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Custodial Sexual Misconduct Laws: A State-by-State Legislative Review

In March of 2001, Amnesty International released “Abuse of Women in Custody – Sexual Misconduct and the Shackling of Pregnant Women in America,” a follow-up to its 1999 report, “Not Part of My Sentence: Violations of the Human Rights of Women in Custody.” Amnesty International reported that five states – Alabama, Minnesota, Oregon, Vermont, and Wisconsin – did not have any laws addressing custodial sexual misconduct and thus, failed to protect women in custody in these states. Alabama, Wisconsin and Minnesota have since ratified laws criminalizing sexual contact between corrections officers and inmates.

The report also found that 13 states poorly conformed with Amnesty International's standards for laws on custodial sexual misconduct. Eighteen states and the U.S. Bureau of Prisons have laws that conform only moderately well with Amnesty International's standards. Fourteen states and the District of Columbia have laws that most closely conform with these standards. Of those states, however, only two - Kansas and Oklahoma - have laws that Amnesty International deems completely sufficient.

In an effort to assist attorneys, survivors, and other interested individuals, SPR has supplemented the Amnesty International report by providing the text of these statutes. The complete state-by-state catalogue of custodial sexual misconduct legislation follows.

It should be noted, however, that prisoners and detainees seeking justice for sexual abuse by officials face formidable obstacles despite these laws. Such barriers include retaliation for reports of abuse by those accused, the desire of officials to protect their own, uninterested district attorneys, inadequate procedures for investigating and documenting sexual abuse, and general indifference and skepticism toward prisoners or other detainees who report sexual abuse.

Moreover, the 1996 Prison Litigation Reform Act (PLRA) serves as a formidable obstacle to prisoner rape survivors seeking justice. Among other things, the PLRA bars litigation unless internal remedies have been exhausted. Such processes are often bureaucratic and ineffective and sometimes force those who have been abused by prison staff to first *seek a resolution with the very person who committed the rape*. The PLRA greatly hampers the ability of inmates to report assaults and threats and obtain protection from the courts.

For additional law-related information, please see the relevant [law review articles](#), the overview of [federal caselaw](#), the state-by-state legislation catalogues on [rape and sexual assault generally](#), and the [correctional systems' policies](#).



ALABAMA

Alabama's HB4 establishing the crime of custodial sexual misconduct was signed into law April 20, 2004. The measure has not yet been codified.

ALASKA

ALASKA STAT. §§ 11.41.425 - Sexual Assault in the Third Degree

(a) An offender commits sexual assault in the third degree if the offender ...

(2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or

(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.

(b) Sexual assault in the third degree is a class C felony.

ALASKA STAT. §§ 11.41.427 - Sexual Assault in the Fourth Degree

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual

contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or

(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.

(b) Sexual assault in the fourth degree is a class A misdemeanor.

ARIZONA

ARIZ. REV. STAT. ANN. § 13-1419 - Unlawful Sexual Conduct; Correctional Employees; Prisoners; Classification

A. A person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a prisoner who is in the custody of the department, a private prison facility or a city or county jail or with an offender who is under the supervision of the department or a city or county.

B. A prisoner who is in the custody of the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status and who is under the supervision of the state department of corrections or a city or county commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail.

C. This section does not apply to:

1. A person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.

2. An offender who is on release status and who was lawfully married to a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail if the marriage occurred prior to the offender being sentenced to the state department of corrections or incarcerated in a city or county jail.

D. Unlawful sexual conduct is a class 5 felony

ARKANSAS

ARK. CODE ANN. § 5-14-109 - Sexual Abuse in the Second Degree

(a) A person commits sexual abuse in the second degree if ...

(3) He or she, being employed directly or through contract with the Department of Correction or the Department of Community Punishment, or with any city or county jail, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment or within any city or county jail, the consent of the person in custody notwithstanding.

(b) Sexual abuse in the second degree is a Class A misdemeanor.

CALIFORNIA

CAL. PENAL CODE § 289.6

(a)

(1) An employee or officer of a public entity health facility, or an employee, officer, or agent of a private person or entity that provides a health facility or staff for a health facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a health facility is guilty of a public offense. As used in this paragraph, "health facility" means a health facility as defined in subdivisions (b), (e), (g), (h), and (j), and subparagraph (C) of paragraph (2) of subdivision (i) of Section 1250 of the Health and Safety Code, in which the victim has been confined involuntarily.

(2) An employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, or person or agent of a public or private entity under contract with a detention facility, or a volunteer of a private or public entity detention facility, who engages in sexual activity with a consenting adult who is confined in a detention facility, is guilty of a public offense.

(3) An employee with a department, board, or authority under the Youth and Adult Correctional Agency or a facility under contract with a department, board, or authority under the Youth and Adult Correctional Agency, who, during the course of his or her employment directly provides treatment, care, control, or

supervision of inmates, wards, or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward, or parolee, is guilty of a public offense.

(b) As used in this section, the term "public entity" means the state, federal government, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.

(c) As used in this section, the term "detention facility" means:

- (1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.
- (2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.
- (3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.
- (4) A vehicle used to transport confined persons during their period of confinement.
- (5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(d) As used in this section, "sexual activity" means:

- (1) Sexual intercourse.
- (2) Sodomy, as defined in subdivision (a) of Section 286.
- (3) Oral copulation, as defined in subdivision (a) of Section 288a.
- (4) Sexual penetration, as defined in subdivision (k) of Section 289.
- (5) The rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another.

(e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

(f) This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place, to physical contact or penetration made pursuant to a lawful search, or bona fide medical examinations or treatments, including clinical treatments.

(g) Any violation of paragraph (1) of subdivision (a), or a violation of paragraph (2) or (3) of subdivision (a) as described in paragraph (5) of subdivision (d), is a misdemeanor.

(h) Any violation of paragraph (2) or (3) of subdivision (a), as described in

paragraph (1), (2), (3), or (4) of subdivision (d), shall be punished by imprisonment in a county jail not exceeding one year, or in the state prison, or by a fine of not more than ten thousand dollars (\$10,000) or by both that fine and imprisonment.

(i) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.

(j) Anyone who is convicted of a felony violation of this section who is employed by a department, board, or authority within the Youth and Adult Correctional Agency shall be terminated in accordance with the State Civil Service Act (Part 2 (commencing with Section 18500) of Title 2 of Division 5 of the Government Code). Anyone who has been convicted of a felony violation of this section shall not be eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.

COLORADO

COLO. REV. STAT. ANN. §§ 18-7-701 - Sexual Conduct in Penal Institutions

(1) An employee of a correctional facility or jail who engages in sexual conduct with a person who is in lawful custody and confinement in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail commits:

- (a) A class 6 felony if the sexual conduct consists solely of sexual contact;
- (b) A class 5 felony if the sexual conduct includes sexual intrusion or sexual penetration.

(2) For purposes of this section, "sexual conduct" means sexual contact as defined in section 18-3-401 (4), sexual intrusion as defined in section 18-3-401 (5), or sexual penetration as defined in section 18-3-401 (6). "Sexual conduct" does not include acts of an employee of a correctional facility or jail or a person who has custody of another person that are performed to carry out the necessary duties of the employee or the person with custody.

CONNECTICUT

CONN. GEN. STAT. ANN. §§ 53A-71 - Sexual Assault in the Second Degree: Class C Felony: Nine months not suspendable

a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and ...

- (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person

(b) Sexual assault in the second degree is a class C felony for which nine months of the sentence imposed may not be suspended or reduced by the court.

CONN. GEN. STAT. ANN. §§ 53A-73 - Sexual Assault in the Fourth Degree: Class A Misdemeanor

a) A person is guilty of sexual assault in the fourth degree when ...

(E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person

(b) Sexual assault in the fourth degree is a class A misdemeanor.

DELAWARE

DEL. CODE ANN. tit. 11 §§ 1259 - Sexual Relations in a Detention Facility

A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility. It shall be no defense that such conduct was consensual. Violation of this section shall be a class G felony.

DISTRICT OF COLUMBIA

D.C. CODE ANN. §§ 22-3013 - First Degree Sexual Abuse of a Ward

Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person:

(1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and

(2) Is under the supervisory or disciplinary authority of the actor shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not to exceed \$100,000.

D.C. CODE ANN. §§ 22-3014 - Second Degree Sexual Abuse of a Ward

Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person:

(1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and

(2) Is under the supervisory or disciplinary authority of the actor shall be imprisoned for not more than 5 years and, in addition, may be fined in an amount not to exceed \$50,000.

D.C. CODE ANN. §§ 22-3017 - Defenses to Sexual Abuse of a Ward, Patient, or Client

(a) Consent is not a defense to a prosecution under §§ 22-3013 to 22-3016, prosecuted alone or in conjunction with charges under § 22-3018 ...

FLORIDA

FLA. STAT. ANN. § 794.011 - Sexual Battery

... (4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:

... (g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

... (8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life

felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

FLA. STAT. ANN. § 944.35 - Authorized Use of Force; Malicious Battery and Sexual Misconduct Prohibited; Reporting Required; Penalties.

... (b)1. As used in this paragraph, the term "sexual misconduct" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.

2. Any employee of the department who engages in sexual misconduct with an inmate or an offender supervised by the department in the community, without committing the crime of sexual battery, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.

4. This paragraph does not apply to any employee of the department who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.

(c) Notwithstanding prosecution, any violation of the provisions of this subsection, as determined by the Public Employees Relations Commission, shall constitute sufficient cause under s. 110.227 for dismissal from employment with the department, and such person shall not again be employed in any capacity in connection with the correctional system.

(d) Each employee who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct pursuant to this subsection shall immediately prepare, date, and sign an independent report specifically describing the nature of the force used or the

nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report shall be delivered to the inspector general of the department with a copy to be delivered to the warden of the institution or the regional administrator. The inspector general shall immediately conduct an appropriate investigation, and, if probable cause is determined that a violation of this subsection has occurred, the respective state attorney in the circuit in which the incident occurred shall be notified.

(4)(a) Any employee required to report pursuant to this section who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with regard to reports required in this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(c) Any person who knowingly or willfully coerces or threatens any other person with the intent to alter either testimony or a written report regarding an incident where force was used or an incident of sexual misconduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

As part of the correctional officer training program, the Criminal Justice Standards and Training Commission shall develop course materials for inclusion in the appropriate required course specifically designed to explain the parameters of this subsection and to teach sexual assault identification and prevention methods and techniques.

GEORGIA

GA. CODE § 16-6-5.1

(a) As used in this Code section, the term:

(1) "Actor" means a person accused of sexual assault.

(2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.

(3) "Psychotherapy" means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.

(4) "Sexual contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.

(b) A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he

engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than three years.

(c)

(1) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is:

(A) In the custody of law; or

(B) Detained in or is a patient in a hospital or other institution ...

(3) Consent of the victim shall not be a defense to a prosecution under this subsection.

HAWAII

HAW. REV. STAT. ANN. §§ 707-731 - Sexual Assault in the Second Degree

(1) A person commits the offense of sexual assault in the second degree if ...

(c) The person, while employed in a state correctional facility or while employed as a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(2) Sexual assault in the second degree is a class B felony.

HAW. REV. STAT. ANN. §§ 707-732 - Sexual Assault in the Third Degree

1) A person commits the offense of sexual assault in the third degree if ...

(d) The person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor ...

(2) Sexual assault in the third degree is a class C felony.

IDAHO

IDAHO CODE § 18-6110 - Sexual Contact With a Prisoner

It is a felony for any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner, whether an in-state or out-of-state prisoner, as those terms are defined in section 18-101A, Idaho Code, housed in such facility. For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.

Any person found guilty of sexual contact with a prisoner is punishable by imprisonment in the state prison for a term not to exceed life.

ILLINOIS

720 ILL. COMP. STAT. ANN. 5/11-9.2 - Custodial Sexual Misconduct

a) A person commits the offense of custodial sexual misconduct when he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system.

(b) A probation or supervising officer commits the offense of custodial sexual misconduct when the probation or supervising officer engages in sexual conduct or sexual penetration with a probationer, parolee, or releasee who is under the supervisory, disciplinary, or custodial authority of the officer so engaging in the sexual conduct or sexual penetration.

(c) Custodial sexual misconduct is a Class 3 felony.

(d) Any person convicted of violating this Section immediately shall forfeit his or her employment with a penal system.

(e) For purposes of this Section, the consent of the probationer, parolee, releasee, or inmate in custody of the penal system shall not be a defense to a prosecution under this Section. A person is deemed incapable of consent, for purposes of this Section, when he or she is a probationer, parolee, releasee, or inmate in custody of a penal system.

(f) This Section does not apply to: (1) Any employee, probation, or supervising officer who is lawfully married to a person in custody if the marriage occurred before the date of custody. (2) Any employee, probation, or supervising officer who has no knowledge, and would have no reason to believe, that the person with whom he or she engaged in custodial sexual misconduct was a person in custody.

(g) In this Section: (1) "Custody" means: (i) pretrial incarceration or detention; (ii) incarceration or detention under a sentence or commitment to a State or local penal institution; (iii) parole or mandatory supervised release; (iv) electronic home detention; (v) probation. (2) "Penal system" means any system which includes institutions as defined in Section 2-14 of this Code or a county shelter care or detention home established under Section 1 of the County Shelter Care and Detention Home Act. (3) "Employee" means: (i) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system; (ii) a contractual employee of a penal system as defined in paragraph (g)(2) of this Section who works in a penal institution as defined in Section 2-14 of this Code; (4) "Sexual conduct" or "sexual penetration" means any act of sexual conduct or sexual penetration as defined in Section 12-12 of this Code. (5) "Probation officer" means any person employed in a probation or court services department as defined in Section 9b of the Probation and Probation Officers Act. (6) "Supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release with the duties described in Section 3-14-2 of the Unified Code of Corrections.

INDIANA

IND. CODE ANN. § 35-44-1-5

a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.

(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct, a Class D felony.

(c) It is not a defense that an act described in subsection (b) was consensual.

(d) This section does not apply to sexual intercourse or deviate sexual conduct between spouses.

IOWA

IOWA CODE ANN. §§ 709.16 - Sexual Misconduct with Offenders and Juveniles

1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.

2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

For purposes of this subsection, a "juvenile placement facility" means any of the following:

- a. A child foster care facility licensed under section 237.4.
- b. Institutions controlled by the department of human services listed in section 218.1.
- c. Juvenile detention and juvenile shelter care homes approved under section 232.142.
- d. Psychiatric medical institutions for children licensed under chapter 135H.
- e. Substance abuse facilities as defined in section 125.2.

3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

KANSAS

KAN. STAT. ANN. § 21-3520 - Unlawful Sexual Relations

(a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

- (1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate; or
- (2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; or
- (3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is

confined by lawful custody to such jail; or

(4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house; or

(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or

(6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and (A) released on conditional release from a juvenile correctional facility under the direct supervision and control of the offender or (B) placed in the custody of the juvenile justice authority under the direct supervision and control of the offender.

(b) For purposes of this act:

(1) "Correctional institution" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(2) "inmate" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(3) "parole officer" means the same as prescribed by K.S.A. 75-5202, and amendments thereto;

(4) "postrelease supervision" means the same as prescribed in the Kansas sentencing guidelines act in K.S.A. 21-4703;

(5) "juvenile detention facility" means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(6) "juvenile correctional facility" means the same as prescribed by K.S.A. 38-1602, and amendments thereto;

(7) "sanctions house" means the same as prescribed by K.S.A. 38-1602, and amendments thereto.

(c) Unlawful sexual relations is a severity level 10 person felony.

KENTUCKY**KY. REV. STAT. ANN. §§ 510.020 - Sexual Abuse in the Second Degree**

(1) A person is guilty of sexual abuse in the second degree when ...

(c) Being an employee, contract, vendor, or volunteer of the Department of Correction, or a detention facility as defined in KRS 510-010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other.

(2) Sexual abuse in the second degree is a Class A misdemeanor.

LOUISIANA**LA. REV. STAT. ANN. § 14:134.1 - Malfeasance in Office; Sexual Conduct Prohibited with Persons Confined in Correctional Institutions**

A. It shall be unlawful and constitute malfeasance in office for any person who is a law enforcement officer, officer of the Department of Corrections, or employee of a prison, jail, or correctional institution, to engage in sexual intercourse or any other sexual conduct with a person confined in a prison, jail or correctional institution.

B. Whoever violates a provision of this Section shall be fined not more than ten thousand dollars, or imprisoned for not more than ten years, or both.

MAINE**ME. REV. STAT. ANN. tit. 17, § 253**

... 2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and ...

E. The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person ...

4. Violation of subsection 1 is a Class A crime.
5. Violation of subsection 2, paragraph A, B, C, D, E or H is a Class B crime.
Violation of subsection 2, paragraph F, G, I or J is a Class C crime ...

ME. REV. STAT. ANN. tit. 17, § 253 - Unlawful Sexual Contact

1. A person is guilty of unlawful sexual contact if the person intentionally subjects another person to any sexual contact, and ...
 - E. The other person, not the actor's spouse, is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person;
2. Unlawful sexual contact is a Class D crime, except that a violation of subsection 1, paragraph J is a Class E crime and except that a violation of subsection 1, paragraph C, G or H is a Class C crime.
3. If the State pleads and proves that an unlawful sexual contact crime included penetration, the sentencing class for that crime is one class higher than it would otherwise be under subsection 2.

MARYLAND

MD. CODE ANN. of 1957 §§ 464G

(a)

(1) In this section the following words have the meanings indicated.

(2) "Correctional employee" means:

(i) A correctional officer, as defined in § 8-201 of the Correctional Services Article; or

(ii) A head or deputy head of a correctional facility, including a sheriff, warden, superintendent, or any person having an equivalent title who is appointed or employed to supervise a correctional facility.

(3) "Inmate" means a person who is incarcerated in a State or local correctional facility or a community adult rehabilitation center.

(b)

(1) A correctional employee may not engage in vaginal intercourse or a sexual act with an inmate ...

(c) A person who violates this section is guilty of a misdemeanor and on

conviction is subject to a fine of not more than \$3,000 or imprisonment for not more than 3 years or both.

(d) A sentence imposed for violation of this section may be separate from and consecutive to or concurrent with a sentence for any other offense under this subheading.

MASSACHUSETTS

MASS. GEN. LAWS ANN. ch. 268 § 21A - Officer or Other Employee of Penal or Correctional Institution; Sexual Relations with Inmate; Punishment

An officer or other person who is employed by or contracts with any penal or correctional institution in the commonwealth, and who, in the course of such employment or contract or as a result thereof, engages in sexual relations with an inmate confined therein, within or outside of such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person, shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both. In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person. For purposes of this section, sexual relations shall include intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 or 24 of chapter 265 or section 2, 3, 35 or 53A of chapter 272.

MICHIGAN

MICH. COMP. LAWS ANN. §§ 750.520c - Criminal Sexual Conduct in the Second Degree

...(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim

in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

MINNESOTA

MINN. STAT. ANN. §§ 609.344 - Criminal Sexual Conduct in the Third Degree

Subdivision 1. Crime defined.

A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists ...

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

Subd. 2. Penalty.

A person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both.

MINN. STAT. ANN. §§ 609.345 - Criminal Sexual Conduct in the Fourth Degree

Subdivision 1. Crime defined.

A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists ...

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

MISSISSIPPI

MISS. CODE ANN. § 97-3-104 - Sexual Penetration of Incarcerated Offenders by Law Enforcement Officers or Employees

It shall be unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal or other officer to engage in any sexual penetration as defined in Section 97-3-97, Mississippi Code of 1972, with any offender, with or without the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility. Any person who violates this section shall be guilty of a felony and upon conviction shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for a term not to exceed five (5) years, or both.

MISSOURI**MO. ANN. STAT. § 217-405 - Offender Abuse**

1. Except as provided in subsection 3 of this section, a person commits the crime of "offender abuse" if he knowingly injures the physical well-being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person.
2. Offender abuse is a class C felony.
3. No employee of the department shall use any physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender.

MONTANA**MONT. CODE ANN. §§ 45-5-501 - Definitions**

- 1) As used in 45-5-503, the term "without consent" means:
 - (a) the victim is compelled to submit by force against the victim or another; or
 - (b) the victim is incapable of consent because the victim is ...
 - (v) incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.

- (2) As used in subsection (1), the term "force" means:

(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or

(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.

MONT. CODE ANN. §§ 45-5-502 - Sexual Assault

(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both ...

(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.

(5) Consent is ineffective under this section if:

(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search ...

MONT. CODE ANN. §§ 45-5-503 - Sexual Intercourse Without Consent

(1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent ...

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222 .

(3) ...

(d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

NEBRASKA

NEB. REV. STAT. §§ 28-322 - Sexual Abuse of an Inmate or Parolee; Person, Defined

For purposes of sections 28-322 to 28-322.03, person means (1) an individual employed by the Department of Correctional Services or by the Office of Parole Administration, which includes, but is not limited to, individuals working in central administration of the department, any individual working under contract with the department, and any individual to whom the department has authorized or delegated control over inmates or inmates' activities and (2) an individual employed by a city or county correctional or jail facility, which includes, but is not limited to, individuals working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual to whom the city or county correctional or jail facility has authorized or delegated control over inmates or inmates' activities.

NEB. REV. STAT. §§ 28-322.01 - Sexual Abuse of an Inmate or Parolee

A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an individual who is confined in a correctional institution or a city or county correctional or jail facility or under parole supervision to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

NEB. REV. STAT. §§ 28-322.02 - Sexual Abuse of an Inmate or Parolee in the First Degree

Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree. Sexual abuse of an inmate or parolee in the first degree is a Class III felony.

NEB. REV. STAT. §§ 28-322.03 - Sexual Abuse of an Inmate or Parolee in the Second Degree

Any person who subjects an inmate or parolee to sexual contact is guilty of sexual abuse of an inmate or parolee in the second degree. Sexual abuse of an inmate or parolee in the second degree is a Class IV felony.

NEVADA

NEV. REV. STAT. ANN. § 212.187 - Voluntary Sexual Conduct Between

Prisoner and Another Person

1. A prisoner who is in lawful custody or confinement, other than residential confinement, and who voluntarily engages in sexual conduct with another person is guilty of a category D felony and shall be punished as provided in NRS 193.130.
2. A person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than residential confinement, is guilty of a category D felony and shall be punished as provided in NRS 193.130.
3. As used in this section, "sexual conduct":
 - (a) Includes acts of masturbation, homosexuality, sexual intercourse or physical contact with another person's clothed or unclothed genitals or pubic area to arouse, appeal to or gratify the sexual desires of a person.
 - (b) Does not include acts of a person who has custody of a prisoner or an employee of the institution in which the prisoner is confined that are performed to carry out the necessary duties of such a person or employee.

NEW HAMPSHIRE

N.H. STAT. ANN. § 632-A:3 - Aggravated Felonious Sexual Assault

A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances ...

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; or

(2) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the above circumstances in subparagraph (n) shall not be considered a defense ...

N.H. STAT. ANN. § 632-A:3 - Felonious Sexual Assault

A person is guilty of a class B felony if he:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or ...

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(a) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; or

(b) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation.

NEW JERSEY

N.J. STAT. ANN. § 2C:14-2-C - Sexual Assault

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

(1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;

(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status; ...

Sexual assault is a crime of the second degree.

NEW MEXICO

N.M. STAT. ANN. § 30-9-11 - Criminal Sexual Penetration

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission ...

D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated ...

(2) on an inmate confined in a correctional facility or jail when the

perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.

NEW YORK

N.Y. PENAL LAW § 130.05 (3) - Sex Offenses; Lack of Consent

3. A person is deemed incapable of consent when he or she is ...

(e) committed to the care and custody of the state department of correctional services or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital. For purposes of this paragraph, "employee" means

(i) an employee of the state department of correctional services who performs professional duties in a state correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs, or vocational training for inmates;

(ii) an employee of the division of parole who performs professional duties in a state correctional facility and who provides institutional parole services pursuant to section two hundred fifty-nine-e of the executive law; or

(iii) an employee of the office of mental health who performs professional duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law, consisting of providing custody, or medical or mental health services for such inmates;
or

(f) committed to the care and custody of a local correctional

facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, "employee" means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates; or ...

NORTH CAROLINA

N.C. GEN. STAT. § 14-27.7 - Intercourse and Sexual Offenses with Certain Victims

a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

NORTH DAKOTA

N.D. CENT. CODE § 12.1-20-07 - Sexual Assault

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if ...

d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person ...

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision d of subsection 1 or subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

OHIO

OHIO REV. CODE ANN. §2907.03 - Sexual Battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply ...

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person ...

(B) Whoever violates this section is guilty of sexual battery, a felony of the third degree ...

OKLAHOMA

OKLA. STAT. ANN. tit. 21, §§ 1111 - Rape

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances ...

7. Where the victim is under the legal custody or supervision of a state agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, county, municipal or political subdivision employee or an employee of a contractor of the state, a county, a municipality or a political subdivision that exercises authority over the victim.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

OREGON

No custodial sexual misconduct statute.

PENNSYLVANIA

PA. STAT. ANN. tit. 18 § 3124.2 - Institutional Sexual Assault

a) General rule. Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental

health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident.

(b) Definition - As used in this section, the term "agent" means a person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution who is employed by any State or county agency or any person employed by an entity providing contract services to the agency.

RHODE ISLAND

R.I. GEN. LAWS §§ 11-25-24 - Correctional Employees - Sexual Relations with Inmates

Every employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution who engages in sexual penetration, as defined in § 11-37-1, with an inmate confined in that institution, or who is otherwise under the direct custodial supervision and control of that employee, is guilty of a felony punishable by imprisonment for not more than five (5) years, by a fine of not more than ten thousand dollars (\$10,000), or both.

SOUTH CAROLINA

S.C. CODE ANN. §§ 44-23-1150 - Sexual Intercourse with Patient or Trainee

A person having sexual intercourse with a patient or trainee of a state mental health facility, whether the patient or trainee is within the facility or unlawfully away from the facility, or an employee of a state or local correctional facility having sexual intercourse with an inmate of that facility, is guilty of a felony and, upon conviction, must be imprisoned not more than ten years.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 22-22-7.6 - Sexual Acts between Jail Employees and Detainees

Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony.

A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections under §1-15-1.4.

S.D. CODIFIED LAWS § 22-22-7.6 - Sexual Acts Prohibited between Prison Employees and Prisoners

Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.

TENNESSEE

TENN. CODE ANN. §§ 41-21-241 - Sexual Contact with Inmates

a) It is an offense for a law enforcement officer or a correctional officer to voluntarily engage in sexual contact or sexual penetration, as such terms are defined in § 39-13-501, with an inmate who is in custody at a penal institution as defined in § 39-16-601.

(b) A violation of this section is a Class A misdemeanor.

TEXAS

TEX. PENAL CODE ANN. § 39.04 - Violation of the Civil Rights of a Person in Custody; Improper Sexual Activity with a Person in Custody

a) An official or employee of a correctional facility or a peace officer commits an offense if he intentionally:

(1) denies or impedes a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or

(2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody.

(b) An offense under Subsection (a)(1) is a Class A misdemeanor. An offense under Subsection (a)(2) is a state jail felony.

(c) This section shall not preclude prosecution for any other offense set out in this code.

(d) The Attorney General of Texas shall have concurrent jurisdiction with law enforcement agencies to investigate violations of this statute involving serious bodily injury or death.

(e) In this section:

(1) "Correctional facility" means:

(A) any place described by Section 1.07(a)(14); or

(B) a "secure correctional facility" or "secure detention facility" as defined by Section 51.02, Family Code.

(2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment to a facility operated by or under a contract with the Texas Youth Commission of a juvenile offender.

(3) "Sexual contact," "sexual intercourse," and "deviate sexual intercourse" have the meanings assigned by Section 21.01.

(f) An employee of the Texas Department of Criminal Justice commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who is not the employee's spouse and who the employee knows is under the supervision of the department but not in the custody of the department.

(g) An offense under Subsection (f) is a state jail felony.

UTAH

UTAH CODE ANN. § 76-5-412 - Custodial Sexual Relations and Misconduct

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in Section 53-13-104;

(ii) a law enforcement officer, as defined in Section 53-13-103; or

(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section

64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-12-201 or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2)(a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii)

(A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with

the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4)

(a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

(c) otherwise taking indecent liberties with a person in custody; or

(d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

- (e) Section 76-5-402.3, object rape of a child;
- (f) Section 76-5-403, forcible sodomy;
- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

(7)

(a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:

(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the person in custody.

(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

VERMONT

No custodial sexual misconduct statute.

VIRGINIA

VA. CODE § 18.2-64.2 - Carnal Knowledge of an Inmate, Parolee, Detainee, or Pretrial or Posttrial Offender

An accused shall be guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial or posttrial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the

Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation program or a pretrial services program; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial or posttrial offender is under the jurisdiction of the state or local correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation program, or a pretrial services program; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial or posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation program, a pretrial services program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program. Such offense is a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.

WASHINGTON

WASH. REV. CODE. ANN. §§ 9A.44.160 - Custodial Sexual Misconduct in the First Degree

1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest[,] or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

WASH. REV. CODE. ANN. §§ 9A.44.170 - Custodial Sexual Misconduct in the Second Degree

(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and

(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or

(b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor.

WASH. REV. CODE. ANN. §§ 9A.44.180 - Custodial Sexual Misconduct-Defenses

It is an affirmative defense to prosecution under RCW 9A.44.160 or 9A.44.170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

WEST VIRGINIA

W. VA. CODE §§ 61-8B-10 - Imposition of Sexual Intercourse or Sexual Intrusion on Incarcerated Prisoners

(a) Any person employed by the division of corrections, any person working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the division of juvenile services pursuant to

contract or as an employee of a state agency, any person employed by a county jail or by the regional jail and correctional facility authority or any person working at a facility managed by the regional jail and correctional facility authority or a county jail who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one nor more than five years or fined not more than five thousand dollars.

(b) Any person employed by the division of corrections as a parole officer or by the West Virginia supreme court of appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the commissioner of corrections for not less than one nor more than five years or fined not more than five thousand dollars, or both.

WISCONSIN

WIS. STAT. ANN. § 940.225

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:

(h) Has sexual contact or sexual intercourse with an individual in who is serving a sentence or is placed in a correctional institution, is participating in the challenge incarceration program under s. 302.045, or is on probation, parole, or extended supervision if the actor is one of the following:

1. A correctional officer.
2. An individual providing services directly to persons confined in a correctional institution.
3. A person providing services directly to or supervising individuals who participate in the challenge incarceration program.
4. A probation, parole, or extended supervision agent.

WYOMING

WYO. STAT. §§ 6-2-303 - Sexual Assault in the Second Degree

a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree ...

(vi) The actor is in a position of authority over the victim and uses

this position of authority to cause the victim to submit; or ...

WYO. STAT. §§ 6-2-306 - Penalties for Sexual Assault

(a) An actor convicted of sexual assault who does not qualify under the criteria of subsection (b) or (d) of this section shall be punished as follows:

(i) Sexual assault in the first degree is a felony punishable by imprisonment for not less than five (5) years nor more than fifty (50) years;

(ii) Sexual assault in the second degree is a felony punishable by imprisonment for not more than twenty (20) years; ...

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