

## **PLAZA COLLEGE SECURITY REPORT 2016**

### **INTRODUCTION**

Plaza College is justifiably proud of its record in maintaining the safety of our community as shown in the enclosed federally reported crime statistics. The Forest Hills campus has been designed with security in mind. Plaza College has a single, dedicated entrance with safety officers prominently stationed to control access to the campus. The new campus is a compact institution with a strong administrative presence. As a College with a transitory commuter population, serious crime has not been an issue at Plaza. Our building has heightened security because of the presence of offices for federal, state and city legislators, which includes camera surveillance of the building front by the NYPD. With the Queens Courthouse and District Attorney's office within blocks of the College, the safety of our neighborhood benefits with the presence of FEMA, the FBI, the Treasury Department, and Secret Service.

### **TIMELY WARNINGS**

Plaza College has created a number of channels to provide information to the community in the event of an emergency. All members of the College community are automatically enrolled in EMS Text Messaging. The College can also choose to send emails about emergency conditions. Members of the campus community may also call the main number (718) 779-1430 for recorded announcements. Finally, the College has a speaker system, accessible to administrators, to speak to the entire on-campus community in the event of an emergency.

### **ADVISORY COMMITTEE ON CAMPUS SECURITY (NYS 129-a 6431)**

In accordance with Article 129-a of the New York State Education Law, Plaza College has appointed the following to Advisory Committee on Campus Security: Administrators (2 male, 1 female), Faculty and Staff (1 male, 2 female), and Students (2 female).

### **SEXUAL ASSAULT, DOMESTIC VIOLENCE, AND STALKING PREVENTION (NYS 129-a 6432)**

#### **Counseling Services**

The numbers below are places where you can find help:

NYS Domestic and Sexual Violence Hotline: 1-800-942-6906

New York City: 1-800-621-HOPE (4673) or dial 311, 1-866-604-5350 (TTY)

NYPD: Sex Crime Unit  
(212) 267-RAPE (7273) (24 Hour)

Rape Intervention Program  
St. Luke's-Roosevelt  
(212)523-4728

Victim Services Agency  
(718) 899-1233  
(212) 577-7777 (24 Hour)

Safe Horizon Sexual Assault Hotline  
866-689-HELP (4357) (24-Hour Hotline)  
212-267-3000, [www.safehorizon.org](http://www.safehorizon.org)

Mount Sinai School of Medicine / SAVI  
25-10 30th Ave  
Astoria  
Hotline: (212) 423-2140  
(212) 577-7777

Sanctuary for Families  
212-349-6009, [www.sanctuaryforfamilies.org](http://www.sanctuaryforfamilies.org)

New York Asian Women's Center  
212-732-5230 (24-Hour Hotline)

New York City Anti-Violence Project  
212-714-1141(24-Hour Hotline), [www.avp.org](http://www.avp.org)  
888-888-7702

Mt. Sinai Hospital  
Sexual Assault Violence Intervention Program  
One Gustav Levy Place  
Main Line: 212-423-2140

## **Sexual Assault**

### **SEXUAL ASSAULT AND RAPE INFORMATION**

Sexual assault involves intercourse, unwelcome physical contact, or any other sexual activity with a person who does not give free and full consent. Anyone can be raped, regardless of age, sex, appearance, or way of dressing. No matter what the circumstances, if you have been raped, a vicious crime has been committed against you. You are not to blame!

### **WHAT TO DO IF YOU HAVE BEEN SEXUALLY ASSAULTED OR RAPED**

Report the assault immediately to the school administration and/or the police. Do not change your clothes, wash, shower, or urinate. Doing so may eliminate important evidence which could lead to the arrest of your attacker. Make sure to seek counseling. Rape is a traumatic experience, and a trained person can help you deal with your feelings. The numbers above will link you to services that will help.

## **Domestic Violence**

### **WHAT TO DO IF YOU ARE A VICTIM OF DOMESTIC VIOLENCE**

If you are a victim of domestic violence, inform the police and the Director of Student Services immediately. If you move to a shelter, inform Student Services not to release any information without your written consent. If you receive an order of protection, please bring a copy of the order and if possible a photo that we can distribute to campus safety officials. Contact the numbers above to link you to services that will help. If the person who is abusing you is a member of the Plaza College community, that person will be sanctioned under the Code of Conduct, which includes the possibility of expulsion.

## **Stalking**

### **WHAT TO DO IF YOU ARE BEING STALKED**

If someone repeatedly acts in a manner that makes you fear for your safety, property, mental health, or employment, you are being stalked (see Appendix C for the text of New York law regarding stalking). You should report stalking to the police and Student Services. If you receive an order of protection, please bring a copy of the order and if possible a photo that we can distribute to campus safety officials. Contact the numbers above to link you to services that will help. If the person who is stalking you is a member of the Plaza College community, that person will be sanctioned under the Code of Conduct, which includes the possibility of expulsion.

## **AFFIRMATIVE CONSENT (NYS 129-b 6441)**

Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

Minors who cannot consent under New York's laws covering age of consent are considered incapacitated for purposes of §6441(2)(d).

Whether all parties consented to sexual activity or contact is to be determined through the student conduct or grievance process. Per Section 6444(5)(c)(ii), respondents have a "right to a presumption that the respondent is 'not responsible' until a finding of responsibility is made pursuant to the provisions of this article." This means that the burden of showing that a student had sexual activity or contact with another without affirmative consent as defined here is on the institution, not on the respondent to prove a negative. Note that the burden is on the institution to develop these facts, not on the reporting individual, who may participate at the level to which he or she is comfortable. Through the process, appropriate officials may listen to witnesses and review available evidence to make a determination, to the best of their ability, whether it is more likely than not that a policy violation occurred.

Individuals who are incapacitated cannot consent to sexual activity or contact. Incapacitation is to be determined by a student conduct hearing based on available evidence, acknowledging that in almost no cases will scientific evidence of alcohol or drug level (such as a breathalyzer taken at the time of the assault) be available. There is no single standard or number of drinks that leads to incapacitation. This level varies for different people, and may depend in part on their age, gender, height, weight,

metabolism and whether and how much they have recently eaten. This provision does not mean that individuals cannot affirmatively consent to 10 sexual activity or contact when they have been drinking or using drugs. Such individuals may still affirmatively consent through words or actions that clearly indicate interest in engaging in the activity. Someone who is unconscious, asleep, or involuntarily restrained cannot consent to sexual activity.

#### **ALCOHOL/DRUG USE AMNESTY (NYS 129-b 6442)**

The health and safety of every student at Plaza College is of utmost importance. Plaza recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence, including but not limited to domestic violence, dating violence, stalking, or sexual assault occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Plaza College strongly encourages students to report domestic violence, dating violence, stalking, or sexual assault to institution officials. A bystander acting in good faith or a reporting individual acting in good faith that discloses any incident of domestic violence, dating violence, stalking, or sexual assault to Plaza College officials or law enforcement will not be subject to [Plaza's] code of conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, or sexual assault.

#### **CODE OF CONDUCT BILL OF RIGHTS (NYS 129-b 6443)**

All students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
3. Make a decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal justice process free from pressure by Plaza;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from Plaza College courteous, fair, and respectful health care and counseling services, where available;
6. Be free from any suggestion that the reporting individual is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;
7. Describe the incident to as few College representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by Plaza College, any student, the accused and/or the respondent, and/or their friends, family and acquaintances within the jurisdiction of Plaza College;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a reporting individual, accused, or respondent throughout the conduct process including during all meetings and hearings related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or judicial or conduct process of Plaza College

#### **CAMPUS CRIME REPORT AND STATISTICS (NYS 129-a 6433)**

##### **Definition of Reportable Crimes**

Criminal Homicide: Murder and non-negligent manslaughter – The willful (non-negligent) killing of one human being by another.

Negligent manslaughter: The killing of another person through gross negligence.

##### **Forcible Sex Offenses**

**Forcible rape:** The carnal knowledge of a person, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his or her temporary or permanent mental or physical incapacity (or because of his/her youth).

**Forcible sodomy:** Oral or anal sexual intercourse with another person, forcibly and/ or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his or her temporary or permanent mental or physical incapacity.

**Sexual assault with an object:** The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against the person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his or her temporary or permanent mental or physical incapacity.

**Forcible fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will, or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his or her temporary or permanent mental or physical incapacity.

### **Non-forcible Sex Offenses**

**Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent.

**Robbery:** The taking or attempting to take anything of value from the care, custody, or control of a person or persons by force or threat of force or violence and/or by putting the victim in fear.

**Aggravated Assault:** An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault usually is accomplished by the use of a weapon or by a means likely to produce death or great bodily harm. (It is not necessary that injury result from an aggravated assault when a gun, knife, or other weapon is used that could and probably would result in serious personal injury if the crime were successfully completed.)

**Burglary:** The unlawful entry of a structure to commit a felony or a theft. For reporting purposes, this definition includes: unlawful entry with intent to commit a larceny or felony, breaking and entering with intent to commit a larceny, housebreaking, safecracking, and all attempts to commit any of the aforementioned acts.

**Motor Vehicle Theft:** The theft or attempted theft of a motor vehicle. (Motor vehicle theft is classified as any case where an automobile is taken by a person not having lawful access, even if the vehicle is later abandoned, including joy riding.)

**Arson:** Any willful or malicious burning or attempt to burn, with or without intent to defraud, a dwelling house, public building, motor vehicle or aircraft, personal property of another.

**Hate Crimes:** The law requires the release of statistics by category of prejudice concerning the occurrence of hate crimes in the crime classifications listed in the preceding section and for other crimes involving bodily injury to any person in which the victim is selected because of the actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability of the victim.

In August 2008 the Clery Act was amended to include the following additional crimes under the hate crimes category:

**Larceny/Theft:** The unlawful taking, carrying, leading, or riding away of property from the possession, or constructive possession, of another.

**Simple Assault:** An unlawful physical attack by one person upon another where neither the offender displays a weapon, nor the victim suffers obvious severe or aggravated bodily injury involving apparent broken bones, loss of teeth, possible internal injury, severe laceration or loss of consciousness.

**Intimidation:** To unlawfully place another person in reasonable fear of bodily harm through the use of threatening words and/or other conduct but without displaying a weapon or subjecting the victim to actual physical attack.

**Destruction/Damage/Vandalism of Property (Except "Arson")**: To willfully or maliciously destroy, damage, deface, or otherwise injure real or personal property without the consent of the owner or the person having custody or control of it.

**Other Offenses**

**Liquor Law Violations**: The violation of laws or ordinances prohibiting the manufacture, sale, transporting, furnishing, possessing of intoxicating liquor; maintaining unlawful drinking places; bootlegging; operating a still; furnishing liquor to a minor or intemperate person; using a vehicle for illegal transportation of liquor; drinking on a train or public conveyance; and all attempts to commit any of the aforementioned activities. (Drunkenness and driving under the influence are not included in this definition.)

**Drug Law Violations**: The violation of state and local laws relating to the unlawful possession, sale, use, growing, manufacturing, and making of narcotic drugs. The relevant substances include opium or cocaine and their derivative (morphine, heroin, codeine); marijuana; synthetic narcotics (Demerol, methadone); and dangerous non-narcotic drugs (barbiturates, Benzedrine).

**Illegal Weapons Possession**: The violation of laws or ordinances dealing with weapon offenses, regulatory in nature, such as: the manufacture, sale, or possession of deadly weapons; the carrying of deadly weapons, concealed or openly; the furnishing of deadly weapons to minors; aliens possessing deadly weapons; and all attempts to commit any of the aforementioned acts.

**Jeanne Clery Act Disclosure of Campus Crime Statistics**

Upon request, Plaza College will provide a written copy of the statistics reported under the Jeanne Clery Act by mail within 10 days of the request. The USDE Web site for campus crime statistics is <http://securityoncampus.org>.

Criminal Offenses			
Offense	Year	On Campus	Public Property
Murder/ Non-negligent manslaughter	2013	0	0
	2014	0	0
	2015	0	0
Negligent Manslaughter	2013	0	0
	2014	0	0
	2015	0	0
Sex Offenses, Forcible	2013	0	0
	2014	0	0
	2015	0	0
Sex Offenses, Non-Forcible	2013	0	0
	2014	0	0
	2015	0	0
Robbery	2013	0	0
	2014	0	0
	2015	0	0
Aggravated Assault	2013	0	0
	2014	0	0
	2015	0	0
Burglary	2013	0	0
	2014	0	0
	2015	0	0
Motor Vehicle Theft	2013	0	0
	2014	0	0
	2015	0	0
Arson	2013	0	0
	2014	0	0
	2015	0	0

Arrests			
Offense	Year	On Campus	Public Property
Weapons: carrying, possession, etc.	2013	0	0
	2014	0	0
	2015	0	0
Drug Abuse Violations	2013	0	0
	2014	0	0
	2015	0	0
Liquor Law Violations	2013	0	0
	2014	0	0
	2015	0	0

Disciplinary Actions			
Offense	Year	On Campus	Public Property
Weapons: carrying, possession, etc.	2013	0	0
	2014	0	0
	2015	0	0
Drug Abuse Violations	2013	0	0
	2014	0	0
	2015	0	0
Liquor Law Violations	2013	0	0
	2014	0	0
	2015	0	0

Offense	Year	Hate Crimes											
		Race		Religion		Sexual Orientation		Gender		Disability		Ethnicity/National Origin	
		On Campus	Public Property	On Campus	Public Property	On Campus	Public Property	On Campus	Public Property	On Campus	Public Property	On Campus	Public Property
Murder/ Non-negligent manslaughter	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Negligent Manslaughter	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Sex Offenses, Forcible	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Sex Offenses, Non-Forcible	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Robbery	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Aggravated Assault	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Burglary	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Motor Vehicle Theft	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Arson	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Simple Assault	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Larceny, Theft	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Intimidation	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0
Destruction/ Damage/ Vandalism of Property	2013	0	0	0	0	0	0	0	0	0	0	0	0
	2014	0	0	0	0	0	0	0	0	0	0	0	0
	2015	0	0	0	0	0	0	0	0	0	0	0	0

**TRANSCRIPT NOTATIONS ON CLERY ACT VIOLATIONS (NYS 129-b 6444b)**

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. 1092(f)(1)(F)(i)(I)-(VIII), Plaza College shall make a notation on the transcript of students found responsible after a conduct process that they were “suspended after a finding of responsibility for a code of conduct violation” or “expelled after a finding of responsibility for a code of conduct violation.” For the respondent who withdraws from the institution while such conduct charges are pending, and declines to complete the disciplinary process, institutions shall make a notation on the transcript of such students that they “withdrew with conduct charges pending.” Each institution shall publish a policy on transcript notations and appeals seeking removal of a transcript notation for a suspension, provided that such notation shall not be removed prior to one year after conclusion of the suspension, while notations for expulsion shall not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

**INVESTIGATION OF VIOLENT FELONY OFFENSES AND MISSING PERSONS ON CAMPUS (NYS 129-a 6434)**

Plaza College cooperates with the New York City Police Department on the investigation of violent felony offenses. If you have been the victim or witness of a violent felony, contact the NYPD immediately at 911. The College administration will update and inform the College community on developments.

As Plaza College has no dormitories, all missing persons reports originate in the precinct of residence of the missing person, as required by NYPD procedures.

**APPOINTMENT OF PRIVATE SECURITY OFFICERS (NYS 129-a 6435)**

Plaza College does not have private security officers. This element of State Law 129-a does not apply.

**BIAS-RELATED CRIME PREVENTION INFORMATION (NYS 129-a 6436)**

A bias crime is defined as an offense against a person wholly or primarily because of the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person (see Appendix D for the New York State law). Plaza College is one of the most diverse colleges in the United States\*, located in the most diverse county in the country and celebrates that diversity. Any member of the community who feels mistreated because of a protected status is urged to contact a dean immediately, who will advise the student of his/her options. Members of the community who engage in bias will be sanctioned under the Code of Conduct, which includes penalties up to expulsion. Any complaint of bias-related crime may be reported directly to the NYPD.

The phone numbers on page 1 will provide counseling resources.

<http://chronicle.com/article/Most-Diverse-Campuses-Fall/147873/>

**PROHIBITION ON THE MARKETING OF CREDIT CARDS (NYS 129-a 6437)**

Plaza College expressly forbids the marketing of credit cards on college property.

**FIRE SAFETY STANDARDS IN COLLEGE-OWNED AND OPERATED HOUSING (NYS 129-a 6438)**

Plaza College does not have college-owned or operated housing. This element of State Law 129-a does not apply.

**APPENDIX A**  
**NEW YORK STATE PENAL LAW**  
**Article 130--Sex Offenses**

**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 any penetration, however slight.
2. **"Deviate sexual intercourse"** means sexual contact between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.
3. **"Sexual contact"** means any touching of the sexual or other intimate parts of a person not married to the actor for the purposes 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.
4. **"Female"** means any female person who is not married to the actor. For the purposes of this article **"not married"** means:
  - (a) the lack of an existing relationship of husband and wife between the female and the actor which is recognized by law, or
  - (b) the existence of the relationship of husband and wife between the actor and the female which is recognized by at the time the actor commits an offense proscribed by this article by means of forcible compulsion against the female, and the female and the actor are living apart at such time pursuant to a valid and effective:
    - (i) order issued by a court of competent jurisdiction which by its terms or in its effect requires such living apart, or
    - (ii) decree or judgment of separation, or
    - (iii) written agreement of separation subscribed by them and acknowledged in the form required to entitle a deed to be recorded which contains provisions specifically indicating that the actor may be guilty of the commission of a crime for engaging in conduct which constitutes an offense proscribed by this article against and without the consent of the female.
5. **"Mentally defective"** means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.
6. **"Mentally incapacitated"** 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 act committed upon him without his consent.
7. **"Physically helpless"** means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.
8. **"Forcible compulsion"** means compel by either :
  - (a) use physical force; or
  - (b) 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.
9. **"Foreign object"** means any instrument or article which, when inserted in the vagina, urethra, penis, or rectum, is capable of causing physical injury.

**130.05 Sex offenses; lack of consent.**

1. Whether or not specifically stated, it is an element of every offense defined in this article, except the offense of consensual sodomy, that the sexual act was committed without the consent of the victim.
2. Lack of consent results from:

(a) forcible compulsion

(b) incapacity to consent

(c) where the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

3. A person is deemed incapable of consent when he is:

(a) less than 17 years old; or

(b) mentally defective; or

(c) mentally incapacitated; or

(d) physically helpless

**130.10 Sex offenses; defense.**

In any prosecution under this article in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally defective, mentally incapacitated, or physically helpless, it is an affirmative defense that the defendant, at the time he engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.

**130.16 Sex offenses; corroboration.**

A person shall not be convicted of consensual sodomy, or an attempt to commit the same, or of any offense defined in this article of which lack of consent is an element but results solely from incapacity to consent because of the victim's mental defect, or mental incapacity, or an attempt to commit the same, solely on the testimony of the victim, unsupported by other evidence tending to:

(a) establish that an attempt was made to engage the victim in sexual intercourse, deviate sexual intercourse, or sexual contact, as the case may be, at the time of the occurrence; and

(b) connect the defendant with the commission of the offense or attempted offense.

**130.26 Sexual misconduct.**

A person is guilty of sexual misconduct when:

1. being a male, he engages in sexual intercourse with a female without her consent; or
2. he engages in deviate sexual intercourse with another person without the latter's consent; or
3. he engages in sexual conduct with an animal or a dead human body.

**Sexual misconduct is a class A misdemeanor (meaning a definite sentence, which shall not exceed one year).**

**130.25 Rape in the third degree.**

A person is guilty of rape in the third degree when:

1. he or she engages in sexual intercourse with another person to whom the actor is not married who is incapable of consent by reason of some factor other than being less than 17 years old; or
2. being 21 years old or more, he or she engages in sexual intercourse with another person to whom the actor is not married less than 17 years old.

**Rape in the third degree is a class E felony (meaning a sentence fixed by court, which shall not exceed four years)**

**130.30 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 to whom the actor is not married less than 14 years old.

**Rape in the second degree is a class D felony (meaning a sentence fixed by court, which shall not exceed seven years).**

**130.35 Rape in the first degree.**

A male is guilty of rape in the first degree when he engages in sexual intercourse with a female:

1. by forcible compulsion; or
2. who is incapable of consent by reason of being physically helpless; or
3. who is less than 11 years old.

**Rape in the first degree is a class B felony (meaning a sentence fixed by court, which shall not exceed 25 years).**

**130.38 Consensual sodomy.**

A person is guilty of consensual sodomy when he engages in deviate sexual intercourse with another person.

**Consensual sodomy is a class B misdemeanor (meaning a definite sentence, which shall not exceed three months).**

**130.40 Sodomy in the third degree.**

A person is guilty of sodomy in the third degree when:

1. he engages in deviate sexual intercourse with a person who is incapable of consent by reason of some factor other than being less than 17 years old; or
2. being 21 years old or more, he engages in deviate sexual intercourse with a person less than 17 years old.

**Sodomy in the third degree is a class E felony (meaning a sentence fixed by court, which shall not exceed four years)**

**130.45 Sodomy in the second degree.**

A person is guilty of sodomy in the second degree when, being eighteen years old or more, he engages in deviate sexual intercourse with another person to whom the actor is not married less than 14 years old.

**Sodomy in the second degree is a class D felony (meaning a sentence fixed by court, which shall not exceed seven years).**

**130.35 Sodomy in the first degree.**

A person is guilty of sodomy in the first degree when he engages in deviate sexual intercourse with another person:

1. by forcible compulsion; or
2. who is incapable of consent by reason of being physically helpless; or
3. who is less than 11 years old.

**Sodomy in the first degree is a class B felony (meaning a sentence fixed by court, which shall not exceed 25 years).**

**130.55 Sexual abuse in the third degree.**

A person is guilty of sexual abuse in the third degree when he 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 17 years old, and
- (b) such other person was more than 14 years old, and
- (c) the defendant was less than five years older than such other person.

**Sexual abuse in the third degree is a class B misdemeanor (meaning a definite sentence, which shall not exceed three months).**

**130.60 Sexual abuse in the second degree.**

A person is guilty of sexual abuse in the second degree when he subjects another person to sexual contact and when such other person is:

1. incapable of consent by reason of some factor other than being less than 17 years old; or

2. less than 14 years old.

**Sexual abuse in the second degree is a class A misdemeanor (meaning a definite sentence, which shall not exceed one year).**

**130.65 Sexual abuse in the first degree.**

A person is guilty of sexual abuse in the first degree when he subjects another person to sexual contact:

1. by forcible compulsion; or
2. who is incapable of consent by reason of being physically helpless; or
3. who is less than 11 years old.

**Sexual abuse in the first degree is a class D felony (meaning a sentence fixed by court, which shall not exceed seven years).**

**130.70 Aggravated sexual abuse**

1. A person is guilty of aggravated sexual abuse when he inserts a foreign object in the vagina, urethra, penis, or rectum of another person causing physical injury to such person:

- (a) by forcible compulsion; or
- (b) when the other person is incapable of consent by reason of being physically helpless; or
- (c) when the other person is less than 11 years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

**Aggravated sexual abuse is a class B felony (meaning a sentence fixed by court, which shall not exceed 25 years).**

## APPENDIX B

### New York State Penal Law

#### Article 485—530.11 Procedures for family offense matters

1. Jurisdiction. The family court and the criminal courts shall have concurrent jurisdiction over any proceeding concerning acts which would constitute disorderly conduct, harassment in the first degree, harassment in the second degree, aggravated harassment in the second degree, sexual misconduct, forcible touching, sexual abuse in the third degree, sexual abuse in the second degree as set forth in subdivision one of section 130.60 of the penal law, stalking in the first degree, stalking in the second degree, stalking in the third degree, stalking in the fourth degree, criminal mischief, menacing in the second degree, menacing in the third degree, reckless endangerment, strangulation in the first degree, strangulation in the second degree, criminal obstruction of breathing or blood circulation, assault in the second degree, assault in the third degree, an attempted assault, identity theft in the first degree, identity theft in the second degree, identity theft in the third degree, grand larceny in the fourth degree, grand larceny in the third degree or coercion in the second degree as set forth in subdivisions one, two and three of section 135.60 of the penal law between spouses or former spouses, or between parent and child or between members of the same family or household except that if the respondent would not be criminally responsible by reason of age pursuant to section 30.00 of the penal law, then the family court shall have exclusive jurisdiction over such proceeding. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section. For purposes of this section, "disorderly conduct" includes disorderly conduct not in a public place. For purposes of this section, "members of the same family or household" with respect to a proceeding in the criminal courts shall mean the following:

- (a) persons related by consanguinity or affinity;
- (b) persons legally married to one another;
- (c) persons formerly married to one another regardless of whether they still reside in the same household;
- (d) persons who have a child in common, regardless of whether such persons have been married or have lived together at any time; and
- (e) persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time. Factors the court may consider in determining whether a relationship is an "intimate relationship" include but are not limited to: the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship. Neither a casual acquaintance nor ordinary fraternization between two individuals in business or social contexts shall be deemed to constitute an "intimate relationship".

2. Information to petitioner or complainant. The chief administrator of the courts shall designate the appropriate probation officers, warrant officers, sheriffs, police officers, district attorneys or any other law enforcement officials, to inform any petitioner or complainant bringing a proceeding under this section before such proceeding is commenced, of the procedures available for the institution of family offense proceedings, including but not limited to the following:

- (a) That there is concurrent jurisdiction with respect to family offenses in both family court and the criminal courts;
- (b) That a family court proceeding is a civil proceeding and is for the purpose of attempting to stop the violence, end family disruption and obtain protection. That referrals for counseling, or counseling services, are available through probation for this purpose;
- (c) That a proceeding in the criminal courts is for the purpose of prosecution of the offender and can result in a criminal conviction of the offender;
- (d) That a proceeding or action subject to the provisions of this section is initiated at the time of the filing of an accusatory instrument or family court petition, not at the time of arrest, or request for arrest, if any;
- (f) That an arrest may precede the commencement of a family court or a criminal court proceeding, but an arrest is not a requirement for commencing either proceeding.

(h) At such time as the complainant first appears before the court on a complaint or information, the court shall advise the complainant that the complainant may: continue with the proceeding in criminal court; or have the allegations contained therein heard in a family court proceeding; or proceed concurrently in both criminal and family court. Notwithstanding a complainant's election to proceed in family court, the criminal court shall not be divested of jurisdiction to hear a family offense proceeding pursuant to this section;

(i) Nothing herein shall be deemed to limit or restrict complainant's rights to proceed directly and without court referral in either a criminal or family court, or both, as provided for in section one hundred fifteen of the family court act and section 100.07 of this chapter;

2-a. Upon the filing of an accusatory instrument charging a crime or violation described in subdivision one of this section between members of the same family or household, as such terms are defined in this section, or as soon as the complainant first appears before the court, whichever is sooner, the court shall advise the complainant of the right to proceed in both the criminal and family courts, pursuant to section 100.07 of this chapter.

3. Official responsibility. No official or other person designated pursuant to subdivision two of this section shall discourage or prevent any person who wishes to file a petition or sign a complaint from having access to any court for that purpose.

4. When a person is arrested for an alleged family offense or an alleged violation of an order of protection or temporary order of protection or arrested pursuant to a warrant issued by the supreme or family court, and the supreme or family court, as applicable, is not in session, such person shall be brought before a local criminal court in the county of arrest or in the county in which such warrant is returnable pursuant to article one hundred twenty of this chapter. Such local criminal court may issue any order authorized under subdivision eleven of section 530.12 of this article, section one hundred fifty-four-d or one hundred fifty-five of the family court act or subdivision three-b of section two hundred forty or subdivision two-a of section two hundred fifty-two of the domestic relations law, in addition to discharging other arraignment responsibilities as set forth in this chapter. In making such order, the local criminal court shall consider the bail recommendation, if any, made by the supreme or family court as indicated on the warrant or certificate of warrant. Unless the petitioner or complainant requests otherwise, the court, in addition to scheduling further criminal proceedings, if any, regarding such alleged family offense or violation allegation, shall make such matter returnable in the supreme or family court, as applicable, on the next day such court is in session.

5. Filing and enforcement of out-of-state orders of protection. A valid order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be accorded full faith and credit and enforced as if it were issued by a court within the state for as long as the order remains in effect in the issuing jurisdiction in accordance with sections two thousand two hundred sixty-five and two thousand two hundred sixty-six of title eighteen of the United States Code.

(a) An order issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction shall be deemed valid if:

(i) the issuing court had personal jurisdiction over the parties and over the subject matter under the law of the issuing jurisdiction;

(ii) the person against whom the order was issued had reasonable notice and an opportunity to be heard prior to issuance of the order; provided, however, that if the order was a temporary order of protection issued in the absence of such person, that notice had been given and that an opportunity to be heard had been provided within a reasonable period of time after the issuance of the order; and

(iii) in the case of orders of protection or temporary orders of protection issued against both a petitioner, plaintiff or complainant and respondent or defendant, the order or portion thereof sought to be enforced was supported by: (A) a pleading requesting such order, including, but not limited to, a petition, cross-petition or counterclaim; and (B) a judicial finding that the requesting party is entitled to the issuance of the order which may result from a judicial finding of fact, judicial acceptance of an admission by the party against whom the order was issued or judicial finding that the party against whom the order was issued had given knowing, intelligent and voluntary consent to its issuance.

(b) Notwithstanding the provisions of article fifty-four of the civil practice law and rules, an order of protection or temporary order of protection issued by a court of competent jurisdiction in another state, territorial or tribal jurisdiction, accompanied by a sworn affidavit that upon information and belief such order is in effect as written and has not been vacated or modified, may be filed without fee with the clerk of the court, who shall transmit information regarding such order to the statewide registry of orders of protection and warrants established pursuant to section two hundred twenty-one-a of the executive law; provided,

however, that such filing and registry entry shall not be required for enforcement of the order.

6. Notice. Every police officer, peace officer or district attorney investigating a family offense under this article shall advise the victim of the availability of a shelter or other services in the community, and shall immediately give the victim written notice of the legal rights and remedies available to a victim of a family offense under the relevant provisions of the criminal procedure law, the family court act and the domestic relations law. Such notice shall be prepared in Spanish and English and if necessary, shall be delivered orally, and shall include but not be limited to the following statement:

"If you are the victim of domestic violence, you may request that the officer assist in providing for your safety and that of your children, including providing information on how to obtain a temporary order of protection. You may also request that the officer assist you in obtaining your essential personal effects and locating and taking you, or assist in making arrangements to take you, and your children to a safe place within such officer's jurisdiction, including but not limited to a domestic violence program, a family member's or a friend's residence, or a similar place of safety. When the officer's jurisdiction is more than a single county, you may ask the officer to take you or make arrangements to take you and your children to a place of safety in the county where the incident occurred. If you or your children are in need of medical treatment, you have the right to request that the officer assist you in obtaining such medical treatment. You may request a copy of any incident reports at no cost from the law enforcement agency. You have the right to seek legal counsel of your own choosing and if you proceed in family court and if it is determined that you cannot afford an attorney, one must be appointed to represent you without cost to you.

You may ask the district attorney or a law enforcement officer to file a criminal complaint. You also have the right to file a petition in the family court when a family offense has been committed against you. You have the right to have your petition and request for an order of protection filed on the same day you appear in court, and such request must be heard that same day or the next day court is in session. Either court may issue an order of protection from conduct constituting a family offense which could include, among other provisions, an order for the respondent or defendant to stay away from you and your children. The family court may also order the payment of temporary child support and award temporary custody of your children. If the family court is not in session, you may seek immediate assistance from the criminal court in obtaining an order of protection.

The forms you need to obtain an order of protection are available from the family court and the local criminal court (the addresses and telephone numbers shall be listed). The resources available in this community for information relating to domestic violence, treatment of injuries, and places of safety and shelters can be accessed by calling the following 800 numbers (the statewide English and Spanish language 800 numbers shall be listed and space shall be provided for local domestic violence hotline telephone numbers).

Filing a criminal complaint or a family court petition containing allegations that are knowingly false is a crime."

The division of criminal justice services in consultation with the state office for the prevention of domestic violence shall prepare the form of such written notice consistent with provisions of this section and distribute copies thereof to the appropriate law enforcement officials pursuant to subdivision nine of section eight hundred forty-one of the executive law.

Additionally, copies of such notice shall be provided to the chief administrator of the courts to be distributed to victims of family offenses through the criminal court at such time as such persons first come before the court and to the state department of health for distribution to all hospitals defined under article twenty-eight of the public health law. No cause of action for damages shall arise in favor of any person by reason of any failure to comply with the provisions of this subdivision except upon a showing of gross negligence or willful misconduct.

7. Rules of court regarding concurrent jurisdiction. The chief administrator of the courts, pursuant to paragraph (e) of subdivision two of section two hundred twelve of the judiciary law, shall promulgate rules to facilitate record sharing and other communication between the criminal and family courts, subject to applicable provisions of this chapter and the family court act pertaining to the confidentiality, expungement and sealing of records, when such courts exercise concurrent jurisdiction over family offense proceedings.

## **APPENDIX C**

### **New York State Penal Law 120.45**

#### **Article 120.45--Stalking in the fourth degree**

A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously clearly informed to cease that conduct; or
3. is likely to cause such person to reasonably fear that his or her employment, business or career is threatened, where such conduct consists of appearing, telephoning or initiating communication or contact at such person's place of employment or business, and the actor was previously clearly informed to cease that conduct.

Stalking in the fourth degree is a class B misdemeanor.

## APPENDIX D

### New York State Penal Law

#### Article 485—Hate Crimes

##### 485.00 Legislative findings.

“The legislature finds and determines as follows: criminal acts involving violence, intimidation and destruction of property based upon bias and prejudice have become more prevalent in New York State in recent years. The intolerable truth is that in these crimes, commonly and justly referred to as “hate crimes”, victims are intentionally selected, in whole or in part, because of their race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation... our laws must be strengthened to provide clear recognition of the gravity of hate crimes and the compelling importance of preventing their recurrence.”

##### 485.05 Hate Crimes.

A person commits a hate crime when he or she commits a specified offense and either:

Intentionally selects the person against whom the offense is committed or intended to be committed, or intentionally commits the act or acts constituting the offense in whole, or in substantial part because of a belief or perception regarding the race, color, national origin, ancestry, gender, religion, religious practice, age, disability or sexual orientation of a person, regardless of whether the belief or perception is correct.

A “**specified offense**” is an offense defined by any of the following provisions of the New York State Penal Law: assault in the first, second or third degree; aggravated assault upon a person less than eleven years old; menacing in the first, second or third degree; reckless endangerment in the first or second degree; manslaughter in the first or second degree; murder in the second degree; stalking in the first, second, third or fourth degree; rape in the first degree; criminal sexual act in the first degree; sexual abuse in the first degree; aggravated sexual abuse in the first or second degree; unlawful imprisonment in the first or second degree; kidnapping in the first or second degree; coercion in the first or second degree; criminal trespass in the first, second or third degree; burglary in the first, second or third degree; criminal mischief in the first, second, third or fourth degree; arson in the first, second, third or fourth degree; petit larceny; grand larceny in the first, second, third or fourth degree; robbery in the first, second or third degree; harassment in the first degree; aggravated harassment in the second degree; or any attempt or conspiracy to commit any of the foregoing offenses.

##### 485.10 Penalties for commission of bias related crimes

###### Sentencing

- 1) When a person is convicted of a hate crime pursuant to this article, and the specified offense is a violent felony offense, as defined in section 70.02 of the NYSPL, the hate crime shall be deemed a violent felony offense.
- 2) When a person is convicted of a hate crime pursuant to this article and the specified offense is a misdemeanor or a class C, D or E felony, the hate crime shall be deemed to be one category higher than the specified offense the defendant committed, or one category higher than the offense level applicable to the defendant’s conviction for an attempt or conspiracy to commit a specified offense, whichever is applicable.
- 3) Notwithstanding any other provision of law, when a person is convicted of a hate crime pursuant to this article and the specified offense is a class B felony:
  - a) The maximum term of the indeterminate sentence must be at least six years if the defendant is sentenced pursuant to section 70.00 of the NYSPL.
  - b) The term of the determinate sentence must be at least eight years if the defendant is sentenced pursuant to section 70.02 of the NYSPL.
  - c) The term of the determinate sentence must be at least twelve years if the defendant is sentenced pursuant to section 70.04 of the NYSPL.

d) The maximum term of the indeterminate sentence must be at least four years if the defendant is sentenced pursuant to section 70.05 of the NYSPL.

4) The maximum term of the indeterminate sentence or term of the determinate sentence must be at least ten years if the defendant is sentenced pursuant to section 70.06 of the NYSPL.

5) Notwithstanding any other provision of law, when a person is convicted of a hate crime pursuant to this article and the specified offense is a class A-1 felony, the minimum period of the indeterminate sentence shall not be less than twenty years.