

SENTENCING

Section 13A-5-6

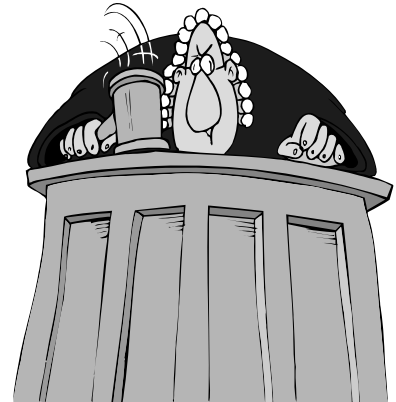
Sentences of imprisonment for felonies.

(a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment includes hard labor, within the following limitations:

- (1) For a Class A felony, for life or not more than 99 years or less than 10 years.
- (2) For a Class B felony, not more than 20 years or less than 2 years.
- (3) For a Class C felony, not more than 10 years or less than 1 year and 1 day.
- (4) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, not less than 20 years.
- (5) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, not less than 10 years.

(b) The actual time of release within the limitations established by subsection (a) of this section shall be determined under procedures established elsewhere by law.

(Acts 1977, No. 607, p. 812, § 1225; Acts 1981, No. 81-840, p. 1505.)



Section 13A-5-7

Sentences of imprisonment for misdemeanors and violations.

(a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:

- (1) For a Class A misdemeanor, not more than one year.
- (2) For a Class B misdemeanor, not more than six months.
- (3) For a Class C misdemeanor, not more than three months.

(b) Sentences for violations shall be for a definite term of imprisonment in the county jail, not to exceed 30 days.

(Acts 1977, No. 607, p. 812, § 1230; Acts 1978, No. 770, p. 1110.)

RAPE

Section 13A-6-61

Rape in the first degree.

- (a) A person commits the crime of rape in the first degree if:
- (1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or
 - (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
 - (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.
- (b) Rape in the first degree is a Class A felony.

(Acts 1977, No. 607, p. 812, &§2310; Act 2000-726, § 1.)

Section 13A-6-62

Rape in the second degree.

- (a) A person commits the crime of rape in the second degree if:
- (1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.
 - (2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.
- (b) Rape in the second degree is a Class B felony.

(Acts 1977, No. 607, p. 812, &§2311; Acts 1979, No. 79-471, p. 862, &§1; Acts 1987, No. 87-607, p. 1056, &§2; Act 2000-726, § 1.)

SODOMY

Section 13A-6-63

Sodomy in the first degree.

- (a) A person commits the crime of sodomy in the first degree if:
- (1) He engages in deviate sexual intercourse with another person by forcible compulsion;
or
 - (2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or
 - (3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.
- (b) Sodomy in the first degree is a Class A felony.

(Acts 1977, No. 607, p. 812, §2315.)

Section 13A-6-64

Sodomy in the second degree.

- (a) A person commits the crime of sodomy in the second degree if:
- (1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.
 - (2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.
- (b) Sodomy in the second degree is a Class B felony.

(Acts 1977, No. 607, p. 812, §2316; Acts 1979, No. 79-471, p. 862, §1; Acts 1987, No. 87-607, p. 1056, §3.)

SEXUAL MISCONDUCT

Section 13A-6-65

Sexual misconduct.

- (a) A person commits the crime of sexual misconduct if:
- (1) Being a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with her consent where consent was obtained by the use of any fraud or artifice; or
 - (2) Being a female, she engages in sexual intercourse with a male without his consent; or
 - (3) He or she engages in deviate sexual intercourse with another person under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64. Consent is no defense to a prosecution under this subdivision.
- (b) Sexual misconduct is a Class A misdemeanor.

(Acts 1977, No. 607, p. 812, §2318.)

SEXUAL TORTURE

Section 13A-6-65.1

Sexual torture.

- (a) A person commits the crime of sexual torture:
- (1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.
 - (2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.
 - (3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.
- (b) The crime of sexual torture is a Class A felony.

(Acts 1993, No. 93-606, §1.)

SEXUAL ABUSE

Section 13A-6-66

Sexual abuse in the first degree.

- (a) A person commits the crime of sexual abuse in the first degree if:
- (1) He subjects another person to sexual contact by forcible compulsion; or
 - (2) He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated; or
 - (3) He, being 16 years old or older, subjects another person to sexual contact who is less than 12 years old.
- (b) Sexual abuse in the first degree is a Class C felony.

(Acts 1977, No. 607, p. 812, §2320.)

Section 13A-6-67

Sexual abuse in the second degree.

- (a) A person commits the crime of sexual abuse in the second degree if:
- (1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or
 - (2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.
- (b) Sexual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.

(Acts 1977, No. 607, p. 812, &sect;2321; Act 2000-728; §1.)

OTHER RELATED CRIMES

Section 13A-6-68

Indecent exposure.

(a) A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm in any public place or on the private premises of another or so near thereto as to be seen from such private premises.

(b) Indecent exposure is a Class A misdemeanor.

(Acts 1977, No. 607, p. 812, §2325.)

Section 13A-13-3

Incest.

(a) A person commits incest if he marries or engages in sexual intercourse with a person he knows to be, either legitimately or illegitimately:

(1) His ancestor or descendant by blood or adoption; or

(2) His brother or sister of the whole or half-blood or by adoption; or

(3) His stepchild or stepparent, while the marriage creating the relationship exists; or

(4) His aunt, uncle, nephew or niece of the whole or half-blood.

(b) A person shall not be convicted of incest or of an attempt to commit incest upon the uncorroborated testimony of the person with whom the offense is alleged to have been committed.

(c) Incest is a Class C felony.

(Acts 1977, No. 607, p. 812, §7010.)

STALKING

Section 13A-6-90

Stalking.

(a) A person who intentionally and repeatedly follows or harasses another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm is guilty of the crime of stalking.

(b) The crime of stalking is a Class C felony.

(Acts 1992, 2nd Ex. Sess., No. 92-675, p. 54, §1.)

Section 13A-6-91

Aggravated stalking.

(a) A person who violates the provisions of Section 13A-6-90(a) and whose conduct in doing so also violates any court order or injunction is guilty of the crime of aggravated stalking.

(b) The crime of aggravated stalking is a Class B felony.

(Acts 1992, 2nd Ex. Sess., No. 92-675, p. 54, §2.)

Section 13A-6-92

Definitions.

As used in this article, the following terms shall have the following meanings, respectively, unless the context clearly indicates otherwise.

(a) COURSE OF CONDUCT. A pattern of conduct composed of a series of acts over a period of time which evidences a continuity of purpose.

(b) CREDIBLE THREAT. A threat, expressed or implied, made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to fear for his or her safety or the safety of a family member and to cause reasonable mental anxiety, anguish, or fear.

(c) HARASSES. Engages in an intentional course of conduct directed at a specified person which alarms or annoys that person, or interferes with the freedom of movement of that person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress. Constitutionally protected conduct is not included within the definition of this term.

(Acts 1992, 2nd Ex. Sess., No. 92-675, p. 54, §3; Acts 1994, No. 94-305, §1.)

Section 13A-11-8

Harassment or harassing communications.

(a)(1) HARASSMENT.- A person commits the crime of harassment if, with intent to harass, annoy, or alarm another person, he or she either:

a. Strikes, shoves, kicks, or otherwise touches a person or subjects him or her to physical contact.

b. Directs abusive or obscene language or makes an obscene gesture towards another person.

(2) For purposes of this section, harassment shall include a threat, verbal or nonverbal, made with the intent to carry out the threat, that would cause a reasonable person who is the target of the threat to fear for his or her safety.

(3) Harassment is a Class C misdemeanor.

(b)(1) HARASSING COMMUNICATIONS. - A person commits the crime of harassing communications if, with intent to harass or alarm another person, he or she does any of the following:

a. Communicates with a person, anonymously or otherwise, by telephone, telegraph, mail, or any other form of written or electronic communication, in a manner likely to harass or cause alarm.

b. Makes a telephone call, whether or not a conversation ensues, with no purpose of legitimate communication.

c. Telephones another person and addresses to or about such other person any lewd or obscene words or language.

Nothing in this section shall apply to legitimate business telephone communications.

(2) Harassing communications is a Class C misdemeanor.

(Acts 1977, No. 607, p. 812, §5530; Acts 1978, No. 770, p. 1110, §1; Acts 1979, No. 79-471, p. 862, §1; Acts 1996, No. 96-767, p. 1353, §1; Acts 1997, No. 97-552, p. 989, §1.)

What you can do:

Suggest the client take the following steps:

- Assess the danger of the situation, and develop a safety plan on how to deal with the stalker and his/her threats.
- Discuss what exactly the threat might be, and what possible responses the client has, and what the stalker's response to the client's action might be. Do not minimize the level of danger or concern. Always err on the side of caution.
- Call 911, or the local police station, and file a report. Get the officer's name, badge number, and report number. Call the police every time anything happens. Often stalkers are convicted of crimes other than stalking (trespassing, stealing, etc.)
- Keep a journal. Record everything the stalker says, does, or sends, along with the dates, time, places, etc. Videotape or take pictures of Caller ID box.
- Alert people you know. Tell people you are in danger and need an escort as much as possible.
- Toll free help and referrals are available for stalking victims at 1-800-FYI-CALL Monday through Friday 8:30 to 5:30 EST, from the National Crime Victim's Center.

SEXUAL HARASSMENT

Sexual harassment is unwanted sexual or gender based behavior that occurs when one person has formal or informal power over the other person.

There are three elements to sexual harassment:

- The behavior is unwanted or unwelcome.
- The behavior is sexual or related to the gender of the person.
- The behavior occurs in the context of a relationship where one person has more formal power than the other person does (such as a supervisor over an employee or a faculty member over a student does) or more informal power (such as one peer over another).

Two Types of Sexual Harassment

Quid pro quo is when the harasser requires sexual favors of the victim in return for some action by the harasser, or harasser retaliates against victim for refusing sexual favors (e.g. sex for a promotion or passing grade).

Hostile environment is when the victim is subjected to unwelcome repeated sexual comments, innuendoes or touching, which alter conditions or interfere with school or employment performance or access to opportunities provided by the institution. Conduct is gender-based, and creates an intimidating or offensive place for employees to work or students to go to school. To establish a hostile environment it usually requires a pattern of this sort of behavior, but sometimes one incident is enough, if severe or outrageous.

Once someone has been informed that behaviors are perceived as hostile (whether or not they were intended to be) and those behaviors are continued, then the offender and possibly other parties aware of the behavior could be charged with sexual harassment.

Sexual harassment may include many behaviors, including but not limited to:

- Unwanted pressure for sexual favors
- Unwanted pressure for dates
- Sexual teasing or remarks
- Unwanted touching
- Letters, phone calls, or materials of a sexual nature
- Sexual comments about a person's looks
- Intimidation by cornering or pinching
- Sexual comments or innuendoes
- An implicit or explicit threat that the victim must comply in order to remain employed, obtain a promotion, etc.

Laws prohibiting Sexual Harassment

State, federal and local laws prohibit sexual harassment in the workplace. Title VII of the Federal Civil Rights Act and local fair employment ordinances contain similar bans on sexual harassment. Every employer must provide a workplace free of sexual harassment, which includes intolerance of a hostile work environment.

Important Note Regarding Schools

The U.S. Supreme Court has ruled that school districts may be sued in federal court when they know of flagrant sexual harassment between students but do little or nothing about it. To be liable, a school board must have “actual knowledge” of student-on-student harassment and be “deliberately indifferent” to it. In addition, the harassment must be “so severe, pervasive, and objectively offensive that it denies its victims the equal access to education” guaranteed under Title IX of the Education Act of 1972. This is the first ruling that specifies that student-to-student harassment is included under Title IX.

What you can do:

Suggest the client take the following steps:

- Say NO to the harasser, verbally and in writing.
- Tell the harasser that repetition of the behavior will be reported to a supervisor.
- Follow through on your threat to report the behavior if it is repeated.
- Keep a diary or log of the harassing behavior and any letters or calls you’ve made because of the harassment
- Learn about your employer’s or school’s sexual harassment policy
- Get support from family, friends and the rape crisis program.

RAPE SHIELD LAW

Section 12-21-203

Admissibility of evidence relating to past sexual behavior of complaining witness in prosecutions for criminal sexual conduct.

(a) As used in this section, unless the context clearly indicates otherwise, the following words and phrases shall have the following respective meanings:

(1) **COMPLAINING WITNESS.** Any person alleged to be the victim of the crime charged, the prosecution of which is subject to the provisions of this section.

(2) **CRIMINAL SEXUAL CONDUCT.** Sexual activity, including, but not limited to, rape, sodomy, sexual misconduct, sexual abuse or carnal knowledge.

(3) **EVIDENCE RELATING TO PAST SEXUAL BEHAVIOR.** Such term includes, but is not limited to, evidence of the complaining witness's marital history, mode of dress and general reputation for promiscuity, nonchastity or sexual mores contrary to the community standards.

(b) In any prosecution for criminal sexual conduct or for assault with intent to commit, attempt to commit or conspiracy to commit criminal sexual conduct, evidence relating to the past sexual behavior of the complaining witness, as defined in subsection (a) of this section, shall not be admissible, either as direct evidence or on cross-examination of the complaining witness or of other witnesses, except as otherwise provided in this section.

(c) In any prosecution for criminal sexual conduct, evidence relating to the past sexual behavior of the complaining witness shall be introduced if the court, following the procedure described in subsection (d) of this section, finds that such past sexual behavior directly involved the participation of the accused.

(d) The procedure for introducing evidence, as described in subsection (c) of this section, shall be as follows:

(1) At the time the defense shall seek to introduce evidence which would be covered by subsection (c) of this section, the defense shall notify the court of such intent, whereupon the court shall conduct an in camera hearing to examine into the defendant's offer of proof. All in camera proceedings shall be included in their entirety in the transcript and record of the trial and case;

(2) At the conclusion of the hearing, if the court finds that any of the evidence introduced at the hearing is admissible under subsection (b) of this section, the court shall by order state what evidence may be introduced by the defense at the trial of the case and in what manner the evidence may be introduced; and

(3) The defense may then introduce evidence pursuant to the order of the court.

(Acts 1977, No. 251, p. 328.)

CONFIDENTIALITY

Section 15-23-42

Confidentiality of communications with victim counselor.

(a) A victim, a victim counselor without the consent of the victim, or a minor or incapacitated victim without the consent of a custodial guardian or a guardian ad litem appointed upon application of either party, cannot be compelled to give testimony or to produce records concerning confidential communications for any purpose in any criminal proceeding.

(b) A victim counselor or a victim cannot be compelled to provide testimony in any civil or criminal proceeding that would identify the name, address, location, or telephone number of a safe house, abuse shelter, or other facility that provided temporary emergency shelter to the victim of the offense or transaction that is the subject of the proceeding unless the facility is a party to the proceeding.

(c) The confidential communication privilege of a victim counselor with respect to communications made between the counselor and the victim shall terminate upon the death of the victim.

(Acts 1987, No. 87-598, p. 1040, §2; Acts 1995, No. 95-536, p. 1094, §1.)

Test Your Knowledge

1. What is the difference between rape and sexual abuse?
2. What steps might you suggest to someone being stalked?
3. Name and describe the two forms of sexual harassment?
4. Which groups of people are incapable of providing consent?