

Sentence options for second child sexual assault felony offender convicted of PL 130.30, a class D violent felony :

This offense is classified a Felony Sex Offense (PL [70.80\(1\)\(a\)](#)).

In imposing a sentence within the authorized statutory range for any felony sex offense, the court may consider all relevant factors set forth in [PL 1.05](#), and in particular, may consider the defendant's criminal history, if any, including any history of sex offenses; any mental illness or mental abnormality from which the defendant may suffer; the defendant's ability or inability to control his sexual behavior; and, if the defendant has difficulty controlling such behavior, the extent to which that difficulty may pose a threat to society (PL [70.80\(2\)](#)).

State prison: If under the circumstances the present offense constitutes a [sexual assault against a child](#), and defendant has been subjected to a [predicate felony conviction](#) for such a sexual assault against a child (*see* CPL [400.19](#)), sentence must be as follows (PL [60.01\(1\)](#), [60.13](#), [70.80\(3\)](#), [70.07\(4\)](#)):

Determinate sentence between 5 and 15 years, plus a period of post-release supervision of between 10 and 20 years (PL [70.80\(9\)](#), [70.45\(2-a\)\(j\)](#)). Court must pronounce term of post-release supervision as part of sentence (PL [70.45\(1\)](#) *as amended by L.2008 c.141 effective 6/30/08*).

If defendant under age 18 at time of commission of predicate offense, court may elect alternate determinate sentence of between 5 and 7 years. (PL [70.07\(5\)](#) [*L.2003, c.264 eff. 11/1/03*]).

Local jail time: Not available (PL [70.07\(1\)](#)).

Split sentence: Not available (PL [70.07\(1\)](#)).

Revocable: Not available (PL [70.07\(1\)](#)).

Unconditional: Unconditional discharge available if and only if a revocable conditional discharge is available (*see above*) (PL [65.20\(1\)](#)).

Fine: A fine is not an available sentence for this category offender sentenced for this felony sex offense (PL [60.01\(1\)](#), [60.13](#), [70.80\(3\)](#), [70.07\(4\)](#)).

Additions: Domestic violence exception unavailable because conviction for this offense requires registration as a sex offender (PL [60.12\(1\)](#)).

Offense is violent felony unavailable for [shock incarceration](#) consideration (Corr Law [865\(1\)\(a\)](#)).

[Sex Offender Registration Act](#) applies to this [sex offense](#) ([Corrections Law 168-a\(2\)\(a\)](#)). Sex offender registration fee of \$50 ([PL 60.35\(1\)\(a\)\(iv\)](#)) (*effective 5/15/03*).

Supplemental sex offender victim fee of \$1000 in addition to mandatory surcharge and any other fee ([PL 60.35\(1\)\(b\)](#), *effective 4/1/04*).

HIV test required at request of victim ([CPL 390.15\(1\)](#)). (Compare CPL [210.16](#) authorizing HIV testing within six months of date of crimes charged upon filing of felony SCI or indictment.)

Effective 6/23/06, upon conviction of *any* Penal Law felony, defendant required to provide DNA sample for state DNA database pursuant to Executive Law [995\(7\)\(e\)](#) [*as amended by L.2006 c.2*]. DNA databank fee of \$50 ([PL 60.35\(1\)\(a\)\(v\)](#)) (*effective 5/15/03*).

On being convicted and sentenced for a violent felony, defendant required to provide DNA sample for state DNA database pursuant to Executive Law [Article 49-B \(Executive Law 995-c\(3\)\)](#). DNA databank fee of \$50 ([PL 60.35\(1\)\(a\)\(v\)](#)) (*effective 5/15/03*).

Since the offense is a violent felony, it is a [Son of Sam Law specified crime](#) (Exec Law [632-a\(1\)\(e\)\(i\)\(A\)](#)). In addition, if revocable sentence is available, Court imposing such sentence must provide defendant written notice of reporting requirements, procedures and potential penalty for failure to comply with Son of Sam Law (CPL [410.10\(3\)](#)).

Optional additions of restitution or order of protection ([CPL 530.13\(4\)](#), [PL 60.27](#)); mandatory surcharge and crime victim assistance fee of \$325 ([PL 60.35\(1\)\(a\)](#) *as amended by L.2008 c.56 Part DD effective 7/1/08*) ; no surcharge or fee if restitution has been made ([PL 60.35\(6\)](#); *People v Quinones*, 95 NY2d 349 [11/16/2000]).

Upon defendant's conviction for this felony, court pursuant to CPL [370.25](#) must inquire as to and order the immediate surrender of all firearms, rifles and shotguns owned or possessed by defendant (PL 265.20[\[a\]\[1\]\[f\]](#), 400.05[\[6\]](#)), immediately notify local law enforcement and NYSP of such action, and direct the authority receiving such weapons to immediately notify the court of their surrender.

If defendant a person legally responsible for victim under 18, DA to notify local child protective services agency of conviction ([CPL 440.65](#)).

Potential subsequent civil commitment proceedings pursuant to New York State Mental Hygiene Law [Article 10](#) (MHL [10.03\(p\)](#)).

CPL [380.55](#) permits trial court at sentencing to entertain application by indigent defendant for poor person status on appeal (L.2016 c.459 effective 11/25/16).