

Qualifying Offenses List**

- PL §§ 105.10, 105.13, 105.15 Conspiracy in the fourth, third, and second degrees if the underlying felony is a “felony sex offense” as defined by PL § 70.80(1) ✱
- PL § 105.15 Conspiracy second degree if the underlying allegation of such charge is that the defendant conspired to commit a class A felony defined in article one hundred twenty-five of the penal law (CPL 510.10[4][f]) ■
- PL § 105.17 Conspiracy in the first degree △
- PL § 120.02 Reckless assault of a child ☒
- PL § 120.05 Assault in the second degree ☒
- PL § 120.06 Gang assault in the second degree □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 120.07 Gang assault in the first degree ◇
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 120.08 Assault on a peace officer, police officer, fireman, etc. □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 120.09 Assault on a judge □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 120.10 Assault in the first degree ◇
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 120.11 Aggravated Assault upon a police officer ◇
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 120.18 Menacing a police officer or peace officer ☒
- PL § 120.60 **subd. (1)** Stalking in the first degree ☒
- PL § 120.70 Luring a child +
- PL § 121.12 Strangulation in the second degree ☒
- PL § 121.13 Strangulation in the first degree □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 125.11 Aggravated criminally negligent homicide □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 125.20 Manslaughter in the first degree ◇
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 125.21 Aggravated manslaughter in the second degree □
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 125.22 Aggravated manslaughter in the first degree ◇
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 125.25 Murder in the Second Degree △
 - PL § 110.05(3) and PL § 70.02(1)(a) Attempt to commit ◇
- PL § 125.26 Aggravated Murder △
 - PL § 110.05(1) Attempt to commit aggravated murder △
- PL § 125.27 Murder in the First Degree △
 - PL § 110.05(1) Attempt to commit murder in the first degree △
- PL § 130.20 Sexual misconduct ✱
 - PL § 110.05(8) attempt to commit ✱
- PL § 130.25 Rape in the third degree ✱

PL § 110.05(7) Attempt to Commit ✱¹
 PL § 130.30 Rape in the second degree ☒, ✱
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.35 Rape in the first degree ◇, ✱
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ✱
 PL § 130.40 Criminal sexual act in the third degree ✱
 PL § 110.05(7) Attempt to Commit ✱²
 PL § 130.45 Criminal sexual act in the second degree ☒, ✱
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.50 Criminal sexual act in the first degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
 PL § 130.52 Forcible touching ✱
 PL § 110.05(8) attempt to commit ✱
 PL § 130.53 Persistent sexual abuse ☆
 PL § 110.05(8) attempt to commit ✱
 PL § 130.55 Sexual abuse in the third degree ✱
 PL § 110.05(6) attempt to commit ✱
 PL § 130.60 Sexual abuse in the second degree ✱
 PL § 110.05(7) Attempt to Commit ✱
 PL § 130.65 Sexual abuse in the first degree ☒
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.65-a Aggravated sexual abuse in the fourth degree ☆, ✱
 PL § 130.66 Aggravated sexual abuse in the third degree ☒, ✱
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.67 Aggravated sexual abuse in the second degree □, ✱
 PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒, ✱
 PL § 130.70 Aggravated sexual abuse in the first degree ◇, ✱
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ✱
 PL § 130.75 Course of sexual conduct against a child in the first degree ◇, ✱
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ✱
 PL § 130.80 Course of sexual conduct against a child in the second degree ☒, ✱
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.85 Female genital mutilation ✱
 PL § 110.05(7) Attempt to Commit ✱
 PL § 130.90 Facilitating a sex offense with a controlled substance ☒, ✱
 PL § 70.80(1) and PL § 110.05(6) Attempt to commit ✱
 PL § 130.91 Sexually motivated felony (a person who commits a specified offense outlined in
 130.91(2) for the purposes of direct sexual gratification) ✱
 PL § 130.95 Predatory sexual assault △
 PL § 110.05(2) Attempt to commit △
 PL § 130.96 Predatory sexual assault against a child △
 PL § 110.05(2) Attempt to commit △

¹ CPL § 510.10(4)(e) includes in its definition “a misdemeanor defined in article one hundred thirty of such law”.

² CPL § 510.10(4)(e) includes in its definition “a misdemeanor defined in article one hundred thirty of such law”.

- PL § 135.20 Kidnapping in the second degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 135.25 Kidnapping in the first degree △
 PL § 110.05(3) and PL § 70.02(1)(a) Attempt to commit ◇
 PL § 135.35 **subd. (3) (a) and (b)** Labor trafficking ☒
- PL § 140.25(1) Burglary in the second degree □ (**n.b.** subdivision 2 is not a qualifying offense)
 PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 140.30 Burglary in the first degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 150.15 Arson in the second degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 150.20 Arson in the first degree △
 PL § 110.05(3) and PL § 70.02(1)(a) Attempt to commit ◇
- PL § 160.10(2) **and (3)** Robbery in the second degree □ (**n.b.** subdivision 1 is not a qualifying offense)
 PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒
- PL § 160.15 Robbery in the first degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 215.11 Tampering with a witness in the third degree ✧
 Attempt to Commit³
- PL § 215.12 Tampering with a witness in the second degree ✧
 Attempt to Commit⁴
- PL § 215.13 Tampering with a witness in the first degree ✧
 Attempt to Commit⁵
- PL § 215.15 Intimidating a victim or witness in the third degree ●
 Attempt to Commit⁶
- PL § 215.16 Intimidating a victim or witness in the second degree ☒
- PL § 215.17 Intimidating a victim or witness in the first degree ◇
 PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □
- PL § 215.50(3) Criminal contempt in the second degree and the underlying allegation of such charge is that

³ The definition of “qualifying offense” includes the language “crime involving” a delineated offense(s). Arguably this includes the attempt of that crime if the attempt is also a crime. See CPL § 510.10(4)(c). Note, however, that the legislation does not include the misdemeanor crime of tampering with a witness in the fourth degree (PL § 215.10). This may support an argument that the Legislature only intended witness tampering crimes that were felony offenses as a “qualifying offense”. This would exclude the crime of attempted tampering with a witness in the third degree as that is an A misdemeanor.

⁴ Id.

⁵ Id.

⁶ The definition of “qualifying offense” includes the language “crime involving” a delineated offense(s). Arguably this includes the attempt of that crime if the attempt is also a crime. See CPL § 510.10(4)(b). However, if the legislative intent were to include attempts as a result of this language, this leads to an anomaly. CPL § 510.10(4)(a) states that a qualifying offense is “a felony enumerated in section 70.02 of the penal law...”. PL § 70.02(1)(c) (class D violent felony offenses) includes PL § 215.16 intimidating a victim or witness in the second degree. However, the attempt of that crime is not a violent felony offense (see PL § 70.02(1)(d)) and no other provision under CPL § 510.10(4) would appear to make the attempt of that crime a qualifying offense. Thus, there is an argument that “crime involving” does not include attempts, as this would lead to an anomalous result.

the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11⁷ of this article †

PL § 215.51(b),(c), or (d) Criminal contempt in the first degree and the underlying allegation of such charge is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article †

PL § 215.52 Aggravated criminal contempt and the underlying allegation of such charge is that the defendant violated a duly served order of protection where the protected party is a member of the defendant's same family or household as defined in subdivision one of section 530.11 of this article †

PL § 220.77 Operating as Major Trafficker △

PL § 230.05 Patronizing a person for prostitution in the second degree

PL § 230.06 Patronizing a person for prostitution in the first degree *

PL § 70.80(1) and PL § 110.05(6) Attempt to commit *⁸

PL § 230.11 Aggravated patronizing a minor for prostitution in the third degree *

PL § 230.12 Aggravated patronizing a minor for prostitution in the second degree *

PL § 70.80(1) and PL § 110.05(6) Attempt to commit *

PL § 230.13 Aggravated patronizing a minor for prostitution in the first degree *

PL § 70.80(1) and PL § 110.05(4) Attempt to commit *

PL § 230.34 **subd.** (5)(a) and (b) Sex trafficking ◇

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 230.34-a Sex trafficking of a child ◇

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 240.55 Falsely reporting an incident in the second degree ☆

PL § 240.60 Falsely reporting an incident in the first degree ☒

PL § 240.61 Placing a false bomb or hazardous substance in the second degree ☆

PL § 240.62 Placing a false bomb or hazardous substance in the first degree ☒

PL § 240.63 Placing a false bomb or hazardous substance in as sports stadium or arena, etc. ☒

PL § 255.25 Incest in the third degree *

⁷ CPL 53011 defines “members of the same family or household” as follows:

(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”.

⁸ PL § 70.80 includes as a “felony sex offense” any attempt to commit the delineated offenses, or a conspiracy to commit the delineated offenses if the attempt or conspiracy crime is a felony.

Attempt to Commit⁹

PL § 255.26 Incest in the second degree ✱

Attempt to Commit¹⁰

PL § 255.27 Incest in the first degree ◇, ✱

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 263.05 Use of a child in a sexual performance ✚

PL § 263.30 Facilitating a sexual performance by a child with a controlled substance or alcohol ✚

PL § 265.02 (5), (6), (7), (8), (9) and (10) Criminal possession of a weapon in the third degree ☒

PL § 265.03 Criminal possession of a weapon in the second degree □

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒

PL § 265.04 Criminal possession of a weapon in the first degree ◇

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 265.08 Criminal use of a firearm in the second degree □

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒

PL § 265.09 Criminal use of a firearm in the first degree ◇

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 265.11 Criminal sale of a firearm in the third degree ☒

PL § 265.12 Criminal sale of a firearm in the second degree □

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒

PL § 265.13 Criminal sale of a firearm in the first degree ◇

PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □

PL § 265.14 Criminal sale of a firearm with the aid of a minor □

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒

PL § 265.19 Aggravated criminal possession of a weapon □

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒

PL § 405.18 Aggravated unpermitted use of indoor pyrotechnics in the first degree ☒

PL § 460.22 Aggravated Enterprise Corruption △

PL § 470.23 Money laundering in the support of terrorism in the second degree ★

PL § 470.24 Money laundering in the support of terrorism in the first degree ★

PL § 490.10 Soliciting or providing support for an act of terrorism in the second degree ☒, ★

PL § 110.05(6) Attempt to Commit ★

PL § 490.15 Soliciting or providing support for an act of terrorism in the first degree □, ★

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒, ★

PL § 490.20 Making a terroristic threat ☒ (**n.b.** see conflict between CPL §§ 510.10[4][a] and 510.10[4][g])¹¹

PL § 490.25 Crime of Terrorism, class B offense or higher △, ★

PL § 490.30 Hindering prosecution of terrorism in the second degree □, ★

PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒, ★

PL § 490.35 Hindering prosecution of terrorism in the first degree ◇, ★

⁹ CPL § 510.10(4)(e) uses the language “crime involving” the delineated offenses. This arguably includes the attempts.

¹⁰ Id.

¹¹ There is a conflict between CPL §§ 510.10(4)(a) and 510.10(4)(g). 510.10(4)(a) states that a qualifying offense is “a felony enumerated in section 70.02 of the penal law...”. PL § 70.02(1)(c) (class D violent felony offenses) states that PL § 490.20 making a terroristic threat is a class D violent felony. However, CPL § 510.10(4)(g) specifically excludes that crime as a qualifying offense. Since the Legislature specifically excluded it, a strong argument exists that this is not a qualifying offense.

- PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ★
- PL § 490.37 Criminal possession of a chemical or biological weapon in the third degree □, ★
 - PL § 110.05(5) and PL § 70.02(1)(c) Attempt to commit ☒, ★
- PL § 490.40 Criminal possession of a chemical weapon or biological weapon in the second degree ◇, ★
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ★
- PL § 490.45 Criminal possession of a chemical weapon or biological weapon in the first degree △
 - PL § 110.05(1) Attempt to commit criminal possession of a chemical weapon or biological weapon in the first degree △, ★
- PL § 490.47 Criminal use of a chemical weapon or biological weapon in the third degree ◇, ★
 - PL § 110.05(4) and PL § 70.02(1)(b) Attempt to commit □, ★
- PL § 490.50 Criminal use of a chemical weapon or biological weapon in the second degree △, ★
 - PL § 110.05(2) Attempt to commit △, ★
- PL § 490.55 Criminal use of a chemical weapon or biological weapon in the first degree △, ★
 - PL § 110.05(1) Attempt to commit criminal use of a chemical weapon or biological weapon in the first degree △, ★

** this list does not account for non-existent, or legally impossible crimes, e.g., attempted manslaughter in the first degree, or attempted assault in the second degree, subd. 3 (see *People v. Campbell*, 72NY2d 602 [1988]).

- ◇ CPL § 510.10(4)(a) and PL § 70.02(1)(a)
- CPL § 510.10(4)(a) and PL § 70.02(1)(b)
- ☒ CPL § 510.10(4)(a) and PL § 70.02(1)(c)
- ☆ CPL § 510.10(4)(a) and PL § 70.02(1)(d)
- CPL § 510.10(4)(b)
- ⊛ CPL § 510.10(4)(c)
- △ CPL § 510.10(4)(d)
- ✱ CPL § 510.10(4)(e) and PL § 70.80(1)
- CPL § 510.10(4)(f)
- ★ CPL § 510.10(4)(g)
- ✚ CPL § 510.10(4)(h)
- ✚ CPL § 510.10(4)(i)