminal, that might otherwise result by reason of such actions. For the purpose of any proceeding, civil or criminal, the good faith of any such person, official, or institution required to report cases of child abuse or maltreatment or providing a service pursuant to section four hundred twenty-four or the disclosure of child protective services information in compliance with sections twenty, four hundred twenty-two and four hundred twenty-two-a of this chapter shall be presumed, provided such person, official or institution was acting in discharge of their duties and within the scope of their employment, and that such liability did not result from the willful misconduct or gross negligence of such person, official or institution.

§ 420. Penalties for failure to report.

1. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who willfully fails to do so shall be guilty of a class A misdemeanor.
2. Any person, official or institution required by this title to report a case of suspected child abuse or maltreatment who knowingly and willfully fails to do so shall be civilly liable for the damages proximately caused by such failure.

Family Court Act § 1012

(e) "Abused child" means a child less than eighteen years of age whose parent or other person legally responsible for his care:

- (i) inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- (ii) creates or allows to be created a substantial risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ; or
- (iii) commits, or allows to be committed an offense against such child defined in article one hundred thirty of the penal law; allows, permits or encourages such child to engage in any act described in sections 230.25, 230.30 and 230.32 of the penal law; commits any of the acts described in sections 255.25, 255.26 and 255.27 of the penal law; or allows such child to engage in acts or conduct described in article two hundred sixty-three of the penal law provided, however, that (a) the corroboration requirements contained in the penal law and (b) the age

requirement for the application of article two hundred sixty-three of such law shall not apply to proceedings under this article.

(f) "Neglected child" means a child less than eighteen years of age:

(i) whose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care

(A) in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or

(B) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; provided, however, that where the respondent is voluntarily and regularly participating in a rehabilitative program, evidence that the respondent has repeatedly misused a drug or drugs or alcoholic beverages to the extent that he loses self-control of his actions shall not establish that the child is a neglected child in the absence of evidence establishing that the child's physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as set forth in paragraph (i) of this subdivision; or

(ii) who has been abandoned, in accordance with the definition and other criteria set forth in subdivision five of section three hundred eighty-four-b of the social services law, by his parents or other person legally responsible for his care.

(g) "Person legally responsible" includes the child's custodian, guardian, or any other person responsible for the child's care at the relevant time. Custodian may include any person continually or at regular intervals found in the same household as the child when the conduct of such person causes or contributes to the abuse or neglect of the child.

N.Y. Penal Law: § 130.00 Sex offenses; definitions of terms.

The following definitions are applicable to this article:

1. "Sexual intercourse" has its ordinary meaning and occurs upon and penetration, however slight.
2. (a) "Oral sexual conduct" means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.
(b) "Anal sexual conduct" means conduct between persons consisting of contact between the penis and anus.

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.
9. "Foreign object" means any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.
10. "Sexual conduct" means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.
12. "Health care provider" means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.

§ 130.05 Sex offenses; lack of consent.

1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.
3. A person is deemed **incapable of consent** when he or she is:
 - (a) **less than seventeen years old.**

§ 130.20 (1)(2) Sexual misconduct.

(no consent) A person is guilty of sexual misconduct when:

1. He or she engages in sexual intercourse with another person without such person's consent; or
2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent;

§ 130.25(2) Rape in the third degree.

A person is guilty of rape in the third degree when being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old.

§ 130.30(1) Rape in the second degree.

A person is guilty of rape in the second degree when being **eighteen years old or more**, he or she engages in sexual intercourse with another person **less than fifteen years old**. It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was **less than four years older** than the victim at the time of the act.

§ 130.35(3),(4) Rape in the first degree.

A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person who is less than eleven years old or who is less than thirteen years old and the actor is eighteen years old or more.

§ 130.40(2) Criminal sexual act in the third degree.

A person is guilty of criminal sexual act in the third degree when being **twenty-one years old or more**, he or she engages in oral sexual conduct or anal sexual conduct with a person **less than seventeen** years old.

§ 130.45(1) Criminal sexual act in the second degree.

A person is guilty of criminal sexual act in the second degree when being **eighteen years old or more**, he or she engages in oral sexual conduct or anal sexual conduct with another person **less than fifteen** years old. It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the **defendant was less than four years older than the victim** at the time of the act.

§ 130.50 Criminal sexual act in the first degree. A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:

(3) Who is **less than eleven years old**; or

(4) Who is **less than thirteen years old** and the actor is **eighteen years old or more**.

§ 130.55 Sexual abuse in the third degree.

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact **without the latter's consent**; except that in any prosecution under this section, it is an **affirmative defense** that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such **other person was more than fourteen years old**, and (c) the **defendant was less than five years older** than such other person.

§ 130.60 (2) Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is **less than fourteen years old**.

§ 130.65 (2) Sexual abuse in the second degree.

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when the other person is **less than eleven years old**.

N.Y. Soc. Serv. Law § 384-b(1) (Determining the Best Interests of the Child)

The legislature recognizes that the health and safety of children are of paramount importance. To the extent it is consistent with the health and safety of the child, the legislature further finds that:

- It is desirable for children to grow up with a normal family life in a permanent home and that such circumstance offers the best opportunity for children to develop and thrive.

- It is generally desirable for the child to remain with or be returned to the birth parent because the child's need for a normal family life will usually best be met in the home of its birth parent, and that parents are entitled to bring up their own children unless the best interests of the child would be thereby endangered.
- The State's first obligation is to help the family with services to prevent its break-up or to reunite it if the child has already left home.
- When it is clear that the birth parent cannot or will not provide a normal family home for the child and when continued foster care is not an appropriate plan for the child, then a permanent alternative home should be sought for the child.

The legislature further finds that many children who have been placed in foster care experience unnecessarily protracted stays in such care without being adopted or returned to their parents.... Such unnecessary stays may deprive these children of positive, nurturing family relationships and have deleterious effects on their development into responsible, productive citizens. Provision of a timely procedure for the termination, in appropriate cases, of the rights of the birth parents could reduce such unnecessary stays. It is the intent of the legislature...to provide procedures not only assuring that the rights of the birth parent are protected, but also, where positive, nurturing parent-child relationships no longer exist, furthering the best interests, needs, and rights of the child by terminating parental rights and freeing the child for adoption.

N.Y. Soc. Serv. Law § 358-a(3)(c)

For the purpose of this section, in determining reasonable efforts to be made with respect to a child, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

Relevant Judicial Cases

In re Katherine C., 471 N.Y.S.2d 216, 219 (Fam. Ct. Richmond Co. 1984).
 In the Matter of Toni D., 579 N.Y.S.2d 181, 182 (N.Y. App. Div. 3d Dep't 1992)
 In re Leslie C., 614 N.Y.S.2d 855, 858 (Fam. Ct. Kings Co. 1994).
 Vacchio v. St. Paul's United Methodist Nursery Sch.
 People v. Brooks 88 A.D.