

Local VAWA Crime Definitions

The federal Violence Against Women Act (VAWA) amendments provided definitions for the VAWA crimes of dating violence, domestic violence, sexual assault, and stalking. These definitions are used by The Culinary Institute of America (CIA) to define violations of the CIA's Harassment, Sexual Misconduct, and Discrimination Policy, and for the purpose of Clery Act statistical reporting. VAWA crime definitions are found in the "Harassment, Sexual Misconduct, and Discrimination—Sexual Violence/VAWA Crimes" section in the *CIA Annual Security, Fire Safety and Statistics Report*.

In addition to the federal definitions, the U.S Department of Education requires that institutions of higher education provide the definitions for each of these offenses in the institution's local jurisdiction for educational and awareness purposes. The definitions of those offenses, as well as statutes that contain elements of these offenses, are provided below for the jurisdictions of The Culinary Institute of America's three domestic campuses in **New York, California** and **Texas**.

New York State

Dating violence: New York State does not specifically define "dating violence." However, under New York Law, intimate relationships may be covered by the definition of domestic violence.

Domestic violence: An act that would constitute a violation of the penal law, including, but not limited to, acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted murder, criminal obstruction or breathing or blood circulation, or strangulation; and such acts have created a substantial risk of physical or emotional harm to a person or a person's child, and such acts are alleged to have been committed by a spouse, former spouse, parent/child, or members of the same household in an intimate relationship. The victim can be anyone over the age of 16, any married person, or any parent accompanied by his or her minor child or children in situations in which such person or such person's child is a victim of the act.

Sexual assault: New York State does not specifically define sexual assault. However, according to federal regulations, sexual assault includes offenses that meet the definitions of rape, fondling, incest, or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) program.

The following VAWA-related offenses are contained in the New York State Penal Law:

130.20 Sexual misconduct: When a person (1) engages in sexual intercourse with another person without such person's consent; or (2) engages in oral sexual conduct or anal sexual conduct without such person's consent; or (3) engages in sexual conduct with an animal or a dead human body.

130.25 Rape in the third degree: When a person (1) engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, engages in sexual intercourse with another person less than 17 years old; or (3) engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

130.30 Rape in the second degree: When a person (1) being 18 years old or more, engages in sexual intercourse with another person less than 15 years old; or (2) engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense to the crime of rape in the second degree if the defendant was less than four years older than the victim at the time of the act.

130.35 Rape in the first degree: When a person engages in 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; or (4) who is less than 13 years old and the actor is 18 years old or more.

130.40 Criminal sexual act in the third degree: When a person engages in oral or anal sexual conduct (1) with a person who is incapable of consent by reason of some factor other than being less than 17 years old; (2) being 21 years old or more, with a person less than 17 years old; or (3) with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

130.45 Criminal sexual act in the second degree: When a person engages in oral or anal sexual conduct with another person (1) and is 18 years or more and the other person is less than 15 years old; or (2) who is incapable of consent by reason of being mentally disabled or mentally incapacitated. It is an affirmative defense 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: When a person engages in oral or anal sexual conduct with another person (1) by forcible compulsion; (2) who is incapable of consent by reason of being physically helpless; (3) who is less than 11 years old; or (4) who is less than 13 years old and the actor is 18 years old or more.

130.52 Forcible touching: When a person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire. It includes squeezing, grabbing, or pinching.

130.53 Persistent sexual abuse: When a person commits a crime of forcible touching, or second or third degree sexual abuse within the previous 10-year period, has been convicted two or more times, in separate criminal transactions for which a sentence was imposed on separate occasions of one of the above-mentioned crimes or any offense defined in this article, of which the commission or attempted commissions thereof is a felony.

130.55 Sexual abuse in the third degree: When a person subjects another person to sexual contact without the latter's consent. For any prosecution under this section, it is an affirmative defense that (1) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old; and (2) such other person was more than 14 years old; and (3) the defendant was less than five years older than such other person.

130.60 Sexual abuse in the second degree: When a person 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.

130.65 Sexual abuse in the first degree: When a person subjects another person to sexual contact (1) by forcible compulsion; (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old; or (4) when the other person is less than 13 years old, and the actor is 21 years old or older.

130.65a Aggravated sexual abuse in the fourth degree: When a person inserts a (1) foreign object in the vagina, urethra, penis, or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than 17 years old; or (2) finger in the vagina, urethra, penis, rectum, or anus of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than 17 years old.

130.66 Aggravated sexual abuse in the third degree: When a person inserts a foreign object in the vagina, urethra, penis, rectum, or anus of another person (1)(a) by forcible compulsion; (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; or (2) causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

130.67 Aggravated sexual abuse in the second degree: When a person inserts a finger in the vagina, urethra, penis, rectum, or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

130.70 Aggravated sexual abuse in the first degree: When a person inserts a foreign object in the vagina, urethra, penis, rectum, or anus of another person causing physical injury to such person by (1) forcible compulsion; or (2) when the other person is incapable of consent by reason of being physically helpless; or (3) when the other person is less than 11 years old.

130.85 Facilitating a sex offense with a controlled substance: A person is guilty of facilitating a sex offense with a controlled substance when he or she (1) knowingly and unlawfully possesses a controlled substance or any preparation, compound, mixture, or substance that requires a prescription to obtain and administers such substance or preparation, compound, mixture, or substance that requires a prescription to obtain to another person without such person's consent and with intent to commit against such person conduct constituting a felony defined in this article; and (2) commits or attempts to commit such conduct constituting a felony defined in this article.

255.25 Incest in the third degree: A person is guilty of incest in the third degree when he or she marries or engages in sexual intercourse, oral sexual conduct, or anal sexual conduct with a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother, or sister of either the whole or the half blood, uncle, aunt, nephew, or niece.

255.26 Incest in the second degree: A person is guilty of incest in the second degree when he or she commits the crime of rape in the second degree, or criminal sexual act in the second degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother, or sister of either the whole or the half blood, uncle, aunt, nephew, or niece.

255.27 Incest in the first degree: A person is guilty of incest in the first degree when he or she commits the crime of rape in the first degree, or criminal sexual act in the first degree, against a person whom he or she knows to be related to him or her, whether through marriage or not, as an ancestor, descendant, brother, or sister of either the whole or half blood, uncle, aunt, nephew, or niece.

120.45 Stalking in the fourth degree: When a person intentionally, and for not 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.

120.50 Stalking in the third degree: When a person (1) commits the crime of stalking in the fourth degree against any person in three or more separate transactions, for which the actor has not been previously convicted; or (2) commits the crime of stalking in the fourth degree against any person, and has previously been convicted, within the preceding 10 years of a specified predicate crime and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) with an intent to harass, annoy, or alarm a specific person, intentionally engages in a course of conduct directed at such person that is likely to cause such person to reasonably fear physical injury or serious physical injury, the commission of a sex offense against, or the kidnapping, unlawful imprisonment, or death of such person or a member of such person's immediate family; or (4) commits the crime of stalking in the fourth degree and has previously been convicted within the preceding 10 years of stalking in the fourth degree.

120.55 Stalking in the second degree: When a person: (1) commits the crime of stalking in the third degree and in the course of and furtherance of the commission of such offense: (a) displays, or possesses and threatens the use of, a firearm, pistol, revolver, rifle, sword, billy, blackjack, bludgeon, plastic knuckles, metal knuckles, chuka stick, sand bag, sand club, slingshot, slungshot, shuriken, "Kung Fu Star," dagger, dangerous knife, dirk, razor, stiletto, imitation pistol, dangerous instrument, deadly instrument, or deadly weapons; or (b) displays what appears to be a pistol, revolver, rifle, shotgun, machine gun, or other firearm; or (2) commits the crime of

stalking in the third degree against any person, and has previously been convicted, within the preceding five years, of a specified predicate crime, and the victim of such specified predicate crime is the victim, or an immediate family member of the victim, of the present offense; or (3) commits the crime of stalking in the fourth degree and has previously been convicted of stalking in the third degree; or (4) being 21 years of age or older, repeatedly follows a person under the age of 14 or engages in a course of conduct or repeatedly commits acts over a period of time intentionally placing or attempting to place such person who is under the age of 14 in reasonable fear of physical injury, serious physical injury, or death; or (5) commits the crime of stalking in the third degree, against 10 or more persons, in 10 or more separate transactions, for which the actor has not been previously convicted.

120.60 Stalking in the first degree: When a person commits the crime of stalking in the third degree or stalking in the second degree and, in the course and furtherance thereof, he or she intentionally or recklessly causes physical injury to the victim of such crime.

California

The following offenses are VAWA-related offenses contained in the California Penal Code.

Dating violence: California law does not specifically define dating violence, however, “dating or engagement relationships” are contained within the domestic violence statute below.

§ 13700(b)—“**Domestic violence**” means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this Subdivision, “cohabitant” means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

§ 242—A **battery** is any willful and unlawful use of force or violence upon the person of another.

§ 243(e)(1)—A **battery committed against a spouse**, person with whom the defendant is cohabiting, person who is the parent of the defendant’s child, former spouse, fiancé or fiancée, or person with whom the defendant currently has, or has previously had, a dating or engagement relationship.

§ 273.5(a)—Any person who willfully inflicts corporal injury resulting in a traumatic condition upon a victim described in Subdivision (b) is guilty of a felony [...]. (b) Subdivision (a) shall apply if the victim is or was one or more of the following: (1) the offender’s spouse or former spouse, (2) the offender’s cohabitant or former cohabitant, (3) the offender’s fiancé or fiancée, or someone with whom the offender has, or previously had, an engagement or dating relationship.

§ 243.4(e)(1)—**Sexual battery:** Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery.

Sexual assault is generally considered to be an act or attempt in violation of any of the following:

- § 220—Assault with intent to commit mayhem or specified sex offenses; assault of a person under 18 years of age with intent to commit specified sex offenses
- § 261/263—Rape
- § 261.5—Unlawful sexual intercourse with a minor
- § 262—Spousal rape
- § 264.1—Punishment for aiding or abetting rape
- § 266(c)—Inducing consent to a sexual act by fraud or fear
- § 285—Incest
- § 286—Sodomy

- § 288(a)—Oral copulation
- § 289—Penetration by foreign object

§ 220—Assault with intent to commit mayhem or specified sexual offenses:

(a) (1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

§ 261(a)—Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances: (1) Where a person is incapable, because of mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. [...] (2) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another. (3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, and this condition was known, or reasonably should have been known by the accused. (4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. [...] (5) Where the person submits under the belief that the person committing the act is someone known to the victim other than the accused, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with the intent to induce the belief. (6) Where the act is accomplished against the victim’s will by threatening to retaliate in the future against the victim or another person, and there is reasonable belief that the perpetrator will execute the threat. [...] (7) Where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. [...]

§ 261.5(a)—Unlawful intercourse is an act of sexual intercourse accomplished with someone who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.

262—Spousal rape (a) Rape of a person who is the spouse of the perpetrator is an act of sexual intercourse accomplished under any of the following circumstances:

(1) Where it is accomplished against a person’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.

(2) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known, by the accused.

(3) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:

(A) Was unconscious or asleep.

(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator’s fraud in fact.

(4) Where the act is accomplished against the victim’s will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, “threatening to retaliate” means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(5) Where the act is accomplished against the victim’s will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, “public official” means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

§ 263—The essential guilt of rape consists in the outrage to the person and feelings of the victim of the rape. Any sexual penetration, no matter how slight, is sufficient to complete the crime.

264.1—**Aiding or abetting rape:** (a) any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person [...] shall suffer confinement in the state prison for five, seven, or nine years.

266(c)—**Inducing consent to a sexual act by fear:** Every person who induces any other person to engage in sexual intercourse, sexual penetration, oral copulation, or sodomy when his or her consent is procured by false or fraudulent representation or pretense that is made with the intent to create fear, and which does induce fear, and that would cause a reasonable person in like circumstances to act contrary to the person’s free will, and does cause the victim to so act, is punishable by imprisonment in a county jail for not more than one year or in the state prison for two, three, or four years.

§ 285—**Incest:** Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.

§ 286(a)—**Sodomy** is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

§ 288(a)—**Oral copulation** is the act of copulating the mouth of one person with the sexual organ or anus of another person.

§ 289(a)(1)(A)—**Penetration by foreign object:** Any person who commits an act of sexual penetration when the act is accomplished against the victim’s will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person [...] (k)(2) “Foreign object, substance, instrument, or device” shall include any part of the body, except a sexual organ. (k)(3) “Unknown object” shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

§ 646.9(a)—**Stalking:** Any person who willfully, maliciously, and repeatedly follows or willfully and maliciously harasses another person and who makes a credible threat with the intent to place that person in reasonable fear for his or her safety, or the safety of his or her immediate family, is guilty of the crime of stalking.

Texas

Dating violence is defined in the Texas Family Code, Section 71.0021 as follows:

(a) “Dating violence” means an act, other than a defensive measure to protect oneself, by an actor that:

(1) is committed against a victim:

(A) with whom the actor has or has had a dating relationship; or

(B) because of the victim’s marriage to or dating relationship with an individual with whom the actor is or has been in a dating relationship or marriage; and

(2) is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the victim in fear of imminent physical harm, bodily injury, assault, or sexual assault.

(b) For purposes of this title, “dating relationship” means a relationship between individuals who have or have had a continuing relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on consideration of:

(1) the length of the relationship;

(2) the nature of the relationship; and

(3) the frequency and type of interaction between the persons involved in the relationship.

(c) A casual acquaintanceship or ordinary fraternization in a business or social context does not constitute a “dating relationship” under Subsection (b).

Family violence is defined by the Texas Family Code, Section 71.004 as follows:

(1) An act by a member of a family or household against another member of the family or household that is intended to result in physical harm, bodily injury, assault, or sexual assault or that is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, assault, or sexual assault, but does not include defensive measures to protect oneself;

(2) Abuse by a member of a family or household toward a child of the family or household; or

(3) Dating violence, as that term is defined by Section 71.0021.

Sexual assault is defined in the Texas Penal Code, Section 22.011 as follows:

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person’s consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person’s consent; or

(C) causes the sexual organ of another person, without that person’s consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

- (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:
- (1) the actor compels the other person to submit or participate by the use of physical force or violence;
 - (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;
 - (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;
 - (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;
 - (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;
 - (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;
 - (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;
 - (8) the actor is a public servant who coerces the other person to submit or participate;
 - (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;
 - (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or
 - (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

- (1) "Child" means a person younger than 17 years of age.
- (2) "Spouse" means a person who is legally married to another.
- (3) "Health care services provider" means:
 - (A) a physician licensed under Subtitle B, Title 3, Occupations Code;
 - (B) a chiropractor licensed under Chapter 201, Occupations Code;
 - (C) a physical therapist licensed under Chapter 453, Occupations Code;
 - (D) a physician assistant licensed under Chapter 204, Occupations Code; or
 - (E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.
- (4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:
 - (A) licensed social worker as defined by Section 505.002, Occupations Code;
 - (B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

- (C) licensed professional counselor as defined by Section 503.002, Occupations Code;
- (D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;
- (E) member of the clergy;
- (F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or
- (G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who, under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

Stalking is defined in the Texas Penal Code, Section 42.072 as follows:

(a) A person commits an offense if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed specifically at another person, knowingly engages in conduct that:

(1) constitutes an offense under Section 42.07, or that the actor knows or reasonably should know the other person will regard as threatening:

(A) bodily injury or death for the other person;

(B) bodily injury or death for a member of the other person's family or household or for an individual with whom the other person has a dating relationship; or

(C) that an offense will be committed against the other person's property;

(2) causes the other person, a member of the other person's family or household, or an individual with whom the other person has a dating relationship to be placed in fear of bodily injury or death or in fear that an offense will be committed against the other person's property, or to feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended; and

(3) would cause a reasonable person to:

(A) fear bodily injury or death for himself or herself;

(B) fear bodily injury or death for a member of the person's family or household or for an individual with whom the person has a dating relationship;

(C) fear that an offense will be committed against the person's property; or

(D) feel harassed, annoyed, alarmed, abused, tormented, embarrassed, or offended.

(b) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor has previously been convicted of an offense under this section or of an offense under any of the following laws that contains elements that are substantially similar to the elements of an offense under this section:

(1) the laws of another state;

(2) the laws of a federally recognized Indian tribe;

(3) the laws of a territory of the United States; or

(4) federal law.

(c) For purposes of this section, a trier of fact may find that different types of conduct described by Subsection (a), if engaged in on more than one occasion, constitute conduct that is engaged in pursuant to the same scheme or course of conduct.

(d) In this section:

(1) "Dating relationship," "family," "household," and "member of a household" have the meanings assigned by Chapter 71, Family Code;

(2) "Property" includes a pet, companion animal, or assistance animal, as defined by Section 121.002, Human Resources Code.