



Breaking the Code of

SILENCE

Correctional Officers' Handbook on Identifying and Addressing Sexual Misconduct

Brenda V. Smith and Jaime M. Yarussi

National Institute of Corrections/Washington College of Law Project on Addressing Prison Rape
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Breaking the Code of Silence: Correction Officers' Handbook on Identifying and Addressing Sexual Misconduct addresses rapidly developing areas of law and practice in the United States. The information in this publication is current as of January 2007. Both law and policies rapidly change. We will remain abreast of those changes and encourage you to contact us with new information as it becomes available.

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Foreword

Since 1999, The American University Washington College of Law has had a cooperative agreement with the National Institute of Corrections to provide training to high-level correctional decision makers on key issues in addressing and investigating staff sexual misconduct. With the enactment of the Prison Rape Elimination Act in 2003 (PREA), the project's focus shifted to addressing prison rape—both staff sexual misconduct with offenders and offender on offender sexual violence and abuse.

This handbook is based on training we have conducted on staff sexual misconduct over the past eight years, and the feedback and comments that we have received from correctional professionals who have attended those trainings and implemented changes in their system to prevent sexual abuse of individuals under custodial supervision.

Since the passage of PREA in 2003, there has been increased national and international attention to the issue of sexual abuse of individuals in custody. States have strengthened criminal laws prohibiting the sexual abuse of individuals in custody. Reports on staff sexual misconduct have increased in number; non-governmental organizations such as Human Rights Watch, Amnesty International and Stop Prisoner Rape have documented the issue, and both print and visual media have covered sexual violence in correctional settings.

However, even with the enactment and strengthening of state and federal law, human rights reports, and media coverage, the fundamental question of whether conditions that enable staff sexual misconduct have changed, remains unanswered. While state correctional systems, the federal government and local jurisdictions have made a great deal of progress in addressing staff sexual misconduct, much work remains. A climate may still exist where sexual abuse of individuals in custody is permitted. Moreover, prosecutions and convictions for wrongdoing are rare, and sanctions for guilty correctional professionals are weak.

This important work must continue in order to ensure the safety and security of correctional agencies, staff who work in these agencies, facilities across the country and people under correctional supervision. Law and policy development and change, consistent enforcement, prosecution and punishment of wrongdoers, and training of staff and offenders will prevent and reduce staff sexual abuse of offenders.

This publication is a critical step in reaching out to rank-and-file correctional staff in order to address the code of silence that surrounds staff sexual misconduct with offenders. We hope that it will deepen the dialogue between line staff, administrators, community leaders, and criminal justice advocates about strategies to eliminate staff sexual misconduct with individuals under custodial supervision.

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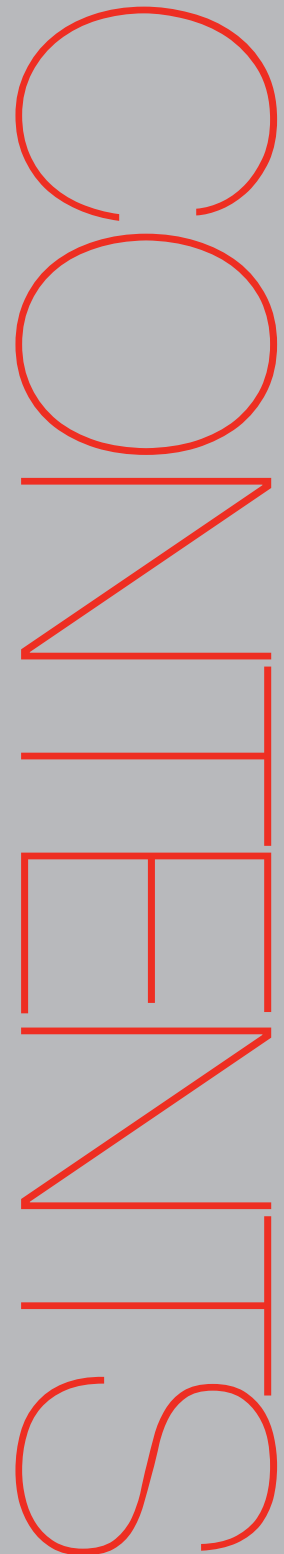
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Introduction

Staff¹ sexual misconduct with offenders² is about more than sex. This behavior compromises your safety and security, the safety of the institution and offenders' safety. While you may never get involved in this unprofessional behavior which is illegal in all states – you should be aware of how staff sexual misconduct with offenders can affect you, your job, your family, offenders and the community.

Staff sexual misconduct with offenders is not a subject to read about and put aside. It needs to be an ongoing discussion involving partners from all correctional sectors. Staff sexual misconduct is a problem that involves facilities, offenders, administration and staff at all levels, as well as outside stakeholders such as law enforcement, the legislature and the community. It has legal and non-legal consequences as well as long-lasting emotional, economic, and mental and physical health effects for staff, offenders, agencies and the community.

This handbook aims to educate correctional professionals at all levels on:

- why correctional staff and administrators need to be concerned about staff sexual misconduct with offenders
- how agency culture and the workplace environment influence staff sexual misconduct
- the tools that will help identify and address staff sexual misconduct
- the consequences of staff sexual misconduct with offenders
- the investigative process that should follow an allegation of staff sexual misconduct
- how correctional staff members can keep the workplace safe

¹ In this publication "staff" will include all of the following: officer, staff, contractor, food service employees, maintenance worker, volunteer, clergy member, medical staff member, and vendors.

² "Offender" refers to individuals (including youth) under custodial supervision, whether in secure confinement such as jails and prisons or under community supervision such as probation, parole, home detention and the like.

Why are We Talking About This Now?

Staff sexual misconduct undermines the mission of corrections by creating unstable living and working environments for the offenders as well as their supervising staff members. Sexual misconduct is the most serious form of boundary violation in a correctional setting. Sexual misconduct is not about sex, but about safety and security. Both are compromised whenever boundaries break down and a staff member becomes personal or intimate with an offender.

Staff sexual misconduct with offenders affects correctional staff by:

- jeopardizing staff safety
- threatening agency and facility safety and security
- creating the risk of legal action – both criminal and civil
- creating health risks
- harming family relationships
- creating negative public views of corrections
- diminishing trust and morale of staff and offenders
- weakening respect for, and the authority of, correctional staff among offenders

Highly publicized legal cases involving women's prisons initially brought this issue to the attention of the national and international community. From civil penalties to incarceration, correctional staff members and correctional agencies have paid the price for staff sexual misconduct with offenders.

The National Institute of Corrections (NIC), a branch of the Department of Justice, has provided training and technical assistance to executive-level correctional professionals since 1996. National professional organizations, individual states, correctional officials and policy advocates have also taken steps to address staff sexual misconduct. Still, staff sexual misconduct persists in correctional settings.

Before we discuss staff sexual misconduct in custodial settings, it is important to acknowledge that staff sexual misconduct is not unique to correctional settings. Sexual misconduct is prevalent in organizations where one person or a group of people has power over others.

It is this imbalance of power that is a pivotal factor in enabling sexual misconduct. Instances of staff sexual misconduct have been reported in:

- religious institutions
- the foster care system
- the United States government
- the United States military

Religious Institutions:

A former pastor from Trinity Baptist Church in Jacksonville, Florida was charged with two counts of capital sexual battery. Two women told police that the pastor had fondled them, touched their genitals and kissed them during visits to his office when they were six and attending school at the Trinity Christian Academy. Six other women also corroborated the abuse happening during the late 1970s and early '80s. At least 15 women have accused the pastor of molesting them. He has admitted to french kissing students years ago. (As reported by *The Florida Times Union* on May 21, 2006)

Foster Care:

Omaha police arrested a 15 year old boy in February for allegedly molesting his three foster sisters ages three, five and seven. The abuse had allegedly been occurring since October and was finally reported in mid-February. The boy has entered a denial plea to three counts of first-degree sexual assault in family court. A spokesperson for the Nebraska Department of Health and Human Services said the girls were immediately removed from the home. (As reported by the *Omaha World Herald* on March 30, 2006)

Military:

Recent allegations of sexual abuse by U.S. military personnel has some concerned that the Pentagon is cultivating a culture of sexual violence against women. More than 500 U.S. service-women who have been or are currently stationed in Iraq, Afghanistan or other countries say they have been assaulted by fellow soldiers since 2003. The Defense Department has stated that reports of sexual assault have risen 65 percent in the past two years. (As reported by *The Salt Lake Tribune* on July 19, 2006)

A jail guard at the Sixth District Jail was charged with raping a male inmate. Jail guard Espiridio Quinones, is accused of forcing a 25-year-old inmate to perform oral sex. The inmate was able to save some of Mr. Quinones' semen in a shoe for DNA evidence. The shoe and Mr. Quinones' blood sample were sent for DNA testing but the results are unavailable at this time. Mr. Quinones was arrested and suspended without pay. (As reported by *The Plain Dealer* on August 25, 2006)

A former North Carolina Department of Corrections official was sentenced by Buncombe County Superior Court to 22 to 36 months in prison. Judge Ronald Payne told Edith Pope that the potential security breach created by her sexual relationship with a convicted murderer created in the Craggy Correctional Center necessitated an active prison term. (As reported by the *Asheville Citizen Times* on August 8, 2006)

A former Illinois Youth Center worker faces up to 15 years in prison for having a sexual relationship with a juvenile offender. Barnett Gill testified in court that no sexual activity occurred between him and the youth resident back in 2004. Gill was convicted of four felony counts of sexual misconduct with a minor. (As reported by the *Chicago Sun-Times* on August 3, 2006)

What is Staff Sexual Misconduct with Offenders?

Staff sexual misconduct with offenders is generally defined as any behavior or act of a sexual nature by:

- a correctional employee (sworn or civilian, managers, administrators, supervisors, line officers, supervisors of offenders on work release)
- a contractor
- a food service employee
- a maintenance worker
- a volunteer
- a medical or mental health staff member (clinical staff and counselors)
- a member of the clergy
- vendors
- youth workers
- teachers

Staff sexual misconduct can be directed towards:

- a person under the care or custody of any correctional authority
- any of the offender's family members
- any other person who has official contact with the department on behalf of offenders (lawyers, social workers, mental health professionals, victim advocates)

Correctional settings where staff sexual misconduct can occur include, but are not limited to:³

- prisons
- jails
- police lock-ups
- juvenile facilities
- immigration detention centers
- court holding facilities
- community corrections (home monitoring, probation, parole half-way houses)

³ The Prison Rape Elimination Act of 2003. Pub. L. 108-79. 4 Sept. 2003. Stat. 117. 972. These settings are defined as correctional settings by the Prison Rape Elimination Act of 2003.

There are four sources of definitions of staff sexual misconduct:

- state law
- agency policy
- the Prison Rape Elimination Act of 2003 (PREA)
- the Bureau of Justice Statistics (BJS)

Staff sexual misconduct can include both physical and non-physical behaviors. It is important to remember that misconduct with an offender can include non-physical actions that precede physical sexual misconduct with offenders. While the criminal law in most states only covers punishment for the physical aspects of sexual misconduct, department policies and procedures address and provide sanctions for the non-physical actions.

Physical sexual misconduct includes, but is not limited to, acts or attempts to commit acts such as:

- sexual abuse or sexual contact (such as fondling of the breast, buttocks, or genitalia)
- sexual assault (such as rape, intercourse, oral and anal sex, or penetration of the vagina, mouth or anus by a penis or any object)
- actions designed for sexual gratification of either party (such as exposure or masturbation)

Non-physical sexual misconduct includes, but is not limited to, acts or attempts to commit acts such as:

- undue familiarity (such as flirting, inappropriate compliments, making suggestive sexual remarks or obscenities, doing favors for an offender, letters or notes which are sexual in nature and conversations with sexual undertones)
- conduct of a sexual nature that implies sex
- sexual harassment
- unreasonable invasion of privacy (such as inappropriate viewing, standing too close to the offender in an intimate space without touching)
- sexually suggestive comments about appearance

PREA defines sexual abuse of an individual in custody as:

“The rape of an inmate (defined as any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary programs) in the actual or constructive control of prison officials.”

BJS defines staff sexual misconduct as:

Any behavior or act of a sexual nature directed toward an inmate by an employee, volunteer, official visitor, or agency representative. Romantic relationships between staff and inmates are included. Consensual and non-consensual sexual acts include:

- **Intentional touching of the genitalia, anus, groin, breast, inner thigh, or buttocks with the intent to arouse or gratify sexual desire**
- **completed, attempted, threatened, or requested sexual acts**
- **occurrences of indecent exposure, invasion of privacy, or staff voyeurism for sexual gratification.**

One of two former Oakhill Correctional Institution (Wisconsin) guards, charged earlier this year with having sex with an inmate, was put on probation for two years and fined. Christine Roberge was charged with second-degree sexual assault in April after an investigation showed she was having sex with an inmate. The plea agreement allowed the defendant to enter a no contest plea to the felony charge and two misdemeanor counts. If she successfully completes probation she will be able to file a motion asking that the felony count be dismissed. That part of the plea bargain did not have the approval of the Department of Corrections, and Oakhill Warden Deirdre Morgan stated that the department would really like to see a felony conviction. Both officers were charged under the law passed in 2003 making sex with a prisoner an assault regardless of the nature of the act and carrying a maximum of 40 years in prison. (As reported by *The Capital Times* September 19, 2006)

Douglas Tower was sentenced to 20 to 40 years in prison for raping and sexually assaulting a female inmate while he was a sergeant at the Shea Farms Halfway House in Concord, New Hampshire. Tower was convicted in February of two counts of rape and four counts of felonious sexual assault. He faced a maximum of 34 to 68 years in prison. Tower is still accused of sexually assaulting 12 other female inmates and faces trials in those cases. (As reported by *The Concord Monitor* on April 19, 2007)

Some may feel that, given a staff member's daily contact with offenders and just "being human," the definition of staff sexual misconduct includes too many "normal" behaviors. Perhaps as you reflect on your career, you may find that you have engaged in one or more of these activities. Maybe you or one of your co-workers believes that sexual misconduct with an offender is not a problem within your agency. You may feel that an offender's actions invite staff sexual misconduct or that the offender manipulated the staff.

If you are thinking one or all of these things, we urge you to reexamine some of your opinions about staff sexual misconduct with offenders. Any conduct of a sexual nature with an offender, whether the offender invites it or not, is prohibited by law and in most states is prohibited by agency policy.

Consequences of Staff Sexual Misconduct with Offenders

The legal, emotional and financial consequences of staff sexual misconduct can be severe, and include legal, emotional, personal and financial hardship. These consequences can be far-reaching, affecting:

- staff members
- offenders
- agency operations
- administrators
- the profession
- elected officials
- families of staff members and offenders
- the community and public

Staff members involved in a sexual relationship with an offender may face both legal as well as non-legal sanctions for their actions if they are found guilty.

Potential *legal* consequences for **staff members** may include:

- civil liability
- criminal prosecution
- incarceration
- fines
- sex offender registration
- community notification

Potential *non-legal* sanctions for **staff members** may include:

- administrative discipline
- loss of employment
- loss of professional license/certification
- difficulty in obtaining another job
- losing the trust of your family, friends, peers and the public
- contracting HIV, hepatitis or other sexually transmitted diseases (STDs)
- public shame and humiliation
- threat to personal safety during incarceration

Can you think of other consequences?

To send us your answers go to:
http://www.wcl.american.edu/nic/co_handbookresponses.cfm

California inmates continue to contract HIV at rates of up to eight times higher than the general population. Statistics show that 20 to 26 percent of people living with HIV/AIDS in the United States have spent time in the correctional system. “The reality is that sex in prison is taking place and it is an undeniable public health issue and we must provide inmates with options for protecting their health and the health of their loved ones upon being released.” (As reported by *Medical News Today* on August 19, 2006)

Incarcerated or formerly incarcerated persons are often involved in high-risk behaviors that can spread various infectious diseases. In correctional settings, the HIV infection rate alone is ten times higher than in the general U.S. population, Hepatitis B infection is three to four times greater and Hepatitis C infections are found in 16 to 41 percent of the inmate population. Additionally, 25 percent of the HIV-infected people in the U.S. are released from prison or jail each year. Gonorrhea, Syphilis and Chlamydia are also present in U.S. incarcerated populations. (Source: United States Department of Justice/ National Institute of Corrections. “Staff Sexual Misconduct: Medical Implications” Addressing Staff Sexual Misconduct with Offenders Training. Comp. Laura Worby. Washington, DC. (March 2006).

Consequences **for offenders** may include:

- punishment under agency policies and procedures
- criminal sanctions
- victimization
- mental health problems
- spreading and contracting disease (especially STDs, HIV, Hepatitis)
- pregnancy
- re-traumatization
- family and marital problems

Potential consequences **for agency operations** include:

- an imbalance of power in favor of offenders (offenders feeling they have a “secret” and can influence or control a staff member)
- breaches in safety and security
- erratic behavior from offenders thereby placing staff in danger
- loss of community, legislative and fiscal support
- loss of agency integrity and credibility
- difficulty in future recruitment of qualified employees
- unfavorable media attention
- undermining agency authority
- diminished respect for the agency and profession of corrections

Consequences **for administrators** may include:

- criminal liability
- civil liability
- alienation of staff
- loss of employment
- staff and offenders not trusting administrators to protect them
- doubts about the security of the agency
- unfavorable media attention

Consequences **for elected officials** may include:

- public mistrust in the criminal justice system
- loss of funding for correctional programming and training
- diminished support for reform funding
- demands for better oversight and accountability

Consequences **for staff members' families** may include:

- shame
- loss of income due to job termination
- loss of status with peers and in the community
- burden of paying monetary damages
- fear of retaliation
- loss of family member due to incarceration

Consequences **for the public** may include:

- fear for personal and community safety
- mistrust of the correctional system
- loss of confidence in the professionalism of correctional operations
- cost of treating infectious disease
- cost of paying civil damages to offenders
- cost of prosecution
- cost of incarcerating the staff member
- cost of training replacement staff

What offenders think:

“Sex, just like drugs, is part of being in prison. There has to be a certain amount of that going on. What’s important is what the prison does when they discover someone having sex.”

“A lot of female staff come here looking for love. They don’t get a lot of support at home or at work. First they become friends with inmates and the next thing you know they are in love.”

“A lot of these offenders have low self-esteem. They don’t think a lot of themselves so they will settle for soda, candy or cigarettes.”

- Quotes from offenders. “An End to Silence” by Brenda V. Smith (1998)

What staff think:

“Staff sexual misconduct involves using power to get what the staff member wants. We are supposed to be taking care of the offenders, not hurting them.”

“State prisoners are pretty upfront about how they will never have another woman because they are doing life. {Prison sex} is just meeting their needs.”

“Women engage in sexual activity here because of a history of previous abuse and sexual misconduct and are unaware of healthy sexual behavior. Most of the women have been victims; not just in prison, but on the outside also. Most women have been victims and they think that’s okay.”

- Quotes from staff members. “Staff Perspectives” by The Moss Group, Inc. (2006)

Interim Tennessee Department of Corrections Commissioner Gayle Ray says the fatal escape involving an inmate and his wife, a former prison nurse, reinforces the importance of policies prohibiting relationships between state employees and inmates. Jennifer Forsyth, who worked as a contractor LPN nurse, was fired last August from Northwest Community Services Agency for "suspicion of a relationship with an inmate." Officials say it's unclear how the two were able to plan the escape. With thousands of inmates, Ray said, phone calls are only taped randomly. Monitors and officers in the rooms during visitations mainly prevent exchange of contraband, Ray said, "but you can't overhear conversations." (As reported by the *Associated Press* on August 10, 2005)

Ralph Hill opened fire Wednesday on FBI agents who had come to arrest him and five other federal prison guards (at FCI Tallahassee) on charges of sex with female inmates in exchange for money and contraband. Officials said Hill fired with a personal weapon. Agents from the Justice Department's inspector general's office returned fire, killing the guard. Hill and the five other guards had been indicted Tuesday on sex-for-contraband charges in a scheme that went on for two years, according to prosecutors. Besides the sex charges, the guards were accused of threatening to plant contraband in inmates' belongings, or to have inmates sent to other institutions farther from their families, if they reported the illegal activity. (As reported by the *Associated Press* on June 22, 2006)

Can Correctional Environments Enable Sexual Misconduct?

YES. The imbalance of power of staff-offender relationships, are a core feature of correctional culture. This culture affects both those who have power and those who do not, and may distort communication and interactions between and among staff and offenders. Offenders who lack power may engage in staff sexual misconduct in an attempt to equalize this power imbalance.

Over-familiarity and sexual interactions between staff and offenders can shift power from the staff to the offender. Since there are few secrets in correctional environments, offenders can gain a great deal of power when a staff member is involved in illegal or unethical behaviors. This power can translate into privileges and favors, including keys and freedom, that compromise the security of the facility, staff and offenders. These relationships can even result in serious injury or death.

What is Agency Culture?

Agency culture is an organization's sum of attitudes, values, norms, beliefs, prejudices, history, personalities and ethics of staff – both past and present. It is the organization's character and the way it does business. In an unhealthy organization, inappropriate relationships between staff and offenders, including sexual misconduct, may be both ignored or accepted and thus reinforced as part of the culture of an agency. Changing the way an agency manages inappropriate relationships between staff and offenders can mean changing the culture of that agency.

In correctional agencies, there are often two types of culture:

- Ideal: the values held in principle, such as an organization's mission statement, policies and procedures, formal incentives and sanctions.
- Real: the way the agency actually works, the hidden, informal chain of command, how things get done and who has the power and leadership.

Influences on the culture of an agency include:

- the history and critical events that happen within an agency and how they are interpreted
- the hiring process
- the promotional process
- the disciplinary process
- the role played by middle management
- the physical environment (how the agency is kept up)
- behavior of staff with offenders and vice versa

- behavior of management with staff
- the tone and style of leadership
- staff-to-staff interactions
- staff-to-offender dynamics
- dress code
- language
- political support

Initiatives to prevent and address staff sexual misconduct through change in agency culture require a long-term commitment. Changing culture is not a short-term project; it involves a substantial and organized effort with all employees as well as with offenders.

The “Code of Silence”

The “code of silence” has been defined as the unwillingness of staff and/or management to talk openly about other staff or incidences of an illegal, unethical or questionable nature. Staff may refuse to cooperate in the investigation of critical events, specifically the reporting and investigation of an allegation of staff sexual misconduct, in order to protect fellow staff members. Most staff members would rather risk discipline than violate the code of silence within the correctional community; this silence protects wrongdoers.

In the case of staff sexual misconduct, the code of silence may exist because:

- staff compromise their values in order to fit into an agency and to avoid becoming an outsider
- staff may find it easier to ignore the conduct
- staff may fear retaliation from the accused or other employees for violating the code
- staff may find it impossible to believe that a peer could have a sexual relationship with an offender
- staff may see internal investigations as unprofessional, untimely or even as a “witch hunt.”
- staff may believe offenders deserve what they get
- staff fear if they report misconduct, other staff may not protect them if they are involved in physical altercations with offenders in the future
- staff may not see relations with offenders as wrong

Baron v. Hickey, 242 F. Supp. 2d 66 (D. Mass. 2003)

In Suffolk County, Mass., a correctional staff member was allegedly harassed and forced to quit because he broke the code of silence. He claimed that he was being harassed by his co-workers after reporting an incident of misconduct as instructed by his supervisor. Co-workers referred to him as a “rat,” dropped cheese in front of him and slashed his tires. The officer complained on 30 separate occasions and was eventually forced to resign.

The court found in favor of the officer stating that reporting matters of misconduct within prison walls is a matter of great importance to the public. Therefore, “it is essential that staff members be able to speak out freely about misconduct without the pressure of a code of silence and fear of extreme retaliatory harassment sufficient to force resignation.” The officer was ultimately awarded \$500,000 in damages by a jury.

The Code of Silence

Three whistleblowers from the California Department of Corrections (CDC) would not deny that they have felt ostracized, stigmatized and isolated as a direct result of breaking the code of silence and reporting the misconduct of co-workers in the CDC. Because of the reprisals and retaliation they endured, each filed whistleblower lawsuits against the department. The current status of those claims calls into question the sincerity of the CDC’s promises of “zero tolerance” for retaliation against officers reporting misconduct. Under the California Whistleblower Protection Act, “state employees should be free to report waste, fraud, abuse of authority, violation of law, or threat to public health without fear of retribution.” (As reported by the *Sacramento News and Review* on May 13, 2004)

What are some other signs of a Code of Silence?

To send us your answers go to:
http://www.wcl.american.edu/nic/co_handbookresponses.cfm

A former correctional officer and supervisor admitted to lying to high-ranking officials when he said he could not remember the names or faces of workers involved in a deadly attack on a detainee last year. The guard said, "The reason why is that I did not want to be the one up in this position now. Woods and Hatcher are good friends of mine. I have nothing against them." (As reported by the *Baltimore Sun* on September 28, 2006)

While there is disagreement about the power and pervasiveness of the code of silence, it does exist within most correctional environments. These unspoken rules often result in irreparable damage to the profession.⁴ As previously mentioned, there are often consequences for those who choose not to report an incident due to this code of silence.

The primary mission of corrections is to provide safe and secure environments for persons under correctional supervision and the staff who supervise them. The code of silence, however, compromises agency security. Administrators and agency policy should be clear about the harm caused by the code of silence. The presence of unethical behavior, abuse of power and cover-ups may result in the institution becoming a dangerous place to live and work.⁵ It allows a group to enforce the rules as they see fit without being accountable. It ultimately breeds anger and distrust and can destabilize an agency.

Another mission of corrections is to create an environment where people can contemplate and/or change behavior that resulted in their conviction and imprisonment. Staff sexual misconduct is at odds with the goal of behavioral change and rehabilitation by creating an unequal and sexualized environment where staff members fail to fulfill their duties as rehabilitators.

In order to address the unhealthy work environment caused by staff sexual misconduct with offenders, there must be a change in agency culture and a redefinition of staff sexual misconduct as a security issue. Even though staff may face pressure to be silent or ignore misconduct, it is necessary to understand the difference between loyalty to each other and loyalty to corrections as a whole. Loyalty to the group is important in fostering solidarity, enhancing safety and building trust. Ultimately though, loyalty to the mission of corrections – safe, secure and rehabilitative environments – is more important.⁶

⁴ Martin, Keith. "Cracking the Code of Silence." *Corrections.com*. 6 July 2002. <www.prisonerlife.com/articles/articleID=36.cfm>

⁵ Martin, Keith. "Cracking the Code of Silence." *Corrections.com*. 6 July 2002. <www.prisonerlife.com/articles/articleID=36.cfm>

⁶ Martin, Keith. "Cracking the Code of Silence." *Corrections.com*. 6 July 2002. <www.prisonerlife.com/articles/articleID=36.cfm>

Victimization

Many correctional staff do not view offenders as “victims” of staff sexual misconduct, especially when offenders initiate or appear to willingly engage in sexual or “romantic” interactions with a staff member. Yet, no matter what an offender says or does, the imbalance of power between staff and offender makes the offender the victim. What may appear to be consent or willingness to participate can often be a survival strategy or a response to prior or current victimization.

In fact, most offenders have prior histories of victimization. A 1999 report by the United States General Accounting Office found that 52 percent of state female prisoners had been physically or sexually abused prior to their current incarceration.⁷

A Bureau of Justice Statistics report from 1999 also indicated that 19 percent of state prison inmates, 10 percent of federal inmates and 16 percent of jail inmates (male and female) reported being physically or sexually abused in the past.⁸ The report also found:

Female offenders who are survivors of abuse:

- report that nearly one-third of the abuse is suffered at the hand of a parent or guardian; prior abuse by spouses or boyfriends is also reported
- report that abuse continues through childhood into adulthood
- report abuse by both family members and intimates
- are more at risk for unhealthy relationships with authority figures, particularly men

Male offenders who are survivors of abuse:

- indicate being mistreated, mostly as children
- are more likely than women to be abused by someone outside of their family
- are less likely to report abuse or seek help
- may question sexual identity and preference as a result of the abuse

Some impacts of victimization on all offenders (male and female) are:

- questioning what is normal
- altered development of attitudes towards self, sexuality and relationships
- poor boundaries, including promiscuity
- substance abuse and addiction

⁷ United States. General Accounting Office. Women in Prison: Sexual Misconduct by Correctional Staff. Washington, DC. June 1999.

⁸ United States. Bureau of Justice Statistics. Prior Abuse Reported by Inmates and Probationers. Comp. Caroline Harlow. Washington, DC. April 1999.

Offender Abuse Histories

Men:

- Although men are more likely than women to be abused in childhood by someone outside of the family, more than half of male offenders reporting a history of abuse had been abused by parents or guardians.
- Sixty one percent of male state prisoners reporting abuse were serving a sentence for a violent offense, compared to 46 percent of those reporting no past mistreatment.
- Males are less likely to report abuse or seek help.
- The experience of sexual victimization may be even more stigmatizing for men than for women because these victimization experiences fall so far outside of the proscribed male gender role.

Women:

- The majority of female offenders report prior sexual abuse, which appears to be a pathway to delinquency, addiction and criminality.
- Women are more at risk for unhealthy relationships (characterized by abuse, exploitation) with authority figures, particularly men.
- Female offenders report that they were most often abused by intimates or family members. Almost 91 percent knew their abuser, 40 percent of abuse was at the hands of a family member, and 27.2 percent of abuse at the hands of a parent or guardian. Sixty one percent of abuse was perpetrated by an intimate.

Classes of persons vulnerable to sexual abuse include those who are:

- Developmentally disabled
 - Hearing impaired
 - Limited language ability
 - Previously victimized
 - Gay and transgendered
 - Juveniles
 - Untreated addicts
 - The mentally ill
 - The elderly
- a “use or be used” philosophy
 - low self-esteem
 - feelings of powerlessness
 - feelings of mistrust, betrayal and fear
 - feelings of guilt or shame
 - susceptibility to further victimization
 - mental illness
 - suicidal tendencies

Communication, Gender and Abuse Histories

A history of abuse for both staff and offenders will affect how women interact with men and how men interact with women. It will also affect how men and women interact with others of the same gender.

In addition, women and men differ in their behavior and communication styles even if they have not experienced abuse. By understanding how you behave and communicate, you will be more likely to avoid situations that could be misinterpreted or lead to sexual misconduct.

Some characteristics of male behavior and communication are that men often:

- guard information
- do not share thoughts and feelings
- are reluctant to ask for help
- are less verbal
- can be aggressive, competitive and less outwardly emotional
- have an ability to conceal vulnerabilities

Some characteristics of female behavior and communication are that women often:

- share thoughts and feelings
- build rapport, bond, and have closeness and intimacy with people
- are eager to talk about problems
- are caretakers
- can show feelings and emotions
- are more inclined to ask for help
- are willing to expose vulnerabilities

The interrelationship between communication, gender and abuse histories in correctional settings is important because it affects how offenders interact with you and how they do their time.

Typology of Staff Involved in Sexual Misconduct:

SITUATIONAL: Good professional history, sudden change in life course, situational breakdown in judgment or control

PSYCHOTIC: Impaired reality, delusions of grandiosity and love

NAÏVE: Difficulty understanding or operating within professional boundaries due to poor social judgment

NEEDY: Emotionally dependent, overly involved, not initially driven by sexual desires

THRILL-SEEKER: Risk-taker, desires adventure, enjoys living on the edge

PREDATOR: Narcissistic, self-centered exploiter, manipulative, seeks to gratify own needs, lacks remorse

LOVESICK: Believes they are in love with the offender; deficiency in judgment confined to one particular offender

RESCUER: Believe they have special kinds of help that only they can offer to save/guide/help the offender

BULLY: Intimidates, dominates, finds victims' submission gratifying, exerts power and control

(Source: United States Department of Justice/National Institute of Corrections. "Gender Differences." Investigating Allegations of Staff Sexual Misconduct with Offenders Training: Comp. Melissa Turner. Washington, DC. (July 2006)).

Other examples of pressures correctional staff face are:

Other strategies for supporting staff can include:

To send us your answers go to:

http://www.wcl.american.edu/nic/co_handbookresponses.cfm

Tools for Defining and Identifying Inappropriate Relationships with Offenders

Correctional staff members are subject to many pressures. These pressures can make staff vulnerable to behaviors they may not normally engage in.

Pressures include but are not limited to:

- stress on the job (e.g. conflicts with other staff)
- personal stress (e.g. financial difficulties, marital difficulties, loneliness, mental health problems)
- substance abuse
- personal life changes
- issues of power and control
- balancing counseling and treatment responsibilities with surveillance and control
- inadequate preparation for supervising offenders and understanding their complex life experiences
- inadequate supervision and support from administration

Offenders have the right to be free from sexual advances by correctional staff. While there is no question that correctional environments are stressful and dangerous work places, personal factors can also weaken a staff member's resolve to avoid sexual misconduct with an offender.

If you are afraid you are in danger of having an inappropriate relationship with an offender you should find out what resources your agency has to support staff in these situations. You can:

- tell a supervisor and request help
- contact your employee assistance program (E.A.P.) or a private counselor
- tell a friend or other trusted staff member
- request a transfer of post
- request a transfer of the offender

Ethics⁹

Ethics are the knowledge and guidelines used to make decisions based on a set of morals and values within a particular group. Correctional staff face many challenges that make day-to-day decisions difficult. Making ethical decisions are sometimes even harder.

In order to make an ethical decision it helps to:

- define the dilemma you are having
- gather data and information about the dilemma
- list the “pros and cons” if you make a decision either way
- ask yourself if your choices would be considered legal
- ask yourself if your choices feel consistent with your own values and moral compass
- ask yourself if your choices are consistent with your agency’s mission
- list the consequences for yourself, offenders, other staff, supervisors, administrators and the public

We face ethical dilemmas every day. Some examples of ethical decisions you may need to make are:

- Is it ethical for me to have dinner with the family of an offender?
- Is it ethical to cover for a colleague who is experiencing some personal problems at home and behaving in a questionable manner?
- Is it ethical to accept a reduced price meal from a local diner because I am a correctional staff member?
- Is it ethical to overlook a close friend’s violation of a petty department rule?
- Is it ethical to take a mental health day periodically?
- Is it ethical to have my car serviced at a garage where a former offender works?
- Is it ethical to tell a “little white lie” to protect a peer or colleague?
- Is it ethical to tell an offender s/he looks good or flirt if no one “gets hurt”?
- Is it ethical to find ways around departmental policy and procedures that get in the way of doing my job?
- Is it ethical to do favors for my supervisor?
- Is it ethical to do favors for an offender?

American Correctional Association Code of Ethics

The American Correctional Association expects of its members unfailing honesty, respect for the dignity and individuality of human beings and a commitment to professional and compassionate service. To this end, we subscribe to the following principles. Members shall:

- Respect and protect the civil and legal rights of all individuals.
- Treat every professional situation with concern for the welfare of the individuals involved and with no intent to personal gain.
- Maintain relationships with colleagues to promote mutual respect within the profession and improve the quality of service.
- Make public criticism of their colleagues or their agencies only when warranted, verifiable, and constructive.
- Respect the importance of all disciplines within the criminal justice system and work to improve cooperation with each segment.

Please visit the American Correctional Association at www.aca.org for the full Code of Ethics.

⁹ Center for Innovative Public Policies. Addressing Staff Sexual Misconduct in Community Corrections. Comp. Susan McCampbell. 2002.

Some headlines involving staff sexual misconduct with offenders have included:

- Former Prison Nurse Springs Husband, Fatally Shoots Officer
- Escape Reinforces Rules Against Relationships with Inmates
- Prison Love Led To Deadly Shooting, 2 Days on the Run and Capture
- Virginia Ex-Deputy Guilty of Having Sex With Inmates
- Governor Fires Prison Chief Over Inmate Sex in Mansion
- Correctional Officers Accused of Sex Offenses with Inmates
- County Jail Guard Charged with Sexually Abusing Woman
- Ex-Officer Pleads Guilty to Sex with Inmate
- Deputy Sentenced in Sex Case
- Nurse Pleads Guilty in Prison Sex Case

The answers to these questions are not always clear or easy to determine. Avoiding staff sexual misconduct with offenders also involves ethical choices.

To determine if the decision you have made is ethical, ask yourself:

- Was my decision based on anger, lust, peer pressure or greed?
- Would I make the same decision if my family were standing beside me?
- Would I make the same decision if I were being videotaped or my supervisor was watching?
- Would my loved ones be ashamed of my decision?
- Can I look at myself in the mirror after the decision I made?

Some people find applying the *Headline Test* is a good way to determine whether a decision may be ethical or not. Ask yourself, “what would a headline in a newspaper look like if they were covering this story?” If the headline looks or feels bad or is one you would be ashamed to show your friends or family, the decision or action is probably not a good one.

The Daily Dozen¹⁰

Asking yourself questions can be a good “check and balance” to see if pressure is clouding or affecting your good judgment. The purpose of these self-check questions is to help correctional staff members identify when they might be getting close to crossing ethical and professional boundaries.

The questions are as follows:

- Do you look forward to seeing a particular offender when you come to work?
- Have you done anything with an offender that you would not want your family or your supervisor to know about?
- Would you be reluctant to have a co-worker observe your behavior for an entire day?
- Do you talk about your personal matters with offenders?
- Do you believe you can ask an offender to do personal favors for you?
- Have you ever received personal advice from an offender?
- Have you said anything to an offender that you would not want tape recorded?
- Do you have thoughts or fantasies of touching a particular offender? Does this extend to planning how you can be alone with that offender?
- Do you think you have the right to touch an offender whenever and wherever you want to?

¹⁰ Teena Farmon, a former warden and a national expert on staff sexual misconduct initially developed this questionnaire for correctional staff to use as a self-test daily.

- Do you look forward to sharing good/ bad news with a particular offender?
- Do you think offenders are not allowed to say “no” to you, no matter what you ask?
- Have you ever allowed an offender to talk to you about sexual experiences or sexual fantasies, or to tell sexual jokes in your presence? Have you ever shared these things with an offender?

If you answered “yes” to any of the above questions, you may be in danger – sexual misconduct often begins as over-familiarity with an offender. Even offering an offender something you may think is simple and harmless, such as candy or soda, can begin to break down professional boundaries. This is particularly important because in some facilities, correctional staff come from the same communities. You may share schools, friend, and sometimes even family. But it is your responsibility to treat all offenders the same and in accordance with your agency’s policies.

Correctional administrators also have a responsibility to assist and support staff members. Administrators need to ask if their agency does the following to prevent staff sexual misconduct with offenders:

- adequately train and supervise staff
- minimize role ambiguity within the agency (make it clear where boundaries between staff as helpers and staff as keepers should be drawn)
- have adequate staffing so staff are not required to work excessive overtime to fill gaps
- limit overcrowding and case loads as much as possible
- minimize the isolation of staff members from their peers
- minimize staff turn-over
- have zero tolerance for retaliation against those who report sexual misconduct
- develop a system of anonymous reporting of incidents of sexual misconduct
- offer safe avenues for staff who seek help
- protect staff who come forward to report misconduct

Are there other questions like the Daily Dozen you should be asking yourself?

To send us your answers go to:
http://www.wcl.american.edu/nic/co_handbookresponses.cfm

Can you identify other red flags?

To send us your answers go to:
http://www.wcl.american.edu/nic/co_handbookresponses.cfm

Can you identify the red flags in this situation?

(Answers on page 22)

Emily, the only female intern working on unit 4, came to work early on a Friday to work on some programming she was planning. That was the fourth day that week she came in early and worked late. She had appointments with four residents set up that day for review of discipline files. Each appointment took about 15 minutes.

As usual, she kept her office door open during those appointments. The fifth resident appointment took an hour and the door was closed. This particular resident had been in her office each day this week and she was unusually attentive to him when she was out on the unit. She always asked the unit advisor about this particular resident and his progress, even though he was not on her case load.

When questioned about her unusual work hours and specific interest in this particular resident, she responded that she was fighting a lot with her husband and did not want to be home much. She said her interest in this particular resident was because they were from the same neighborhood and she knew his sister.

When the resident was questioned about his relationship with Emily he revealed that he knew her phone number and that she had confided in him that she was thinking of getting a divorce. The resident stated that she looked sad one day, and, noticing that she did not interact with any other staff because they were all men, he thought he could be her friend.

Red Flags

Addressing staff sexual misconduct is important both individually and within an agency. While you may not be in danger of committing such an offense, one of your co-workers may be. Therefore it is very important to pay close attention to your colleagues' behavior as well as your own.

The following is an exercise developed over the years. It is a list of behaviors that may be signs that you or someone you work with is in danger of engaging in sexual misconduct. These behaviors or "red flags" may signal that there are problems ahead for you, your co-workers, or your agency.

Some examples of "red flags" are:

- deviating from agency policy for the benefit of a particular offender
- changes in the appearance of an offender or staff member
- overlooking infractions of a particular offender
- spending a lot of time with a particular offender
- trying to manipulate duty assignments in favor of a particular offender
- taking up an offender's cause or grievance
- doing favors for an offender
- getting into conflicts with co-workers over an offender
- withdrawing from co-workers
- consistently volunteering for a particular assignment or shift
- consistent overtime
- coming to work early
- staying at work late
- flirting with an offender
- feeling the effects of major life changes (such as the end of a relationship)
- less rigid body language or standing unusually close to an offender
- doing favors for an offender's family
- bringing things into the facility for the offender

Remember, it is a problem for every staff member when a co-worker is involved in sexual misconduct. By regularly looking for red flags and signs of over-familiarity, and by asking yourself the Daily Dozen questions, you will be doing a personal check of your feelings and emotions as well as those of your co-workers. This will help in the protection from and prevention of staff sexual misconduct with offenders.

What Happens When an Allegation of Staff Sexual Misconduct is Made?

Because all states define staff sexual misconduct as a criminal behavior, sexual misconduct allegations must be treated like any other allegation of criminal conduct. While each investigating authority will have different protocols, there are some common investigative elements.

An investigation is a process to objectively gather the facts surrounding an allegation to prove or disprove, to the extent possible, its merits. Effective investigations of allegations of staff sexual misconduct with offenders are essential for the agency's security, the safety of offenders and staff, and the professionalism of corrections. Effective investigations also help the agency to prove the guilt or innocence of staff members.

Demystifying the Investigative Process

The first few hours after an allegation is made are critical to the investigative process. Investigators should:

- secure the crime scene
- assure medical and mental health interventions are available
- collect and preserve physical evidence
- gather witness statements
- transfer the victim and/or staff member involved to ensure no further harm
- provide medical or mental health services to the victim if necessary
- implement the investigative plan

The plan put together by an investigative team may include:

- individual interviews with staff, the victim, and all other possible witnesses (staff and offenders)
- searches of staff and offender property
- reviewing account activity of the offender
- reviewing telephone activity of the offender and staff
- reviewing mail to the offender
- collection of DNA evidence (which includes blood, semen, saliva, skin and hair)
- the use of covert surveillance techniques¹¹
- electronic monitoring and recordings

¹¹ Each jurisdiction's rules about surveillance are different. For more information on the rules for your agency consult your investigations department.

DNA can be collected from cups, chairs, floors and clothes and can be found years after an incident. One of the most important aspects of securing a crime scene in a correctional setting is to preserve the scene with minimal contamination or disturbance of any physical evidence. The first responder in a sexual assault incident should always treat the area in question as a crime scene. He or she should remain observant of any persons, events, potential evidence and environmental conditions, and pass this information on to the investigative team.

Polygraph results are often in question. The CIA, the FBI and many other agencies use polygraphs to screen applicants even though scientists are increasingly certain that the equipment is ineffective at accurately detecting when people are lying. Many researchers and defense attorneys say the technology is prone to a large number of false results that have stalled or derailed careers. (As reported by *The Washington Post* on May 1, 2006)

Red Flags Answers (from page 20)

1. Unusual amount of office visits by an offender
2. Employee is isolated from other employees
3. Employee is in personal crisis
4. Employee is consistently working overtime
5. Employee is overly concerned about a particular offender
6. Employee is discussing personal information with an offender
7. Employee is involved with an offender's family
8. Closed door

- controlled calls between staff and offenders
- polygraph examinations

Staff members accused of sexual misconduct may face the following during an investigation:

- reassignment
- placement on administrative leave with or without pay
- required participation in an employee assistance program (E.A.P.)

Each agency has a unique investigative process. We suggest that you find out what the investigative process is in your agency. Consider the following:

- Who is responsible for investigating allegations of staff sexual misconduct?
- How can an offender or staff member make a complaint?
- To whom is the complaint made?
- Who collects evidence?
- How does evidence get collected?
- Who interviews witnesses?
- What are the guidelines for interviewing other staff?
- Does the interview policy allow the use of polygraphs?
- Who will manage the investigation?
- Is there a review of the investigation once it is completed?
- Does your agency have a victim advocate? If so, when are they called in?
- What are the procedures for handling unsubstantiated reports?

By learning the answers to these questions, you can demystify the internal investigative process for yourself. At the mere mention of internal affairs, many correctional staff have negative reactions. For a variety of reasons, including unfamiliarity with the investigative process, internal affairs investigations are suspect for most correctional staff members. However, if the internal investigative process is understood, staff are more likely to be cooperative and report suspicious activity and violations of policy. Remember, thorough and competent investigations can clear staff as well as convict them.

What are Your Rights During a Staff Sexual Misconduct Investigation?

Your rights as a correctional staff member depend on your employment status. Consider the following:

- Are you a public or government employee?
- Are you a union member?
- Are you a private employee?
- Are you a new employee and on probation status?
- Are you on disciplinary status from a previous situation?

Public or government employees are those employed by a federal, state or local government. They have significant protections under federal and state law and also under federal and state constitutions.

Many correctional staff members belong to unions. If you are a union member, you have certain protections during investigations and/or disciplinary procedures that are governed by the collective bargaining agreement (the agreement between the union, the workers represented and the agency).

Still other correctional employees are workers in the private sector, who do not have rights against their employer under the federal constitution but have some protections under federal and state antidiscrimination and other laws.

As public sector **employers**, correctional facilities must balance your constitutional rights with the legitimate interests of your agency. Your constitutional rights as a public employee are guaranteed by the:

- First Amendment – Freedom of Association
- Fourth Amendment – Privacy and Surveillance
- Fifth and Fourteenth Amendments – Due Process and Equal Protection

What is a "probationary employee"?

A worker may be considered "probationary" when:

1. the worker is first hired (whether under a union contract or based on the employer's personnel policies); or
2. the worker is being disciplined by the employer

As a probationary employee, am I still covered by employment laws?

Generally, employment laws treat probationary and regular employees equally. Whatever the reason for an employee's probation, the employer is still required to abide by minimum wage, discrimination, and workers' compensation laws regarding that employee.

I have been placed on probation by my employer for disciplinary reasons. What is the legal significance of being on probation?

If an employer places an employee on probation for disciplinary reasons, that employee still has the same legal rights as regular employees. There is no legal significance to this probationary status other than as notice to the employee that s/he is in danger of being fired.

Ross v. Clayton County, 173 F.3d 1305 (11th Cir. 1999). Demotion of a corrections officer who had allowed his probationer brother to live with him did not violate the officer's free association rights under the First Amendment.

Keeney v. Heath, 57 F.3d 579 (7th Cir. 1995). Plaintiff guard at a county jail, who had been forced to resign from her job when she married a former inmate, sued, arguing that the county jail regulation that prohibited employees from becoming socially involved with inmates in or out of jail violated her constitutionally protected right to marry under the First Amendment. The court upheld the agency rule as constitutional.

Sacramento County Deputy Sheriff's Association v. County of Sacramento, 51 Cal. App.4th 1468 (1996), cert. denied, 520 U.S. 1124 (1997). County jail employees sued for Fourth Amendment violations after discovering they had been subjected to video surveillance in the county jail's release office, which was off limits to inmates. A concealed video camera without audio capacity had been installed in this office after inmates' money was reported missing almost a dozen times. The court held that the employees had no objectively reasonable expectation of privacy while in the release office, especially given that they had accepted employment in a prison setting, and that the institution's security concerns weighed more heavily than officers' privacy rights.

The First Amendment

The First Amendment to the U.S. Constitution protects your rights to free speech and free association against interference by government actors. If you work for a government employer, you carry some of these First Amendment protections to work. However, courts have recognized that staff rights to freedom of association may be limited by correctional facilities' legitimate interests in upholding staff professionalism and preventing fraternization between staff and offenders. Using this reasoning, courts have said correctional facilities' no-contact policies are appropriate even when challenged under the First Amendment. No contact policies typically prohibit correctional staff from having relationships, both while on and off duty, with persons under correctional supervision. The courts have held that the policies are reasonable as long as they are justified by:

- interests in on-the-job performance
- interests in off-the-job conduct that implicates officers' fitness for duty
- interests in the public reputation of correctional facilities

The Fourth Amendment

The Fourth Amendment states that it is your right to be free from unreasonable searches and seizures. If you are a public employee, this means you have some privacy rights at work. However, the amount of privacy protection you are entitled to depends on what reasonable expectations of privacy are in your employment setting. Because correctional facilities are, by their very nature, work settings where employees can reasonably expect a high degree of surveillance, your reasonable privacy expectations as a correctional staff member are limited. Correctional staff are well aware that their employers often use various types of surveillance within and around the perimeters of the agency, and that those surveillance techniques are often likely to watch staff as well as offenders.

The courts have found the following in cases of surveillance and Fourth Amendment violations:

- employees who accept a job in a correctional setting have very limited expectations of privacy
- a correctional agency's security concerns weigh heavily in the balance between agency needs and employee privacy rights
- random drug testing of correctional employees is permissible provided that it is not administered in a discriminatory way

- employee vehicles parked where they are accessible to offenders can be searched without cause provided that the searches are not administered in a discriminatory manner
- employee vehicles not accessible to offenders can only be searched on the basis of reasonable suspicion that they may contain contraband
- searches of a staff member's home require probable cause, as would be the case for any citizen

The Fifth Amendment and Statutory Due Process Rights

If you are a public employee, the Fifth Amendment gives you the right to due process of law. Due process includes the right to avoid self-incrimination, to have representation for yourself, and to have due process proceedings before negative employment action is taken against you. The hearing procedures to which you are entitled will be spelled out under your state or federal civil service laws that apply to government employees.

The Fourteenth Amendment

The Supreme Court has held that the Fourteenth Amendment to the U.S. Constitution prohibits coerced statements in an internal investigation from being used in a later criminal prosecution. These rights are based on a U.S. Supreme Court case known as *Garrity v. New Jersey*, 385 U.S. 493 (1967). These rights apply only in the context of investigations of public employees. The Supreme Court set forth rules for interrogating public employees and said that public employees could not be forced, under threat of discipline, to violate their protection against self-incrimination. In simple terms, this means that an investigator cannot force you to talk to them in connection with a criminal matter by threatening you with the loss of your job or other employment-related discipline. If an investigator does this, any information you provide cannot be used against you in a later criminal proceeding. Asserting your *Garrity* rights during an administrative hearing where you can be disciplined is advised.

Sample Garrity Notice

"You are advised that you are being questioned as part of an official investigation by (insert agency name here). You will be asked questions specifically directed and narrowly related to the performance of your official duties or fitness for office. You are entitled to all the rights and privileges guaranteed by the laws and Constitution of (the State) and the United States Constitution. This includes your right not to be compelled to incriminate yourself (for unionized agencies only) and to have a union representative present during questioning. I further wish to advise you that if you refuse to issue a statement or to answer questions relating to performance of your official duties or fitness for duty you will be subject to departmental charges which could result in your termination. If you do answer, neither your statements nor any information or evidence, which is gained by reason of such statements, can be used against you in any subsequent criminal proceeding. However, these statements may be used against you in relation to subsequent disciplinary actions." - Minnesota DOC Internal Affairs Division

Sample Waiver of Union/Association Representation

I have been offered the opportunity to have a Union/Association representative present prior to my being asked any questions during this investigation that may lead to my being disciplined in accordance with the collective bargaining agreement between _____ and the State/ local jurisdiction of _____.

I am hereby waiving my right to have Union/Association representation present while being asked questions during the investigation.

The burden is on the employee to assert *Garrity* and make clear to the employer that you are answering under threat of losing your job. Once an employee has asserted *Garrity* rights, a supervisor or investigating authority must:

- attempt to make the question specific and related to your employment
- advise you that the answers will not and cannot be used against you in a criminal proceeding

It is important to understand that *Garrity* rights apply only under certain circumstances. Important to the *Garrity* rule is the following:

- whether the employer actually ordered or required you to respond to questions
- whether you were compelled by the threat of discipline to answer the question

Garrity protections do not apply if you voluntarily give a statement. Unless you are compelled, you have no obligation to respond to the questions. If you do decide to respond to questions without being compelled, there is no immunity given for the later use of your answers in a criminal prosecution. It is also important to remember that *Garrity* does not protect you from employment discipline.

Union Member Rights

If you are a union member, you also have a right to union representation at investigatory interviews. These rights were first announced by the U.S. Supreme Court in a 1975 case and have become known as *Weingarten* rights.¹² *Weingarten* rights apply during investigatory interviews. Investigatory interviews happen any time a supervisor questions an employee to obtain information that could be used as a basis for discipline, or asks an employee to defend his or her conduct.

If you have a reasonable belief that discipline or other adverse consequences may result from what you say in answering a supervisor's questions, you have the right to request union representation. Management is not required to inform you of your *Weingarten* rights; it is your responsibility to know and make the request.

When you make the request for a union representative to be present, your supervisor or the investigating authority has three options:

- stop questioning until the representative arrives
- call off the interview
- ask you to voluntarily give up your right to a union representative (*it is generally not a good idea to waive your rights*)

¹² *NLRB vs. Weingarten, Inc.* 420 U.S. 251, 88 LRRM 2689. University of Hawaii – Oahu. Center for Labor and Research.

Employers often claim that the only role of a union representative in an investigatory interview is to observe the discussion. However, according to the Supreme Court, your union representative may do any of the following:

- assist and counsel you during the interview
- seek information on the subject of the interrogation
- speak privately with you before the interview
- interrupt to clarify a question or to object to confusing or intimidating tactics
- advise you on how to answer a question, provided that this advice does not extend to telling you what to say
- add information to support your case at the end of the interview

The union representative may not be disruptive or obstructionist, and an employer may be within its rights to request that the representative leave if he or she acts this way.

Your collective bargaining agreement will also provide for a grievance procedure ending in arbitration of any disciplinary action. If you engage in arbitration to contest discipline imposed based on an allegation of sexual misconduct with an offender, remember the following:

- both sides have the right to representation. (Remember, the attorney or other representative your union provides for you works for the union. He or she is not your lawyer.)
- both sides have the right to present evidence
- your employer may not interfere with your or any employee's right to testify at an arbitration hearing
- your union owes you the duty of fair representation and may not refuse to take or defend your case vigorously

Employee Rights against Discrimination

If you are a public employee, federal and state laws, and the Constitution, grant you protection against discrimination by your employer on the basis of race, sex, national origin or religion. In order to make a case of discriminatory treatment based on your employer's investigation of alleged sexual misconduct or disciplinary action, you must be able to prove that you were treated differently from other employees in the same situation but with different social identity characteristics. It is usually very difficult for employees to win discrimination cases. Most employees who file such cases lose them even when they have some evidence of discrimination. Nevertheless, the law does require employers to treat employees with an even hand regardless of race, sex, national origin or religion.

Can an Employer Take the Following Actions?

(Answers on Page 28)

Withdraw a job offer to a probation officer applicant after learning the applicant is married to a former offender

Yes No

Terminate a probation officer for buying a car at a dealership where a probationer under her supervision works (even though he was not involved in the sale)

Yes No

Terminate a probation officer for exchanging letters with a man she once dated who is now serving a life sentence outside her jurisdiction

Yes No

Deny a probation officer's request to attend the baptism of a child of a long-standing friend whose older son had been placed on probation

Yes No

Defamation and Qualified Privilege

“Qualified privilege” protects representatives of employers who give out allegedly defamatory information for legitimate business purposes. This applies to former employee reference checks, provided that employer can show:

- Lack of malice
- Good faith
- Belief in truth of the statement made

Employee Polygraph Protection Act:

- Many states have rules limiting or prohibiting polygraph testing; check with your legal counsel
- Federal law prohibits most polygraph testing in the private sector, but exempts public employees

(Answers from Page 27)

Courts upheld employers in all of these cases. While this is still a developing area of law, there is a strong trend in the courts toward upholding state no contact policies between correctional employees and offenders and ex-offenders.

If it appears that you are being wrongfully targeted for investigation based on your race, sex, national origin or religion, and others are treated differently, your rights may be being violated.

Protections for Private Sector Employees

If you work for a non-government employer, such as a private contractor who provides services within a correctional agency, the constitutional protections discussed above will not apply to you. You will, however, still have significant protections under federal and state antidiscrimination laws. Almost all employers are prohibited from discriminating on the basis of race, sex, national origin or religion. Generally, employment in the private sector however, is on an “at will” basis, which means that your employer is free to fire you for any reason except a discriminatory one, at any time.

Former Employee Reference Checks

If you are terminated based on allegations of sexual misconduct, your former employer will have “qualified privilege”¹³ to provide information about your termination to future employers who are conducting reference checks. Your former employer must act in good faith and may not be vindictive or spread information about the circumstances of your termination beyond those who have a legitimate “need to know.” Your employer can ask you to sign a waiver before agreeing to provide information about your employment to prospective employers. If you are investigated for alleged staff sexual misconduct and the investigation does not conclude that the allegations are true, be sure that it is clear in your employee record that the allegations were unfounded. You should also save copies of any reports or other written materials you receive in the course of any such investigation in your personal files at home.

¹³ Qualified Privilege is applied to material that is of public concern and for the public benefit.

What are the Legal Consequences of Staff Sexual Misconduct with Offenders?

There is legal liability for staff sexual misconduct with offenders. That liability can come in a number of ways. Correctional staff members who are found guilty of sexual misconduct with an offender could face:

- criminal;
- civil; and
- administrative sanctions

When discussing legal consequences for staff sexual misconduct, it is important to know the following:

- sex between staff and offenders violates state and federal criminal laws
- sex in correctional settings between staff and offenders can violate the U.S. Constitution
- correctional staff have a special responsibility to offenders; therefore as a matter of law, offenders cannot consent to sex with staff
- correctional agencies have a responsibility to protect employees and offenders who report sexual misconduct

It is important to remember that however you may feel about offenders, there are legal ramifications for any actions taken with or against an offender.

Criminal Liability¹⁴

Each state has a law that makes staff sexual misconduct with offenders a crime. While each state's law is different in its coverage and penalties, it is essential that you know the following about the laws in your state:

- which employees are covered under the law
- which correctional settings are covered under the law
- what conduct is covered under the state's sexual misconduct law
- if staff are considered mandatory reporters
- what are the legal sanctions and penalties defined for those found guilty
- is there a strict liability defense

A former Livingston County jail (Illinois) correctional officer will serve fifteen weekends in jail, pay a fine of \$300.00 and register as a sex offender after pleading guilty to having sexual contact with a female inmate. In 2002 the officer was the jail's correctional officer of the year. (As reported by the *Pantagraph of Bloomington*, on November 2, 2004)

A former corrections lieutenant fathered the child of an incarcerated woman. DNA tests proved that veteran Virginia Department of Corrections Officer Bobby Gordon Brown, Jr. fathered a child while the child's mother, Sheron Montrey, was imprisoned at the Pocahontas Correctional Center in 2005. Brown will serve six months in jail and pay restitution. (As reported by *The Richmond Times Dispatch* on July 27, 2006)

A former jail guard plead guilty to rape and lying to the FBI about sexually abusing female inmates at the Rensselaer County Jail (New York). David Rohrmiller admitted to the Rensselaer County Court that he lied to the FBI and the grand jury. He faces one to three years in prison for third-degree rape. (As reported by the *Associated Press* on March 24, 2006)

Jimmie Harris Knight, a former Federal Correctional Institute (FCI) officer, was sentenced to three years probation and six months home detention for a sexual incident that occurred with a female inmate on June 6, 2005. Other FCI guards were charged separately with conspiracy and staff sexual misconduct, which spurred a deadly shootout in June. (As reported by the *Tallahassee Democrat* on August 29, 2006)

¹⁴ A 50 State Survey of Criminal Laws Prohibiting the Sexual Abuse of Individuals in Custody developed by the NIC/WCL Project on Addressing Prison Rape under NIC Cooperative Agreement O6S20GJJ1 is located in the appendix of this handbook.

A suit filed in federal court by the Civil Rights Division of the U.S. Department of Justice accuses former Inmate Systems Manager, Rick Bernard, of sexual contact with female inmates at the Bryan Federal Prison Camp. He is charged with two counts of sexual abuse of a ward, two counts of abusive sexual contact with a ward and one count of making a false statement to a federal agent. (As reported by the *Houston Chronicle* on October 3, 2006)

Prosecutors can also use the following areas of law to charge correctional staff who engage in sexual abuse of individuals under correctional supervision:

1. Witness Tampering
2. Bribery
3. Perjury
4. Malfeasance in Office

The legal consequences you could face if convicted of felony or misdemeanor staff sexual misconduct with an offender may include:

- fines
- imprisonment for “less than one year” up to “a term not to exceed life in prison”
- loss of professional license
- sex offender registration

It is important to remember that in cases of staff sexual misconduct, prosecutors can seek a conviction under sexual assault, statutory rape, sodomy and sexual misconduct laws. In addition, prosecutors can charge you for official misconduct.

If you fail to report the misconduct or assist another staff member in facilitating the conduct – either by hiding their conduct, lying about conduct you’ve witnessed, or participating in it – you can be charged with:

- obstruction of justice
- conspiracy
- making a false statement to a government official

Civil Liability

The U.S. Constitution, state constitutions and state and federal laws protect offenders from correctional officials’ actions and actions of other individuals whom correctional authorities have given authority over offenders.

Federal Constitutional provisions are:

- 42 U.S.C. §1983
- The Fourth Amendment
- The Eighth Amendment
- The Fourteenth Amendment

Correctional staff are “persons acting under color of state law” under 42 U.S.C. §1983, so they can be liable for violating offenders’ rights. This is true even if you are not security staff or if you don’t work for the corrections agency. Persons acting under color of state law can include:

- volunteers
- contractors
- food service workers

- clergy
- staff in other agencies where offenders work (such as supervisors of offenders on work release)
- teachers
- nurses

In sexual misconduct cases, offenders typically claim that correctional staff or agents violated their rights under:

- The Fourth Amendment
- The Fourteenth Amendment
- The Eighth Amendment
- State law

The Fourth Amendment prohibits unreasonable search and seizures. Typical actions challenged under the Fourth Amendment are:

- inappropriate or intrusive searches
- cross-gender supervision
- inappropriate viewing of offenders

The Fourteenth Amendment prohibits states from depriving “any person of life, liberty or property without due process of law.” Typical actions challenged under the Fourteenth Amendment are:

- sexual abuse by staff or other offenders
- discipline or retaliation for reporting misconduct
- any action that puts the offender at risk

Most often, though, offenders challenge staff sexual misconduct under the Eighth Amendment of the Constitution. They claim that sexual abuse is “cruel and unusual punishment” in violation of the Eighth Amendment. Courts favor offenders using the Eight Amendment. Offenders must show that the harm is serious and that persons acting under color of state law were deliberately indifferent to their safety, health or a known vulnerability.

Typical actions challenged under the Eighth Amendment are:

- sexual abuse by staff or other offenders
- retaliation
- inadequate medical treatment
- conditions of confinement that contribute to an unsafe environment

Colman v. Vasquez, 142 F. Supp.2d 226 (2d. Cir. 2001). A female inmate was incarcerated at FCI Danbury in a special unit for victims of sexual abuse, where they were subjected to random pat searches by male staff. A victim filed a complaint after a staff member made sexual advances, but the complaint was ignored. The court found that there was a failure to protect inmates and adequately train staff. The motion to dismiss on the basis of qualified immunity was dismissed.

Torres v. Wisconsin DOC, 859 F.2d 1523 (7th Cir. 1986). A male correctional officer at a maximum security women's prison challenged the DOC's exclusion of male employees from posts in the living units. The court upheld the prison's decision.

Morris v. Eversley, 2002 WL 1313118 (S.D. N.Y. June 13, 2002). The court found that women challenging sexual assault during incarceration are not required to meet the Prison Litigation Reform Act (PLRA) exhaustion requirement once released.

Smith v. Cochran, 339 F.3d 1205 (10th Cir. 2003). An inmate who was assigned to work in a state driver's license bureau as part of her sentence was able to sue the state driver's license examiner for sexual misconduct under the Eighth Amendment. The court found that a state agency that is delegated the responsibility of care and confinement of an inmate of the DOC can be liable under Eight Amendment.

Austin v. Terhune, 2004 WL 1088293 (9th Cir. 2003). A correctional officer exposed his genitalia to a male prisoner. The prisoner tried to file a grievance but was prevented from doing so by other officers. The exposing officer apologized later and told the inmate not to complain but the inmate refused. The officer filed a false disciplinary report on the inmate. As a result, the inmate was placed in segregation for six weeks. During that time, the inmate continued to file grievances. Officials eventually investigated, and suspended the officer without pay for 30 days. The court found that there was no Eighth Amendment violation for the exposure, but allowed the inmate to proceed in an Eighth Amendment law suit for the retaliation against him.

Campos v. Nueces County, 162 S.W. 3d 778 (2005). The court found that female prisoners in a county substance abuse treatment facility could sue guards and the county under the Civil Rights Act and Texas Tort Claims Act for non-functional and improperly placed security cameras, doors, rooms and enclosures, when those defects resulted in prisoners' sexual abuse and harassment.

- malfunctioning of unmonitored cameras
- poorly trained staff
- poor investigations
- failure to fire staff who harm offenders
- failure to supervise or train staff properly

Offenders also challenge sexual misconduct using state laws including:

- State constitutions
- State tort laws
 - assault and battery
 - negligent hiring, firing and supervision
 - intentional infliction of emotional distress
 - negligent infliction of emotional distress

Sexual misconduct can result in criminal and civil liability for correctional staff, officials, and agencies. Staff can face sentences ranging from probation to 40 years in prison – in addition to loss of license, sex offender registration and civil liability. Civil liability means that the state will have to pay monetary damages to the harmed offender and/or take actions to remedy the sexual abuse. More often than not, damages incurred by agencies and officials are paid by the state. However, damages incurred by the staff who directly harm the offender or who assist in harming the offender by covering up the misconduct are paid by those staff from their own financial resources.

Prevention

Although staff sexual misconduct may be difficult to control, internal policies and training¹⁵ for both staff and offenders can help. The purpose of internal policies is to deter behavior that may lead to the violation of your agency's standards for conduct, and ultimately to prevent you from violating the law. Your agency has policies regarding use of force, searches and seizures, and confidentiality of records. Likewise, most facilities have internal policies prohibiting staff sexual misconduct with offenders.

We suggest that you find and read your facility's policy regarding this matter. It may also be helpful to read some representative policies from other facilities and compare and contrast the language and behaviors outlined in those policies.¹⁶

Then consider the following:

- Does your agency's internal policy measure up to others?
- Do you see gaps in your agency's policy that may leave you or your co-workers vulnerable to committing, and being found guilty of, sexual misconduct with an offender?
- Is your agency's policy outdated or otherwise lacking?

To prevent and address staff sexual misconduct, you can:

- ask your agency's policy review board to review, revise and update your written policies and procedures to include updated definitions of illegal and unethical behaviors
- ask for training about policies and procedures as well as state laws governing staff sexual misconduct
- ask for training to improve your skills in offender management
- ask for training on offender abuse histories and how it impacts them and you during their incarceration
- work to diminish the "code of silence" in your agency
- research and learn more about the resources available to you through your employee assistance program (E.A.P.) and resources available to your agency through the National Institute of Corrections
- report sexual misconduct in your agency
- do not commit sexual misconduct

¹⁵ The National Institute of Corrections (NIC) is a useful resource for training on staff sexual misconduct. To view these opportunities please go the NIC website at www.nicic.org.

¹⁶ If you would like to get a copy of policies and procedures from other jurisdictions please go to www.wcl.american.edu/nic.

Prevention Strategies Include:

1. Following agency policies and procedures
2. Triaging your organization
3. Reviewing policies and procedures
4. Training
5. Knowing investigative protocols
6. Zero tolerance

Are there other prevention strategies that you use or are aware of?

To send us your answers go to:
http://www.wcl.american.edu/nic/co_handbookresponses.cfm

For further information on anything discussed in this handbook or to give us your comments please email us at nic@wcl.american.edu. We are interested in hearing from you.

Conclusion

Staff sexual misconduct with offenders can be prevented. It is not inevitable. Staff and agencies have the tools to prevent this harmful conduct.

This handbook addresses and explains:

- why staff sexual misconduct is an important topic for discussion individually and agency-wide
- how correctional culture can allow sexual misconduct to flourish
- which tools can help you identify and address sexual misconduct
- what will happen if there is an allegation against you and what your rights are
- what the consequences of staff sexual misconduct with offenders are for you personally and for your agency

We hope that we have provided information that assists you in understanding and addressing this problem. This issue cannot be ignored. It is not just a legal issue; it is an issue of public safety and security. We hope that you commit to eliminating inappropriate relationships and staff sexual misconduct in your agency.

Resources

Government Reports

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- United States. The Department of Justice/National Institute of Corrections. Gender Responsive Strategies for Women: Using Jail Exit Surveys to Improve Community Responses to Women Offenders. Comp. Teri Martin and Becky Ney. Washington, DC. December 2005.
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Smith, Brenda V., Nairi M. Simonian and Jaime M. Yarussi. "Health Concerns of Incarcerated Women Part 1: Profiles, Chronic Diseases and Conditions." Women, Girls and Criminal Justice 7:3 (April/ May 2006): 33-34, 39-45

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American Correctional Health Services Association: www.achsa.org
American Jail Association: www.aja.org
American Probation and Parole Association: www.appa-net.org
Amnesty International: www.amnesty.org
Bureau of Justice Statistics: www.ojp.usdoj.gov/bjs
Center for Disease Control: www.cdc.gov
Center for Mental Health Services: GAINS Center: www.gainscenter.samhsa.gov
Federal Bureau of Prisons: www.bop.gov
Human Rights Watch: www.hrw.org
Institute for Criminal Justice Healthcare: www.icjh.org
Justice Research and Statistics Association: www.jrsa.org
National Clearinghouse for Science, Technology and
Law at Stetson University: www.ncstl.org
National Criminal Justice Reference Service: www.ncjrs.org
National Institute of Corrections: www.nicic.org
National Institute of Justice: www.ojp.usdoj.gov/nij
National Juvenile Defender Center: www.njdc.info
National Prison Rape Elimination Commission: www.nprec.us
National Sheriff's Association: www.sheriffs.org
National Victims' Constitutional Amendment Passage: www.nvcap.org
National Youth Court Center: www.youthcourt.net
Office of Juvenile Justice and Delinquency Prevention: www.ojjdp.ncjrs.org
Prisons Foundation: www.prisonfoundation.org
Prison Legal News: www.prisonlegalnews.org/visitors
Rape Abuse and Incest National Network (RAINN): www.rainn.org
The Sentencing Project: www.sentencingproject.org
Stop Prison Rape: www.spr.org
United States Department of Health & Human Services: www.hhs.gov
United States Department of Justice: www.doj.gov
Urban Institute: www.urban.org
Vera Institute of Justice: www.vera.org



APPENDIX



Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|---------|--|--|---|--|---|
| Alabama | <p>Custodial Sexual Misconduct.</p> <p>ALA. CODE § 14-11-31 (LexisNexis 2005).</p> <p>Prohibited Acts</p> <p>ALA. CODE § 14-11-31 (LexisNexis 2005).</p> | <p>ALA. CODE § 14-11-31 (LexisNexis 2005).</p> <p>(a):it shall be unlawful for any employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.</p> <p>(b):it shall be unlawful for any probation or parole officer to engage in sexual conduct with a person who is under the supervisory, disciplinary, or custodial authority of the officer engaging in the sexual conduct with the person</p> | <p>Custody.</p> <p>ALA. CODE § 14-11-30 (LexisNexis 2005).</p> <p>(a)(1) Custody is defined as any of the following: (a) pretrial incarceration or detention; (b) incarceration or detention under the sentence or commitment to a state or local penal institution, any detention facility for children or youthful offenders; (c) parole or mandatory supervised release; (d) electronic home detention; (e) parole or probation.</p> <p>(b)(2):Employee. An employee or contractual employee of any governmental agency of the state, county, or municipality that has by statute, ordinance, or court order the responsibility for care, control, or supervision of pretrial or sentenced persons in a penal system or detention facility.</p> <p>(b)(3): Sexual Conduct. Any of the following acts: (a) sexual intercourse.- this shall have its ordinary meaning; (b) sexual contact- any known touching for the purpose of sexual arousal, gratification, or abuse of the following: (1) the sexual or other intimate parts of the victim by the actor; (2) the sexual or other intimate parts of the actor by the victim; (3) the clothing covering the immediate area of the sexual or other intimate parts of the victim or actor; (c) Sexual Intrusion- any intrusion, however slight by any object or any part of the body of a person into the genital, anal, or oral opening of the body of another person if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.</p> | <p>ALA. CODE § 14-11-31 (LexisNexis 2005).</p> <p>(c)Any person violation subsection (a) or (b) shall upon conviction, be guilty of custodial sexual misconduct.</p> <p>(d)Custodial Sexual Misconduct is a Class C felony.</p> <p>Prison terms: felonies</p> <p>ALA. CODE 813A-5-6 (Lexis Nexis 2006).</p> <p>(a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment means hard labor within the following limitations:</p> <p>(3) For a Class C felony, not more than 10 years or less than 1 year and 1 day.</p> <p>Fines: felonies.</p> <p>ALA. CODE 813A-5-11 (Lexis Nexis 2005).</p> <p>A sentence to pay a fine for a felony shall be for a definitive amount, fixed by the court, within the following limitations:</p> <p>(3) For a Class C felony, not more than \$15,000.00; or (4) Any amount not exceeding double the pecuniary gain to the defendant or loss to the victim caused by the commission of the offense.</p> | <p>ALA. CODE § 14-11-31 (LexisNexis 2005).</p> <p>(e):Consent of the person in custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality, or a person who is on probation or on parole shall not be a defense to a prosecution under this act.</p> |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|--------|--|---|--|---|---|
| Alaska | Sexual assault in the first degree. ALASKA STAT. § 11.41.410 (2006). Sexual assault in the second degree. ALASKA STAT. § 11.41.420 (2006). Sexual assault in the third degree. ALASKA STAT. § 11.41.425 (2006). Sexual assault in the fourth degree. ALASKA STAT. § 11.41.427 (2006). | ALASKA STAT. § 11.41.410 (2006). (a) An offender commits the crime of sexual assault in the first degree if, (3) the offender engages in sexual penetration with another person (B) who is in the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the state. ALASKA STAT. § 11.41.420 (2006). (a) An offender commits the crime of sexual assault in the second degree if, (2) the offender engages in sexual contact with a person (A) who the offender knows is mentally incapable; and (B) who is in the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the state. ALASKA STAT. § 11.41.425 (2006). (a) An offender commits the crime of 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 or period of temporary commitment ALASKA STAT. § 11.41.427 (2006). (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. | Definitions. ALASKA STAT. 811.81.900. (a) For purposes of this title, unless the context requires otherwise, (58) "sexual contact" means (A) the defendant's (i) knowingly touching, directly or through clothing, the victim's genitals, anus, or female breast; or (ii) knowingly causing the victim to touch, directly or through clothing, the defendant's or victim's genitals, anus, or female breast; (B) but "sexual contact" does not include acts (i) that may reasonably be construed to be normal caretaker responsibilities for a child, interactions with a child, or affection for a child; (ii) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical or mental health of the person being treated; or (iii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services; (59) "sexual penetration" (A) means genital intercourse, cummingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or anal opening of another person's body; each party to any of the acts described in this subparagraph is considered to be engaged in sexual penetration; (B) does not include acts (i) performed for the purpose of administering a recognized and lawful form of treatment that is reasonably adapted to promoting the physical health of the person being treated; or (ii) that are a necessary part of a search of a person committed to the custody of the Department of Corrections or the Department of Health and Social Services; | ALASKA STAT. § 11.41.410 (2006). (b) Sexual assault in the first degree is an unclassified felony. ALASKA STAT. § 11.41.420 (2006): (b) Sexual assault in the second degree is a class B felony. ALASKA STAT. § 11.41.425(b) (2006). Sexual assault in the third degree is a class C felony. ALASKA STAT. § 11.41.427 (2006). (b) Sexual assault in the fourth degree is a class A misdemeanor. Sentences of imprisonment for felonies ALASKA STAT. § 12.55.125 (2006). (d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definitive term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155–12.55.175. (e) A defendant convicted of a class C felony may be sentenced to a definite term of not more than 5 years, and shall be sentenced to a definitive term within the following presumptive ranges, subject to adjustments as provided in AS 12.55.155–12.55.175. (i) A defendant convicted of (1) sexual assault in the first degree or sexual abuse of a minor in the first degree may be sentenced to a definitive term of imprisonment of not more than 99 years and shall be sentenced to a definitive term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155–12.55.175. Sentences of imprisonment for misdemeanors. ALASKA STAT. § 12.55.135. (a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year. | Defenses ALASKA STAT § 11.41.432 (2006). (a) It is a defense to a crime charged under AS 11.41.410(a)(3), AS 11.41.420(a)(2), AS 11.41.420(a)(3) or AS 11.41.425 that the offender is: (1) mentally incapable; or (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage. (b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. |

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State **Statute** **Coverage** **Definitions/Notes** **Penalties** **Defenses**

Alaska
(cont.)

Fines.
Alaska Stat. § 12.55.035 (2006).
(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.
(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provisions of law defining the offense, a fine of no more than
(3) \$100,000.00 for a class B felony;
(4) \$50,000.00 for a class C felony;
(5) \$10,000.00 for a class A misdemeanor.

Arizona

Unlawful sexual conduct; correctional employees; persons in custody; classification.
ARIZ. REV. STAT. ANN. § 13-1419 (LexisNexis 2006).
A. A person who is employed by the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail, or who contracts to provide services with the state department of corrections, the department of juvenile 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 person who is in the custody of the department 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 or an offender who is on release status and who is under the supervision of the state department of corrections 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 or a private prison facility or who contracts to provide

Definitions.
ARIZ. REV. STAT. ANN. § 13-1401 (LexisNexis 2006).
In this chapter, unless the context otherwise requires:
1. "Oral sexual contact" means oral contact with the penis, vulva or anus.
2. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.
3. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.
4. "Spouse" means a person who is legally married and cohabiting.
5. "Without consent" includes any of the following:
(a) The victim is coerced by the immediate use or threatened use of force against a person or property.
(b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of

ARIZ. REV. STAT. ANN. § 13-1419(D) (LexisNexis 2006); Unlawful sexual conduct is a class 5 felony.
Sentence of imprisonment for felony.
ARIZ. REV. STAT. ANN. § 13-701 (LexisNexis 2006). (C)(4):The penalty for a class 5 felony shall be imprisonment for one and one half years, provided it is the first offense.
Fines for Felonies.
ARIZ. REV. STAT. ANN. § 13-801 (LexisNexis 2006). (A) a fine not to exceed \$150,000.

ARIZ. REV. STAT. ANN. § 13-1419 (D) (LexisNexis 2006). 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 who contracts to provide services within 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

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Arizona (cont.) | | services with the state department of corrections or a private prison facility. | cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another. (C) The victim is intentionally deceived as to the nature of the act. (D) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse. Definitions. ARIZ. REV. STAT. ANN. § 13-2501 (2006). In this chapter, unless the context otherwise requires: 3. "Custody" means the imposition of actual or constructive restraint pursuant to an on-site arrest or court order but does not include detention in a correctional facility, juvenile detention center or state hospital. | | 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. |
| | Sexual assault in the first degree. ARK. CODE ANN. § 5-14-124 (2006). Sexual Assault in the second degree. ARK. CODE ANN. § 5-14-125 (2006). Sexual assault in the third degree. ARK. CODE ANN. § 5-14-126 (2006). | ARK. CODE ANN. § 5-14-124 (2006). (a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with another person who is less than eighteen (18) years of age and is not the actor's spouse and the actor is: (1) Employed with the Department of Correction, the Department of Community Correction, the Department of Health and Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Health and Human Services, any city or county jail or juvenile detention facility, or their contractors or agents; | ARK. CODE ANN. § 5-14-124 (2006). (c) Sexual assault in the first degree is a Class A Felony. Sexual Assault in the second degree. ARK. CODE ANN. § 5-14-125 (2006). (b) (1) Sexual assault in the second degree is a Class B felony. (2) Sexual assault in the second degree is a Class D felony if committed by a person less than eighteen (18) years of age with another person who is: (A) Less than fourteen (14) years of age; and (B) Not the person's spouse. ARK. CODE ANN. § 5-14-126 (2006). (c) Sexual assault in the 3rd degree is a class C Felony. | ARK. CODE ANN. § 5-14-124 (2006). (b) It is no defense to prosecution under this section that the victim consented to the conduct. ARK. CODE ANN. § 5-14-125 (2006). (B) For the purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution. ARK. CODE ANN. § 5-14-126 (2006). (b) It is no defense to a prosecution under this section that the victim consented to the conduct. | |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|---------------------|---------|---|-------------------|--|----------|
| Arkansas (cont.) | | <p>(2) A professional under § 12-12-507(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or</p> <p>(3) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim.</p> <p>ARK. CODE ANN. § 5-14-125 (2006).</p> <p>(a) A person commits sexual assault in the second degree if the person:</p> <p>(1) Engages in sexual contact with another person by forcible compulsion;</p> <p>(2) Engages in sexual contact with another person who is incapable of consent because he or she is:</p> <p>(A) Physically helpless;</p> <p>(B) Mentally defective; or</p> <p>(C) Mentally incapacitated;</p> <p>(3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:</p> <p>(A) Less than fourteen (14) years of age; and</p> <p>(B) Not the person's spouse;</p> <p>(4) (A) Engages in sexual contact with another person who is less than eighteen (18) years of age and the actor is:</p> <p>(i) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;</p> <p>(ii) A professional under § 12-12-507(b) and is in a position of trust or authority over the minor; or</p> <p>(iii) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.</p> <p>(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;</p> | | <p>ARK. CODE ANN. § 5-4-401(a) (2006).</p> <p>(a) a defendant convicted of a felony shall receive a determinate sentence according to the following limitations:</p> <p>(2) The penalty for a Class A felony shall be not less than 6 years nor more than 30 years imprisonment</p> <p>(3) For a Class B felony, the sentence shall be not less than five (5) years nor more than twenty (20) years;</p> <p>(4) For a Class C felony, the sentence shall be not less than three (3) years nor more than ten (10) years</p> <p>(5) For a Class D felony, the sentence shall not exceed six (6) years.</p> <p>ARK. CODE ANN. § 5-4-201 (2006).</p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine:</p> <p>(1) Not exceeding fifteen thousand dollars (\$15,000) if the conviction is of a Class A felony or Class B felony;</p> <p>(2) Not exceeding ten thousand dollars (\$ 10,000) if the conviction is of a Class C felony or Class D felony.</p> | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Arkansas (cont.) | | <p>(5) (A) Being less than eighteen (18) years of age, engages in sexual contact with another person who is:</p> <p>(i) Less than fourteen (14) years of age; and</p> <p>(ii) Not the person's spouse.</p> <p>(B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:</p> <p>(i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or</p> <p>(ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older; or</p> <p>(6) Is a teacher in a public school in a grade kindergarten through twelve (K-12) and engages in sexual contact with another person who is:</p> <p>(A) A student enrolled in the public school; and</p> <p>(B) Less than twenty-one (21) years of age.</p> <p>ARK. CODE ANN. § 5-14-126 (2006).</p> <p>(a) A person commits sexual assault in the 3rd degree if: (1) the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse and the person (A) Is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail and the victim is in the custody of the Department of Correction, Department of Community correction, Department of Human Services, or any city or county jail; or (B) A professional under §12-12-507(b) or a member of the clergy and is in a position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity; or (2)(A) Being under eighteen (18) years of age, engages in sexual intercourse or deviate sexual activity with another person who is:</p> <p>(i) Less than fourteen (14) years of</p> | | | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Arkansas (cont.) | | <p>age and;</p> <p>(ii) not the person's spouse</p> <p>(B) It is an affirmative defense under this subdivision</p> <p>(a)(2) that the actor was not more than three (3) years older than the victim.</p> <p>(b) It is no defense to a prosecution under this section that the victim consented to the conduct.</p> | | | |
| California | <p>Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in detention facility.</p> <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> | <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(a)(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.</p> <p>(3) An employee with a dept, board or authority under the Youth & Adult Correctional Agency or a facility under contract with a dept, board or authority under the Youth & Adult Correctional Agency, who during the course of 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.</p> | <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(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.</p> <p>Sodomy.</p> <p>CAL. PENAL CODE § 286 (Deering 2006).</p> <p>(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.</p> <p>Oral Copulation.</p> <p>CAL. PENAL CODE § 288a (Deering 2006).</p> <p>(a) Oral copulation is the act of copulating the mouth of one person and the sex organ or anus of another person</p> | <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(g) Any violation of paragraph (1) of subsection (a), or a violation of paragraph (2) or (3) of subdivision (a) as described in paragraph (5) of subdivision (d), is a misdemeanor.</p> <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(h) Any violation of paragraph (2) or (3) of subdivision (a) shall be punished by imprisonment in a county jail not exceeding one year or by a fine not exceeding \$10,000, or by both fine and imprisonment</p> <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(i) Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.</p> <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(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. Anyone who has been convicted of a felony violation of this section shall not be</p> | <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for a violation of this section.</p> <p>CAL. PENAL CODE § 289.6 (Deering 2006).</p> <p>(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 or to physical contact or penetration made pursuant to a lawful search or bona fide medical examinations or treatments, including clinical treatments.</p> |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Colorado (cont.) | COLO. REV. STAT. §18-7-701 (2005). (1) An employee, contract employee or volunteer of a criminal justice facility or an individual who performs work or volunteer functions in a criminal justice facility or for the department of corrections who engages in sexual conduct with a person who is in lawful custody in a criminal justice facility commits the offense of sexual conduct in a penal institution. | in section 18-3-401 (5), or sexual penetration as defined in section 18-3-401(6). It does not include acts of an employee of a criminal justice facility 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. | the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4)(a), (4)(b), or (4)(c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section. | COLO. REV. STAT. § 18-3-404 (2005). (g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices. (g)(1.5) Any person who knowingly with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact . For purposes of this section (1.5), the term "child" means any person under the age of eighteen years. | COLO. REV. STAT. § 18-7-701 (2005). (3) Sexual conduct in a penal institution is a class 5 felony if the sexual conduct includes sexual intrusion or sexual penetration and is committed by an employee or contract employee of a criminal justice facility or by an employee, contract employee, or individual who performs work functions in a criminal justice facility or for the department of corrections. |
| | | | Definitions. COLO. REV. STAT. § 16-1-104 (2006). (1) The following definitions in this section are applicable generally in this code. Other terms which need definition, but which are used only in a limited number of sections of this code are defined in the particular section or article in which the terms appear. Definitions set forth in any section of this code are applicable whenever the same term is used in the same sense in another section of this code, unless the definition is specifically limited or the context indicates that it is inapplicable. (9) "Custody" means the restraint of a person's freedom in any significant way. | COLO. REV. STAT. § 18-3-401 (2005). As used in this part 4, unless the context otherwise requires: (4) "Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse. (5) "Sexual intrusion" means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be | COLO. REV. STAT. § 18-7-701 (2005). (4) Sexual conduct in a penal institution is a class 6 felony if: (a) the sexual conduct consists solely of sexual contact and is committed by an employee or contract employee of a criminal justice facility or by an employee, contract employee, or individual who performs work functions in a criminal justice facility or |

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Colorado
(cont.)

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| | | | <p>construed as being for the purposes of sexual arousal, gratification, or abuse.</p> <p>(6) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.</p> <p>Definitions</p> <p>COLO. REV. STAT. § 17-1-102 (2005). As used in this title, unless the context otherwise requires:</p> <p>(1) and (1.3) (Deleted by amendment, L. 93, p. 404, § 1, effective April 19, 1993.)</p> <p>(1.7) "Correctional facility" means any facility under the supervision of the department in which persons are or may be lawfully held in custody as a result of conviction of a crime.</p> <p>(2) "Department" means the department of corrections.</p> <p>(3) (Deleted by amendment, L. 94, p. 602, § 2, effective July 1, 1994.)</p> <p>(4) "Executive director" means the executive director of the department of corrections.</p> <p>(5) and (6) (Deleted by amendment, L. 2000, p. 829, § 2, effective May 24, 2000.)</p> <p>(6.5) "Inmate" means any person who is sentenced to a term of imprisonment for a violation of the laws of this state, any other state, or the United States.</p> <p>(7) "Local jail" means a jail or an adult detention center of a county or city and county.</p> <p>(7.3) "Private contract prison" means any private prison facility operated by a county, city and county, or private corporation located in this state; except that "private contract prison" does not include any local jail, multi-jurisdictional jail, or community corrections center.</p> <p>(7.5) (a) "Special needs offender" means a person in the custody of</p> | <p>for the department of corrections; or (b) the sexual conduct includes sexual intrusion or sexual penetration and is committed by a volunteer.</p> <p>COLO. REV. STAT. § 18-7-701 (2005).</p> <p>(5) Sexual conduct in a penal institution is a class 1 misdemeanor if the sexual conduct consists solely of sexual contact and is committed by a volunteer.</p> <p>COLO. REV. STAT. § 18-1.3-401 (2005).</p> <p>(V)(A) The penalty for a class 4 felony shall be imprisonment for a term ranging from 2-6 years with a 3 year mandatory period of parole and/or (III)(A) A fine ranging from \$2,000 to \$500,000.</p> | |
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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Colorado (cont.) | | | <p>the department:</p> <p>(I) Who is physically handicapped, mentally ill, or developmentally disabled; or</p> <p>(II) Who is sixty-five years of age or older and incapable of taking care of himself or herself; or</p> <p>(III) (A) Who has a medical condition, other than a mental illness, that is serious enough to require costly care or treatment; and</p> <p>(B) Who is physically incapacitated due to age or the medical condition.</p> <p>(b) Notwithstanding the provisions of paragraph (a) of this subsection (7.5), "special needs offender" does not include a person who:</p> <p>(I) Has been convicted of a class 1 felony; or</p> <p>(II) Has ever been convicted of a crime of violence as defined in section 18-1.3-406, C.R.S.; or</p> <p>(III) Is or has ever been a sex offender as defined in section 18-1.3-1003 (4), C.R.S.</p> <p>(8) "State inmate" means any person who is sentenced by the state to a term of imprisonment in a correctional facility or who is sentenced to a term of imprisonment pursuant to section 16-11-308.5, C.R.S.</p> <p>(9) "Warden" means the administrative head of a correctional facility.</p> <p>COLO. REV. STAT § 18-7-701 (2005).</p> <p>(2)(b) "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). It does not include acts of an employee of a criminal justice facility 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.</p> <p>"Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing</p> | | |

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Colorado
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| Connecticut | Sexual assault in the second degree: Class C or B felony. CONN. GEN. STAT. § 53a-71 (2006). Sexual assault in the fourth degree: Class A misdemeanor or class D felony. CONN. GEN. STAT. § 53a-73a (2006). | CONN. GEN. STAT. § 53a-71 (2006). A person is guilty of sexual assault in the second degree when: (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. CONN. GEN. STAT. § 53a-73a (2006). A person is guilty of sexual assault in the fourth degree when: (a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (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. | CONN. GEN. STAT. § 53a-70b (2006). (a)(2) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim. Definitions. CONN. GEN. STAT. § 53a-65 (2006). (2) "Sexual intercourse" means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person. CONN. GEN. STAT. § 53a-65 (2006). (3) "Sexual contact" means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor. | CONN. GEN. STAT. § 53a-71 (2006). (b) Sexual assault in the second degree is a class C felony or, if the victim of the offense is under 16 years of age, a Class B felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which 9 months of the sentence imposed may not be suspended or reduced by the court. Imprisonment for any felony committed on or after July 1, 1981 CONN. GEN. STAT. § 53a-35a (2006). (6) The penalty for a class C felony shall be imprisonment for a term not less than 1 year nor more than 10 years. CONN. GEN. STAT. § 53a-73a (2006). (b) Sexual assault in the fourth degree is a class A misdemeanor, or if the victim of the offenses is under 16 years of age, a Class D felony. Imprisonment for misdemeanor CONN. GEN. STAT. § 53a-36 (2006). (1) The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year. CONN. GEN. STAT. § 53a-35 (2006). (7) The penalty for a Class D felony shall be imprisonment for not less than one, but no more than 5 years. | |
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NOTE: See *State v. Straub*, 1999 Conn. Super. LEXIS 746 (holding that the statutory phrase "in custody of law" covered persons beyond those confined and included persons committed by the court to supervision by the probation departments, and that the alleged victims were therefore in custody while on probation).

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Delaware | Sexual relations in detention facility; Class G felony DEL. CODE ANN. tit. 11, § 1259 (2006). | DEL. CODE ANN. tit. 11, § 1259 (2006). 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. | Escape and offenses relating to custody; definitions. DEL. CODE ANN. tit. 11, § 1258 (2006). As used in §§ 1251-1257 of this title: (1) "Detention facility" means any place used for the confinement of a person; a. Charged with or convicted of an offense; or b. Charged with being a delinquent child as defined in § 901 of Title 10; or c. Held for extradition or as a material witness; or d. Otherwise confined pursuant to an order of a court. (2) "Custody" means restraint by a public servant pursuant to an arrest, detention or an order of a court. (3) "Contraband" means any intoxicating liquor or drug prohibited under Chapter 47 of Title 16, except as prescribed by a physician for medical treatment, any money without the knowledge or consent of the Department of Health and Social Services, any deadly weapon or part thereof or any instrument or article which may be used to effect an escape. (4) "Escape" means departure from the place in which the actor is held or detained with knowledge that such departure is unpermitted. (5) "Other place having custody of such person" includes, but is not limited to, any building, facility, structure, vehicle or property in which a person may be placed while in custody, whether temporarily or permanently and regardless of whether such building, facility, structure, vehicle or property is owned or controlled by the Department of Correction or any other state agency. (e) "Sexual intercourse" means: (1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any | DEL. CODE ANN. tit. 11, § 1259 (2006). Violation of this section shall be a class G felony. DEL. CODE ANN. tit. 11, § 4205 (2006). (b)(7) The penalty for a class G felony shall be imprisonment at Level V for a term of up to 2 years, and (k)The penalty may include fines and penalties as the court deems appropriate. | DEL. CODE ANN. tit. 11, § 1259 (2006). It shall be no defense that such conduct was consensual. |

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Delaware
(cont.)

penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or
 (2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.
 (f) "Sexual contact" means: (1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or (2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature.
 Sexual contact shall also include touching when covered by clothing.
 (g) "Sexual penetration" means:
 (1) The unlawful placement of an object, as defined in subsection (c) of this section, inside the anus or vagina of another person; or (2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.
 (h) "Without consent" means: (1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or
 (2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or
 (3) The defendant knew that the vic-

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Delaware (cont.) | | | <p>tim suffered from a mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct; or</p> <p>(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or</p> <p>(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.</p> <p>(i) "Position of trust, authority or supervision over a child" includes, but is not limited to:</p> <p>(1) Familial or custodial authority or</p> | | |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Delaware (cont.) | | | <p>supervision; or</p> <p>(2) A teacher, instructor, coach, babysitter, day care provider, or aide or any other person having regular direct contact with children through affiliation with a school, church or religious institution, athletic or charitable organization or any other organization, whether such a person is compensated or acting as a volunteer.</p> <p>(j) A child who has not yet reached his or her sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.</p> <p>NOTE: See Smith v. State, 361 A.2d 237. A prisoner on furlough, although outside the prison walls without immediate supervision, is clearly not free from restraint; the prisoner is deemed to be fully aware that the prisoner's movements are restricted according to the limitations of time, place and purpose imposed by the terms of the furlough.</p> | | |
| District of Columbia | <p>First degree sexual abuse of a ward. D.C. CODE ANN. § 22-3013 (LexisNexis 2006).</p> <p>Second degree sexual abuse of a ward. D.C. CODE ANN. § 22-3014 (LexisNexis 2006).</p> | <p>D.C. CODE ANN. § 22-3013 (LexisNexis 2006). 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.</p> <p>D.C. CODE ANN. § 22-3014 (LexisNexis 2006). Whoever engages in sexual contact with another person or causes</p> | <p>Definitions. D.C. CODE ANN. § 22-3001(6) "Official custody" means: (A) Detention following arrest for an offense; following surrender in lieu of an arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings; or pending extradition, deportation, or exclusion; (b) custody for purposes incident to any detention described in subparagraph (a) of this paragraph, including transportation, medical diagnosis</p> | <p>D.C. CODE ANN. § 22-3013(2) (LexisNexis 2006). The penalty for first degree sexual abuse of a ward shall be imprisonment for a term not to exceed 10 years, and may include a fine not to exceed \$100,000.</p> <p>D.C. CODE ANN. § 22-3014 (LexisNexis 2006). (2) The penalty for second degree sexual abuse of a ward shall be imprisonment for a term not to exceed 5 years and may include a fine not to exceed \$50,000.</p> | <p>Defenses to sexual abuse of a ward, patient, or client. D.C. CODE ANN. § 22-3017 (LexisNexis 2006). (a) Consent is not a defense to either first or second degree sexual abuse of a ward; (b) Marriage between the defendant and the victim at the time of the offense is a defense to both first and second degree sexual abuse of a ward, which the defendant must prove by a preponderance of the evidence.</p> |

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| | | another person to engage in or submit to sexual contact 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. | | | |
| Florida | Authorized use of Force; malicious battery & sexual misconduct prohibited; reporting required; penalties. FLA. STAT. ANN. § 944.35 (LexisNexis 2006). | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3)(b)(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. | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3)(b)(1) 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. Does not include an act done for a bona fide medical exam or an internal search lawfully conducted. | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). Sexual misconduct is a felony in the third degree. (3)(d) The penalty for a felony in the third degree shall be: imprisonment for a term not to exceed 5 years | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3)(b)(3) Consent is not a defense. |
| | Sexual battery. FLA. STAT. ANN. § 794.011 (LexisNexis 2006). | FLA. STAT. ANN. § 944.35(4)(a) (LexisNexis 2006). (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. | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3)(C) Notwithstanding prosecution, any violation of the provisions of this subsection, as determined by the Public Employees Relations Commission, shall constitute sufficient cause under 5.110.227 for dismissal from employment with the department, and such person may not again be employed in any capacity in connection with the correctional system. | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3) (b)(4) Ignorance that inmate is an inmate or under the supervision by the. | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (3)(b) (4) Marriage is a defense. |
| | | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (4)(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with regard to reports required in their section commits a misdemeanor of the first degree. | FLA. STAT. ANN. § 794.011 (LexisNexis 2006). (1)(a) "consent" means intelligent, knowing, voluntary consent and does not include submission. | FLA. STAT. ANN. § 775.082 (7) This section does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgement or order may be included in the sentence. | |
| | | FLA. STAT. ANN. § 944.35 (LexisNexis 2006). (4)(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 the incident of sexual misconduct commits a felony in the third degree. As part of the correctional-officer training program, the Criminal Justice Standards and Training Commission shall develop | FLA. STAT. ANN. § 794.011 (LexisNexis 2006). (1)(f) "retaliation" includes but is not limited to threats of future physical punishment, false imprisonment or forcible confinement or extortion. | Fines. FLA. STAT. ANN. § 775.083 (LexisNexis 2006). (c) \$5,000 when the conviction is of a felony of the third degree. (d): \$1,000 when the conviction is of a misdemeanor of the first degree. | |

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| Florida (cont.) | | <p>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.</p> <p>FLA. STAT. ANN. § 794.011 (LexisNexis 2006).</p> <p>(4) 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 1st degree, punishable as provided in §§775.082, 775.083, 775.084 & 794.0115.</p> <p>(4)(g): when the offender is a law enforcement officer; correctional officer; or correctional probation officer; or is an elected official exempt from such certification by virtue of § 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.</p> | <p>(1)(h) "Sexual battery" means 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; however sexual battery does not include an act done for a bonafide medical purpose.</p> <p>Definitions. FLA. STAT. ANN. § 943.10 (LexisNexis 2006). The following words and phrases as used in §§943.085-943.255 are defined as follows: (1) "Law enforcement officer" means any person who is elected, appointed or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of a crime or the enforcement of the penal, criminal, traffic or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency (2) "Correctional officer" means any person which is appointed or employed full time by the state or any political subdivision thereof, or by any private entity which has contracted with the state or county and whose primary responsibility is the supervision, protection, care, custody, and control, or investigation of inmates within a correctional institution; however, the term "correctional officer" does not include any secretarial, clerical, or professionally trained personnel. (3)"Correctional Probation Officer"</p> | | |

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means a person who is employed full time by the state whose primary responsibility is the supervised custody, surveillance, and control of assigned inmates, probationers, parolees, or community controllees within institutions of the Department of Corrections or within the community. The term includes supervisory personnel whose duties include, in whole or in part, the supervision, training and guidance of correctional probation officers, but excludes management and administrative personnel above, but not including, the probation and parole regional administrator level. (4) "Employing agency" means any agency or unit of government or any municipality or the state or any political subdivision thereof, or any agent thereof, which has constitutional or statutory authority to employ or appoint persons as officers. The term also includes any private entity which has contracted with the state or county for the operation and maintenance of a non-juvenile detention facility.

FLA. STAT. ANN. § 944.02 (LexisNexis 2006).

"Correctional system" means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the Department of Corrections.

Georgia

Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient. GA. CODE ANN. § 16-6-5.1 (2006).

GA. CODE ANN. § 16-6-5.1 (2006). (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 disci-

GA. CODE ANN. § 16-6-5.1(c)(3) (2006).. Consent of the victim is not a defense.

The definition of "sexual contact" in § 16-6-5.1(a)(4) excludes contact between married persons.

GA. CODE ANN. § 16-6-5.1 (2006). (b) A person convicted of sexual assault shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault, shall, in addition, be subject to the sen-

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| Georgia (cont.) | | <p>plinary authority over such other person.</p> <p>(c) 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.</p> | | <p>tencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(c)(4) A person convicted of sexual assault under this subsection shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> | |
| Hawaii | <p>Sexual assault in the second degree. Haw. Rev. Stat. Ann. § 707-731</p> <p>Sexual assault in the third degree. HAW. REV. STAT. ANN. § 707-732</p> <p>Sexual assault in the second degree. HAW. REV. STAT. ANN. § 707-731</p> <p>Sexual assault in the third degree. HAW. REV. STAT. ANN. § 707-732</p> | <p>HAW. REV. STAT. ANN. § 707-731 (LexisNexis 2006).</p> <p>(1) A person commits the offense of sexual assault in the second degree if: (c) the person, while employed (i) in a state correctional facility, (ii) by a private company providing services at a correctional facility, (iii) by a private company providing community based residential services to persons committed to the director of public safety and having received notice of this statute, (iv) by a private correctional facility operating in the state of Hawaii, or (v) as a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody.</p> <p>HAW. REV. STAT. ANN. § 707-732 (LexisNexis 2006).</p> <p>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, (ii) by a private company providing services at a correctional facility, (iii) by a</p> | <p>Definitions of terms in this chapter. HAW. REV. STAT. ANN. § 707-700 (LexisNexis 2006).</p> <p>"Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.</p> <p>"Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material intended to cover the sexual or other intimate parts.</p> <p>HAW. REV. STAT. ANN. § 710-1000 (LexisNexis 2006).</p> <p>(3) "Custody" means restraint by a public servant pursuant to arrest, detention, or order of a court;</p> <p>(4) "Detention facility" means any place used for the confinement of a person: (a) Arrested for, charged</p> | <p>HAW. REV. STAT. ANN. § 707-731 (LexisNexis 2006).</p> <p>(2) Sexual assault in the second degree is a class B felony.</p> <p>HAW. REV. STAT. ANN. § 707-732 (LexisNexis 2006).</p> <p>(2) Sexual assault in the third degree is a class C felony.</p> <p>HAW. REV. STAT. ANN. § 706-660 (LexisNexis 2006).</p> <p>(1) The penalty for a class B felony shall be imprisonment not to exceed a term of 10 years. The penalty for a class C felony shall be imprisonment for a term not to exceed 5 years. (2) The minimum length of imprisonment shall be determined by the paroling authority.</p> | |

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| Hawaii (cont.) | | private company providing community based residential services to persons committed to the director of public safety and having received notice of this statute, or (iv) by a private correctional facility operating in the state of Hawaii knowingly subjects to sexual contact an imprisoned person, a person committed to the director of public safety, or a person residing in a private correctional facility operating in the state of Hawaii, or causes such person to have sexual contact with the actor. | with, or convicted of a criminal offense; or (b) Confined pursuant to chapter 571; or (c) Held for extradition; or (d) Otherwise confined pursuant to an order of a court. | | |
| Idaho | Sexual contact with a prisoner. IDAHO CODE ANN. § 18-6110 (2006). | IDAHO CODE ANN. § 18-6110 (2006). It is a felony for any employee of the Idaho department of correction or any officer, employee or agent of a state, local or private correctional facility to have sexual contact with a prisoner, not their spouse, whether an in-state or out-of-state prisoner. | IDAHO CODE ANN. § 18-6110 (2006). "Sexual contact" means sexual intercourse, genital-genital, manual-anal, manual-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex. Definitions. IDAHO CODE ANN. § 18-101A (2006). (1) "Correctional facility" means a facility for the confinement of prisoners. The term shall be construed to include references to terms including, but not limited to, "prison," "state prison," "state penitentiary," "governmental detention facility," "penal institution (facility)," "correctional institution," "detention institution (facility)," "county jail," "jail," "private prison (facility)" or "private correctional facility." (3) "Local correctional facility" means a facility for the confinement of prisoners operated by or under the control of the county or city. The term shall include references to "county jail," or "jail." The term shall also include a private correctional facility housing prisoners under the custody of the state board of correction, the county Sheriff or other local law enforcement agency. (5) "Prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole or probation for | IDAHO CODE ANN. § 18-6110 (2006). 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. | IDAHO CODE ANN. § 18-6110 (2006). The sexual contact must be with a prisoner who is not the employee's spouse. |

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| Idaho (cont.) | | | <p>that crime or in custody for trial and sentencing, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or through the state of Idaho.</p> <p>(6) "Private correctional facility" or private prison (facility)" means a correctional facility constructed or operated in the state of Idaho by a private prison contractor.</p> <p>(7) "Private prison contractor" means any person, organization, partnership, joint venture, corporation or other business entity engaged in the site selection, design/building, acquisition, construction/ management, financing, maintenance, leasing, leasing/purchasing, management or operation of private correctional facilities or any combination of these services.</p> <p>(8) "State correctional facility" means a facility for the confinement of prisoners; owned or operated by or under the control of the state of Idaho. The term shall include references to "state prison," "state penitentiary" or state penal institution (facility)." The term shall also include a private correctional facility housing prisoners under the custody of the board of correction.</p> | | |
| Illinois | Custodial Sexual Misconduct 720 ILL. COMP. STAT. ANN. 5/11-9.2 (LexisNexis 2005). | 720 ILL. COMP. STAT. ANN. 5/11 9.2 (LexisNexis 2005). (a) A person commits the offense of custodial sexual misconduct when: (1) 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 or (2) he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a | 720 ILL. COMP. STAT. ANN. 5/11 9.2 (LexisNexis 2005). (g)(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; (vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons | 720 ILL. COMP. STAT. ANN. 5/11 9.2 (LexisNexis 2005). (e) Consent is not a defense to a prosecution under this section. 720 ILL. COMP. STAT. ANN. 5/11 9.2 (LexisNexis 2005). (f) This section does not apply to: (1) Any employee, probation or supervising officer, | |

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| Illinois (cont.) | | person who is in the custody of that treatment and detention facility. (b) A probation or supervising officer or surveillance agent commits the offense of custodial sexual misconduct when the probation or supervising officer or surveillance agent engages in sexual conduct or sexual penetration with a probationer, parolee, or releasee or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent so engaging in the sexual conduct or sexual penetration. | Commitment Act; (g)(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, or (iii) a contractual employee of a treatment and detention facility. (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 certified Code of Corrections. (7) "Surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act [725ILCS 207/1et seq.]. | tion facility, or conditional release program. | or surveillance agent who is lawfully married to a person in custody if the marriage occurred before the date of custody. (2) Any employee, probation, or supervisory officer, or surveillance agent 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. |
| | | | Definitions. 720 ILL. COMP. STAT. ANN § 5/12-12 (LexisNexis 2005). (e) "Sexual conduct" means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused. (f) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex | | |

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| Illinois (cont.) | | | <p>organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.</p> <p>Definitions. 720 ILL. COMP. STAT. ANN. 110/9b (LexisNexis 2005). (3) "Probation officer" means a person employed full time in a probation or court services department providing services to a court under this Act or the Juvenile Court Act of 1987 [705 ILCS 405/1-1 et seq.]. A probation officer includes detention staff, non-secure group home staff and management personnel who meet minimum standards established by the Supreme Court and who are hired under the direction of the circuit court. These probation officers are judicial employees designated on a circuit wide or county basis and compensated by the appropriate county board or boards.</p> <p>"Penal institution." 720 ILL. COMP. STAT. ANN. 5/2 14 (LexisNexis 2005). "Penal institution" means a penitentiary, state farm, reformatory, prison, jail, house of correction, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.</p> | | |
| Indiana | Sexual misconduct by service provider and detainee. IND. CODE ANN. § 35-44-1-5 (LexisNexis 2006). | IND. CODE ANN. § 35-44-1-5 (LexisNexis 2006). (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. | IND. CODE ANN. § 35-44-1-5 (LexisNexis 2006). (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. Lawful detention. IND. CODE ANN. § 35-41-1-18 | IND. CODE ANN. § 35-44-1-5 (LexisNexis 2006). (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. | |

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| Indiana (cont.) | | | | |

(LexisNexis 2006).
 (a) "Lawful detention" means:
 (1) arrest;
 (2) custody following surrender in lieu of arrest;
 (3) detention in a penal facility;
 (4) detention in a facility for custody of persons alleged or found to be delinquent children;
 (5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
 (6) detention for extradition or deportation;
 (7) placement in a community corrections program's residential facility;
 (8) electronic monitoring;
 (9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
 (10) any other detention for law enforcement purposes.
 (b) Except as provided in subsection (a) (7) and (a) (8), the term does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

Deviate sexual conduct.
 IND. CODE ANN. § 35-41-1-9 (LexisNexis 2006).
 "Deviate sexual conduct" means an act involving:
 (1) A sex organ of one person and the mouth or anus of another person, or
 (2) The penetration of the sex organ or anus of a person by an object.

Sexual Intercourse.
 IND. CODE ANN. § 35-41-1-26 (LexisNexis 2006).
 "Sexual intercourse means an act that includes any penetration of the female sex organ by the male sex organ.

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| Iowa | Sexual misconduct with offenders and juveniles IOWA CODE § 709.16 (2005). | | <p>IOWA CODE § 709.16 (2005). (2) A "juvenile placement facility" means a "juvenile placement facility" means any of the following:</p> <ul style="list-style-type: none"> 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. <p>IOWA CODE § 702.17 (2005). The term "sex act" or "sexual activity" means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed to do so; or by use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.</p> | <p>IOWA CODE § 709.16 (2005). Sexual misconduct with offenders is an aggravated misdemeanor.</p> <p>Maximum sentence for misdemeanor.</p> <p>IOWA CODE § 903.1(2) (2005). The penalty for an aggravated misdemeanor shall be imprisonment for a term not to exceed 2 years and a fine ranging between \$500 and \$5,000 when a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.</p> <p>Special sentence – Class "D" felonies or misdemeanors. IOWA CODE § 903B.2. A person convicted of a misdemeanor or a class "D" felony offense under chapter 709, section 726.2, or section 728.12 shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole. The revocation of release shall not be for a period greater than two years</p> | |
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| <p>Iowa (cont.)</p> | | | | | |
| <p>Kansas</p> | <p>Unlawful sexual relations. KAN. STAT. ANN. § 21-3520 (2005).</p> | <p>KAN. STAT. ANN. § 21-3520 (2005). (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 a person 16 years of age or older who is an inmate; or (2) the offender is a parole officer, or the employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or post-release supervision, and the inmate has been released on parole, conditional release or post-release supervision under direct supervision and control of the offender; or (3) the offender is a law enforcement officer, jail employee, or employee of a contractor and the person is 16 or older under lawful confinement; or (4) the offender is a law enforcement officer, employee of a juvenile detention facility or sanctions house, or employee of a contractor and the person is 16 years of age or older under lawful confinement; or (5) the offender is an employee of the juvenile justice authority or the employee of a contractor under contract to provide services to such juvenile correctional facility and the person is 16 years of age or older</p> | <p>Definitions. KAN. STAT. ANN. § 75-5202 (2005). As used in K.S.A. 75-5201 et seq. and amendments thereto, unless the context clearly requires otherwise: (a) "Secretary" means the secretary of corrections. (b) "Parole board" means the Kansas parole board established by K.S.A. 22-3707 and amendments thereto. (c) "Inmate" means any person incarcerated in any correctional institution of the state of Kansas. (d) "Correctional institution" means the Lansing correctional facility, Hutchinson correctional facility, Topeka correctional facility, Norton correctional facility, Ellsworth correctional facility, Winfield correctional facility, Osawatomie correctional facility, Larned correctional mental health facility, Toronto correctional work facility, Stockton correctional facility, Wichita work release facility, El Dorado correctional facility, and any other correctional institution established by the state for the confinement of offenders under control of the secretary of corrections. (e) "Warden" means the person in charge of the operation and supervision of a correctional institution. (f) "Corrections officer" means a full-time, salaried officer or employee under the jurisdiction of the secretary, whose duties include the receipt, custody, control, maintenance, discipline, security and apprehension of persons convicted of criminal offense in this state and sentenced to a term of imprisonment</p> | <p>KAN. STAT. ANN. § 21-3520 (2005). (c) "Unlawful sexual relations" is a severity level 10 person felony.</p> | <p>upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under section 903A.2.</p> |

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| Kansas (cont.) | | <p>under lawful confinement; or</p> <p>(6) the offender is an employee of the juvenile justice authority or employee of a contractor; and the person is 16 or older and</p> <p>(A) released on conditional release from a juvenile correctional facility under supervision and control of the juvenile justice authority or juvenile community supervision agency or (B) placed in custody of juvenile justice authority under direct supervision and control of the juvenile justice authority or juvenile community supervision agency and the offender has knowledge that the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching or sodomy is currently under supervision.</p> | <p>ment under the custody of the secretary.</p> <p>(g) "Parole officer" means a full-time salaried officer or employee under the jurisdiction of the secretary whose duties include:</p> <p>(1) Investigation, supervision, arrest and control of persons on parole or postrelease supervision and the enforcement of the conditions of parole or postrelease supervision; and</p> <p>(2) services which relate to probationers, parolees or persons on postrelease supervision and are required by the uniform act for out-of-state parolee supervision.</p> <p>Definitions. KAN. STAT. ANN. § 21-4703 (2005). As used in this act: (o) "nonimprisonment," "nonprison" or "nonprison sanction" means probation, community corrections, conservation camp, house arrest or any other community based disposition;</p> <p>(p) "postrelease supervision" means the release of a prisoner to the community after having served a period of imprisonment or equivalent time served in a facility where credit for time served is awarded as set forth by the court, subject to conditions imposed by the Kansas parole board and to the secretary of correction's supervision;</p> <p>(r) "prison" means a facility operated by the Kansas department of corrections.</p> <p>Definitions. KAN. STAT. ANN. § 38-1602 (2005). As used in this code, unless the context otherwise requires:</p> <p>(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.</p> <p>(b) "Juvenile offender" means a person who commits an offense while a juvenile which if committed by an adult would constitute the commission of a felony or</p> | | |

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| Kansas (cont.) | | | misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include: (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto; (2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated; (3) a person under 18 years of age who previously has been: (A) Convicted as an adult under the Kansas code of criminal procedure; (B) sentenced as an adult under the Kansas code of criminal procedure following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16,126, and amendments thereto; or (C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 38-1636, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction. (d) "Law enforcement officer" means any person who by virtue of that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes. (e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated. (f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated | | |

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Kansas
(cont.)

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| | | | <p>juvenile offenders and which shall not be a jail.</p> <p>(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.</p> <p>(i) "Jail" means:</p> <p>(1) An adult jail or lockup; or</p> <p>(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.</p> <p>(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.</p> <p>(m) "Institution" means the following institutions: The Kansas juvenile correctional complex, the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility and the Topeka juvenile correctional facility.</p> <p>(n) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeter of the facility, or which relies on locked rooms and</p> | | |
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| Kansas (cont.) | | | buildings, fences, or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house. (r) "Juvenile corrections officer" means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility. (s) "Investigator" means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility. | | |
| Kentucky | Sexual Abuse in the Second Degree. KY. REV. STAT. ANN. § 510.120 (LexisNexis 2006). | KY. REV. STAT. § 510.120 (LexisNexis 2006). (1) A person is guilty of sexual abuse in the second degree when: (c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility, 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. | KY. REV. STAT. § 510.010 (LexisNexis 2006). (7) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party. KY. REV. STAT. § 510.010 (LexisNexis 2006). (2) "Custody" means restraint by a public servant pursuant to a lawful arrest, detention, or an order of court for law enforcement purposes, but does not include supervision of probation or parole or constraint incidental to release on bail; (4) "Detention facility" means any building and its premises used for the confinement of a person: (a) Charged with or convicted of an offense; (b) Alleged or found to be delinquent; (c) Held for extradition or as a material witness; or (d) Otherwise confined pursuant to an order of court for law enforcement purposes. | KY. REV. STAT. § 510.120 (LexisNexis 2006). (2) Sexual abuse in the second degree is a Class A misdemeanor. Sentence of imprisonment for a misdemeanor. KY. REV. STAT. § 532.090 (LexisNexis 2006). Sentence of imprisonment for misdemeanor: (1) For a Class A misdemeanor, the term shall not exceed 12 months. | KY. REV. STAT. § 510.120 (LexisNexis 2006). (1) Marriage at the time of sexual contact is a defense. |

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| Louisiana | Malfesance in office; sexual conduct prohibited with persons confined in correctional institutions. LA. REV. STAT. ANN. § 14:134.1 (2006). | LA. REV. STAT. ANN. § 14:134.1(A) (2006). It shall be unlawful and constitute malfesance 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. | ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). 1. In this chapter the following definitions apply. C. "Sexual act" means: 1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and genitals of the other; 2) Any act between a persona and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the other; or 3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration. § 251.I.D "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. | LA. REV. STAT. ANN. § 14:134.1(B) (2006). Whoever violates a provision of this section shall be fined not more than \$10,000 or imprisoned for a term not to exceed 10 years, or both. | ME. REV. STAT. ANN. tit. 17-A, § 253 A, § 253(2)(E), (F) & (G) (2005). Marriage is a defense. ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). 3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consented or allowed administration of the substance with knowledge of its nature, except that it is no defense when the other person is a patient of the actor and has a reasonable belief that he actor is administering the substance for medical or dental examination or treatment. |
| Maine | Gross sexual assault. ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). Unlawful sexual contact. ME. REV. STAT. ANN. tit. 17-A, § 255-A 1.E (2005). Unlawful sexual touching. ME. REV. STAT. ANN. tit. 17-A, § 260.1-E (2005). | ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). 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; violation of this paragraph is a Class B crime. J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Dept. of Mental Health, Mental Retardation and Substance Abuse Services or the Dept. of Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that person as a person with mental retardation. Unlawful sexual touching, ME. REV. STAT. ANN. tit. 17-A, § 260.1(2005). 1. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching 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 | ME. REV. STAT. ANN. tit. 17-A, § 251(1)(C) (2005). 1. In this chapter the following definitions apply. C. "Sexual act" means: 1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and genitals of the other; 2) Any act between a persona and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the other; or 3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration. § 251.I.D "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. | ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). 6. In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the second step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor. A. When the prior conviction is a Class A crime, enhance the basic period of incarceration by at least 4 years of imprisonment; B. when the prior conviction is a Class B crime, enhance the basic period of incarceration by at least 2 years of imprisonment; C. when the prior conviction is a Class C crime, enhance the basic period of incarceration by at least one year of imprisonment. Imprisonment for crimes other than murder. ME. REV. STAT. ANN. tit. 17-A, § 1252 (2005). The court shall set the term of imprisonment as follows: B.in the case of a Class B crime, the court shall set a definite period not to exceed 10 years. ME. REV. STAT. ANN. tit. 17-A, § 260 (2005). 1.E. Unlawful sexual touching is a Class D crime. | |

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| Maine (cont.) | | other institution and the actor has supervisory or disciplinary authority over the other person. | E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being. "Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor. G. "Sexual touching means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire. | | |
| | | | ME. REV. STAT. ANN. tit. 17-A, § 755 (2005). 3. As used in this section, "official custody" means arrest, custody in, or on the way to or from a courthouse or a jail, police station, house of correction, or any institution or facility under the control of the Department of Corrections, or under contract with the department for the housing of persons sentenced to imprisonment, the custody of any official of the department, the custody of any institution in another jurisdiction pursuant to a sentence imposed under the authority of section 1253, subsection 1-A or any custody pursuant to court order. A person on a parole or probation status is not, for that reason alone, in "official custody" for purposes of this section. | | |
| Maryland | Sexual conduct between correctional or Department of Juvenile Services employee and inmate or confined child. MD. CODE ANN., CRIM. LAW § 3-314 (LexisNexis 2006). | MD. CODE ANN., CRIM. LAW § 3-314(b) (LexisNexis 2006). A correctional employee may not engage in vaginal intercourse or a sexual act with an inmate. (C) An employee or licensee of the Department of Juvenile Services may not engage in vaginal intercourse or a sexual act with an indi- | MD. CODE ANN., CRIM. LAW § 3-314 (LexisNexis 2006). (a) Definitions.— (2)(i) "Correctional employee" means a 1. a correctional officer, as defined in § 8-201 of the Correctional Services Article; or (2) managing official or deputy managing official of a correctional facility. | MD. CODE ANN., CRIM. LAW § 3-314 (LexisNexis 2006). (d) Penalty — 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. | |

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| Maryland (cont.) | | vidual confined in a child care institution licensed by the Department, a detention center for juveniles, or a facility for juveniles, or a facility for juveniles Listed in Article §3C-82117(a)(2) of the code. | <p>(ii) "Correctional employee" includes a sheriff, warden, or other official who is appointed or employed to supervise a correctional facility. (3)(i) "Inmate has the meaning stated in § 1-101 of this article. (ii) "Inmate" includes an individual confined in a community adult rehabilitation center.</p> <p>MD. CODE ANN., CRIM. LAW § 8-201 (LexisNexis 2006).</p> <p>(e) Correctional officer.</p> <p>(1) "Correctional officer" means a member of a correctional unit whose duties relate to the investigation, care, custody, control, or supervision of inmates and individuals who: (i) have been placed on parole or mandatory supervision;</p> <p>(ii) have been placed on probation; or</p> <p>(iii) have received a suspended sentence. (2) "Correctional officer" does not include: (i) the head or deputy head of a correctional unit; or (ii) a sheriff, warden, or superintendent or individual with an equivalent title who is appointed or employed by a unit of government to exercise equivalent supervisory authority.</p> <p>(g) Correctional unit. -- (1) "Correctional unit" means a unit of State, county, or municipal government that is responsible under a statute, ordinance, or court order for the investigation, care, custody, control, and supervision of inmates and individuals who: (i) have been placed on parole or mandatory supervision; (ii) have been placed on probation; or (iii) have received a suspended sentence. (2) "Correctional unit" includes those facilities as set forth in Article 83C, § 2-117 and other facilities as designated by the Secretary of Juvenile Services.</p> <p>(h) Department of Juvenile Services employee.</p> <p>(1) "Department of Juvenile Services employee" means a youth supervisor, youth counselor, direct care worker, or other employee of the Department</p> | | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

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Maryland
(cont.)

of Juvenile Services whose employment responsibility is the investigation, custody, control, or supervision of minors, juvenile delinquents, and youthful offenders who are committed, detained, awaiting placement, adjudicated delinquent, or are otherwise under the supervision of the Department of Juvenile Services. (2) "Department of Juvenile Services employee" includes an employee of any nonprofit or for-profit entity under contract with the Department of Juvenile Services whose employment responsibility is the investigation, custody, control, or supervision of minors, juvenile delinquents, and youthful offenders as described under paragraph (1) of this subsection.

State facilities – Establishment and operation.
MD. CODE ANN., CRIM. LAW art. 83C § 2-117 (LexisNexis 2006).

(a) Facilities authorized.

(1) The Department may establish and operate the facilities that are necessary to diagnose, care for, train, educate, and rehabilitate properly children who need these services.

(2) These facilities include: (i) The Baltimore City Juvenile Justice Center; (ii) The J. DeWeese Carter Center; (iii) The Charles H. Hickey, Jr. School; (iv) The Alfred D. Noyes Children's Center; (v) The Cheltenham Youth Facility; (vi) The Victor Cullen Center; (vii) The Thomas J. S. Waxter Children's Center; (viii) The Lower Eastern Shore Children's Center; (ix) The Western Maryland Children's Center; and (x) The youth centers.

MD. CODE ANN., CRIM. LAW § 1-101 (LexisNexis 2006).

(i) Inmate. – "Inmate" means an individual who is actually or constructively detained or confined in a correctional facility.

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| Massachusetts | <p>Punishments for sexual relations with inmate.</p> <p>MASS. ANN. LAWS ch. 268, § 21A (LexisNexis 2006).</p> | <p>MASS. ANN. LAWS ch. 268, § 21A (LexisNexis 2006).</p> <p>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 such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person.</p> | <p>Definitions.</p> <p>MASS. ANN. LAWS ch. 125, § 1 (LexisNexis 2006).</p> <p>As used in this chapter and elsewhere in the general laws, unless the context otherwise requires, the following words shall have the following meanings:</p> <p>(i) "inmate, committed offender or such other person as is placed in custody in a correctional facility in accordance with law.</p> <p>MASS. ANN. LAWS ch. 268, § 21A (LexisNexis 2006).</p> <p>For purposes of this section, "sexual relations" includes intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 (sexual intercourse or unnatural sexual intercourse) or 24 (assault with the intent to commit rape) of chapter 265 or section 2 (prostitution or unlawful sexual intercourse), 3 (drugging a person for the purposes of engaging in sexual intercourse), 35 (unnatural and lascivious acts) or 53A (engaging in sexual conduct for a fee) of chapter 272.</p> | <p>MASS. ANN. LAWS ch. 268, § 21A (LexisNexis 2006).</p> <p>A person who violates this section shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both.</p> | <p>MASS. ANN. LAWS ch. 268, § 21A (LexisNexis 2006).</p> <p>An inmate shall be deemed incapable of consent.</p> |
| | | | <p>Rape.</p> <p>MASS. ANN. LAWS ch. 265, § 22 (LexisNexis 2006).</p> <p>(a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred</p> | | |

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Massachusetts
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and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

(b) Whoever has sexual intercourse with or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or

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Massachusetts
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more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences. For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).

Assault with Intent to Commit Rape. MASS. ANN. LAWS ch. 265, § 24 (LexisNexis 2006).

Whoever assaults a person with intent to commit a rape shall be punished by imprisonment in the state prison for not more than twenty years or by imprisonment in a jail or house of correction for not more than two and one-half years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years. Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than five years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years.

No person serving a sentence for a second or subsequent such offense shall be eligible for furlough, temporary release, or education, training or employment programs established outside a correctional facility until such person shall have served two-thirds of such minimum sentence or if such person has two or more sentences to be served otherwise than concurrently, two-thirds of the aggregate of the minimum terms of such several sentences.

Abduction of Persons for the Purpose of Prostitution or Unlawful Sexual Intercourse.

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Massachusetts
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MASS. ANN. LAWS ch. 272, § 2 (LexisNexis 2006).
Whoever fraudulently and deceitfully entices or takes away a person from the house of his parent or guardian or elsewhere, for the purpose of prostitution or for the purpose of unlawful sexual intercourse, and whoever aids and assists in such abduction for such purpose, shall be punished by imprisonment in the state prison for not more than three years or in jail for not more than one year or by a fine of not more than one thousand dollars, or by both such fine and imprisonment in jail.

Administering Drug.
MASS. ANN. LAWS ch. 258, § 3 (LexisNexis 2006).
Whoever applies, administers to or causes to be taken by a person any drug, matter or thing with intent to stupefy or overpower such person so as to thereby enable any person to have sexual intercourse or unnatural sexual intercourse with such person shall be punished by imprisonment in the state prison for life or for any term of years not less than ten years.

Unnatural and Lascivious Acts.
MASS. ANN. LAWS ch. 272, § 35 (LexisNexis 2006).
Whoever commits any unnatural and lascivious act with another person shall be punished by a fine of not less than one hundred nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years.

Engaging in Sexual Conduct for Fee; Payors and Payees; Penalties.
MASS. ANN. LAWS ch. 272, § 53A (LexisNexis 2006).
Any person who engages, agrees to engage, or offers to engage in sexu-

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Massachusetts (cont.)

al conduct with another person in return for a fee, or any person who pays, agrees to pay or offers to pay another person to engage in sexual conduct, or to agree to engage in sexual conduct with another natural person may be punished by imprisonment in a jail or house of correction for not more than one year, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

Michigan

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| Criminal sexual conduct in the first degree; felony. MICH. COMP. LAWS § 750.520b (LexisNexis 2006). | MICH. COMP. LAWS § 750.520b (LexisNexis 2006). (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists: (f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances: (i) When the actor overcomes the victim through the actual application of physical force or violence. (ii): When the actor coerces the victim to submit by threatening to use force of violence on the victim, and the victim believes the actor has the present ability to execute these threats (iii): when the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes the actor has the present ability to execute these threats (iv): when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable (v): when the actor, through concealment or by the element of surprise, is able to overcome the victim. | MICH. COMP. LAWS § 750.520c (LexisNexis 2006). (2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years. |
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| Michigan (cont.) | | MICH. COMP. LAWS SERV. § 750.520C (LexisNexis 2006). (1) A person is guilty of criminal sexual conduct in the second degree if he or she engages in sexual contact with another person and if any of the following circumstances exist: (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in § 520b(1)(f)(i) to (v). (See definitions) (g) The actor knows or has reason to know that the person is mentally incapable, mentally incapacitated, or physically helpless. (i) That the other person is under jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or volunteer with, the dept of corrections who knows that the other person is under the jurisdiction of the dept of corrections. (j) That other person is under the jurisdiction of the department of corrections and the actors is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility, 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 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 as a result of the victim having been found responsible for an act that would be a crime if committed by an adult, and the | | | |

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| Michigan (cont.) | | actor is an employee or contractual employee of, or volunteer with, the facility in which the victim is detained or to which the victim was committed. | | | |
| Minnesota | Criminal sexual conduct in the third degree. MINN. STAT. § 609.344 (2005). | MINN. STAT. § 609.344 (2005). (1) 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 exist: (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. | Definitions. MINN. STAT. § 609.341(11)(a) (2005). "Sexual contact" includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent: (i) the intentional touching by the actor of the complainant's intimate parts, or (ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is mentally impaired or under 13, or (iii) the touching by another of the complainant's intimate party effected by coercion or by a person in a position of authority, or (iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts. | MINN. STAT. § 609.344 (2005). (2) A person convicted under subdivision 1 may be sentenced to imprisonment for not more than fifteen years or to a payment of a fine not more than \$30,000 or both. MINN. STAT. § 609.345 (2005). (2) A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine not more than \$20,000 or both. | MINN. STAT. § 609.344 (2005). (1)(m) Consent by the complainant is not a defense. |
| | Criminal sexual conduct in the fourth degree. MINN. STAT. § 609.345 (2005). | MINN. STAT. § 609.345 (2005). (1) A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exist: (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. | | | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Mississippi | Crime of sexual activity between law enforcement or correctional personnel and prisoners; sanctions. MISS. CODE ANN. § 97-3-104 (2006). | MISS. CODE ANN. § 97-3-104 (2006). 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, with any offender, with or without the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility. | Sexual battery; definitions. MISS. CODE ANN. § 97-3-97 (2006). (a) Sexual penetration includes cunnilingus, fellatio, buggery, or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body. | MISS. CODE ANN. § 97-3-104 (2006). Any person who violates this section shall be guilty of a felony and upon conviction shall be fined not more than \$5,000 or imprisoned for a term not to exceed 5 years, or both. | MISS. CODE ANN. § 97-3-104 (2006). Consent is not a defense. |
| Missouri | Sexual contact with an inmate, penalty -- consent not a defense MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo. HB 1698 (2006)). Offender abuse; penalty; employees not to use physical force, exceptions. MO. REV. STAT. § 217.405 (2005). | MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo. HB 1698 (2006)). 1. A person commits the crime of sexual contact with a prisoner or offender if: (1) Such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with a prisoner or; (2) such person is a probation and parole officer and has sexual intercourse or deviate sexual intercourse with an offender who is under the direct supervision of the officer. MO. REV. STAT. § 217.405 (2005). 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. (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. | MO. REV. STAT. § 217.410 (2005). 1. When any employee of the department has reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused, he shall immediately report it in writing to the director. (5) Upon receipt of a report, the department shall initiate an investigation within 24 hours. (10) No person who directs or exercises any authority in a correctional center operated or funded by the department shall harass, dismiss or retaliate against an offender or employee because he or any member of his family has made a report of any violation or suspected violation of laws, ordinances or regulations applying to the correctional center which he has reasonable cause to believe has been committed or has occurred. MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo. HB1698(2006)). 2. For the purposes of this section the following terms shall mean: (1) "Prisoner," includes any person who is in the custody of a jail, whether pre-trial or after disposition of a charge (2) "Offender" includes any person in the custody of a prison or correctional facility and any person who is under the supervision of the state board of probation and parole. | MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo. HB1698(2006)) 3. Sexual contact with a prisoner or offender is a class D felony. MO. REV. STAT. § 558.011 (2005). 1. The terms of imprisonment, including both prison and conditional release terms are: (4) For a class D felony, a term of years not to exceed four years. Sentence of imprisonment terms - conditional release MO. REV. STAT. § 558.011.1 (2005). The penalty MO. REV. STAT. § 217.410 (2005). 3. Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor. MO. REV. STAT. § 558.011.1 (2005). 5. The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year. | MO. REV. STAT. § 566.145(3) (2005). 4. Consent of a prisoner or offender is not an affirmative defense. |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Missouri (cont.) | | | <p>MO. REV. STAT. § 566.010 (2005). As used in this chapter and chapter 568, RSMo, the following terms mean:</p> <p>(1) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person;</p> <p>(2) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;</p> <p>(3) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;</p> <p>(4) "Sexual intercourse", any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.</p> | | |
| Montana | <p>Sexual assault. MONT. CODE ANN. § 45-5-502 (2005).</p> <p>Sexual intercourse without consent. MONT. CODE ANN. § 45-5-503 (2005).</p> | <p>MONT. CODE ANN. § 45-5-502 (2005).</p> <p>(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.</p> <p>(5) Consent is ineffective under this section if:</p> <p>(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.</p> | | <p>MONT. CODE ANN. § 45-5-502 (2005).</p> <p>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.</p> <p>MONT. CODE ANN. § 45-5-503 (2005).</p> <p>(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</p> | <p>MONT. CODE ANN. § 45-5-501 (2005).</p> <p>Consent is not a defense.</p> |

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| Montana (cont.) | | (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. | | | fined an amount not to exceed \$50,000, or both. |
| Nebraska | Sexual abuse of an inmate or parolee. NEB. REV. STAT. ANN. § 28-322.01 (LexisNexis 2005). 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 § 28-318. NEB. REV. STAT. ANN. 28-322.02 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the second degree; penalty NEB. REV. STAT. ANN. § 28-322.03 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the first degree; penalty NEB. REV. STAT. ANN. § 28-322.04 (LexisNexis 2005). | NEB. REV. STAT. ANN. § 28-322.01 (LexisNexis 2005). 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 § 28-318. NEB. REV. STAT. ANN. § 28-322.02 (LexisNexis 2005). 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. NEB. REV. STAT. ANN. § 28-322.03 (LexisNexis 2005). 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. | Terms Defined. NEB. REV. STAT. ANN. § 28-318 (LexisNexis 2005). (5) Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact shall also mean the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party; (6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or non-health purposes. Sexual penetration shall not require emission of semen. Sexual abuse of an inmate or parolee; terms, defined. NEB. REV. STAT. ANN. § 28-322 (LexisNexis 2005). For purposes of sections 28-322 to 28-322.03: (1) inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or | Sexual abuse of an inmate or parolee in the first degree; penalty. NEB. REV. STAT. ANN. § 28-322.02 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the first degree is a Class III felony. Sexual abuse of an inmate or parolee in the second degree; penalty. NEB. REV. STAT. ANN. § 28-322.03 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the second degree is a Class IV felony. Felonies; classification of penalties; sentences; where served; eligibility for probation. NEB. REV. STAT. ANN. § 28-105(1) (LexisNexis 2005). The penalty for a Class III felony is a term of 1 to 20 years imprisonment or a \$25,000 fine, or both. The penalty for a Class IV felony is minimum- one and maximum- five years imprisonment, or ten thousand dollars fine, or both. | NEB. REV. STAT. ANN. § 28-322.01 (LexisNexis 2005). It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact. |

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State **Statute** **Coverage** **Definitions/Notes** **Penalties** **Defenses**

Nebraska
(cont.)

under parole supervision; and
 (2) Person means (a) an individual employed by the Department of Correctional Services or by the Office of Parole Administration, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual 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, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.

Nevada

Voluntary sexual conduct between prisoner and another person;
 NEV. REV. STAT. ANN. § 212.187 (LexisNexis 2006).

1. A prisoner who is in lawful custody or confinement, other than in the custody of the division of parole and probation of the department of public safety or residential confinement, and who voluntarily engages in sexual conduct with another person is guilty of a category D felony.

2. A person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than in the custody of the division of parole and probation of the department of public safety or residential confinement, is guilty of a category D felony.

NEV. REV. STAT. ANN. § 212.187 (LexisNexis 2006).

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.

NEV. REV. STAT. ANN. § 193.130 (LexisNexis 2006).

2. (d)A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000 unless a greater fine is authorized or required by statute.

Categories and punishment of felonies.

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| <p>Nevada (cont.)</p> | | | <p>NOTE: Unlike many laws in other states, this law addresses sexual conduct between prisoners and gives a “duty defense” to correctional officers.</p> <p>“Prisoner” defined. NEV. REV. STAT. ANN. § 193.022 (LexisNexis 2006). “Prisoner” includes any person held in custody under process of law, or under lawful arrest.</p> | | |
| <p>New Hampshire</p> | <p>Aggravated Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A:2 (LexisNexis 2006).</p> <p>Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A:3 (LexisNexis 2006).</p> | <p>N.H. REV. STAT. ANN. § 632-A:2(i) (LexisNexis 2006). i. 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 action is in a position of authority over the victim and use this authority to coerce the victim to submit under any of the following circumstances: (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or (2) When the actor is a probation or parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.</p> <p>N.H. REV. STAT. ANN. § 632-A:3 (LexisNexis 2006). A person is guilty of a class B felony if such person: i. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA § 632-</p> | <p>Definitions. N.H. REV. STAT. ANN. § 632-A:1 In this chapter: i. “Actor” means a person accused of a crime of sexual assault. i-a. “Affinity” means a relation which one spouse because of marriage has to blood relatives of the other spouse. i-b. “Genital openings” means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum. i-c. “Pattern of sexual assault” means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years. ii. “Retaliate” means to undertake action against the interests of the victim, including, but not limited to: (a) Physical or mental torment or abuse. (b) Kidnapping, false imprisonment or extortion. (c) Public humiliation or disgrace. iii. “Serious personal injury” means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ. iv. “Sexual contact” means the</p> | <p>N.H. REV. STAT. ANN. § 632-A:3 (LexisNexis 2006). A person is guilty of a class B felony if such person: 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. Classification of crimes. N.H. REV. STAT. ANN. § 625:9 The penalty for a class B felony is imprisonment of 1-7 years and fines.</p> | <p>N.H. REV. STAT. ANN. § 632-A:2 (LexisNexis 2006). (n) Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be a defense. N.H. REV. STAT. ANN. § 632-A:3 (LexisNexis 2006). IV. Consent of the victim under any of the circumstances set forth in subparagraph IV shall not be a defense.</p> |

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| New Hampshire (cont.) | | 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 direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or the juvenile detention facility where the actor is employed; or (b) when the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation. | intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including breasts and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification. V. "Sexual penetration" means: (a) Sexual intercourse; or (b) Cunnilingus; or (c) Fellatio; or (d) Anal intercourse; or (e) Any intrusion, however slight, of any part of the actor's body or any object manipulated by the actor into genital or anal openings of the victim's body; or (f) Any intrusion, however slight, of any part of the victim's body into genital or anal openings of the actor's body; (g) Any act which forces, coerces or intimidates the victim to perform any sexual penetration as defined in subparagraphs (a)-(f) on the actor, on another person, or on himself. (h) Emission is not required as an element of any form of sexual penetration. VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods. | | |
| New Jersey | Sexual assault N.J. REV. STAT. ANN. § 2C:14-2 (2006). | N.J. REV. STAT. ANN. § 2C:14-2 (2006). a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances: (2) The victim is at least 13 but less than 16 and (b) the actor has supervisory or disciplinary power over the person by virtue of the actor's legal, professional or occupational status, or c. An actor is guilty of sexual assault | Definitions. N.J. REV. STAT. ANN. § 2A:61B-1 (2006). a. As used in this act: (3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction. | N.J. REV. STAT. ANN. § 2C:14-2 (2006). (a) Aggravated sexual assault is a crime of the first degree. N.J. REV. STAT. ANN. § 2C:14-2 (2006). c. Sexual assault is a crime of the second degree. Sentence of imprisonment for crime; ordinary terms; mandatory terms. N.J. REV. STAT. ANN. § 2C:43-6 (2006). | |

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| New Jersey (cont.) | | if he commits an act of sexual penetration with another person under any one of the following circumstances: (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. | | | <p>a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:</p> <p>(1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;</p> <p>(2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years.</p> |
| New Mexico | Criminal sexual penetration. N.M. STAT. ANN. § 30-9-11 (LexisNexis 2006). | N.M. STAT. ANN. § 30-9-11. (LexisNexis 2006). D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated: (1) on a child thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit; (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. | N.M. STAT. ANN. § 30-9-11. (LexisNexis 2006). 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. | N.M. STAT. ANN. § 30-9-11. (LexisNexis 2006). D. Criminal sexual penetration in the second degree is a second-degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offenses against a child shall be sentenced to a minimum term of imprisonment of three years. | |
| New York | Sexual misconduct. N.Y. PENAL LAW § 130.20 (Consol. 2006). Rape in the third degree. N.Y. PENAL LAW § 130.25 (Consol. 2006). | N.Y. PENAL LAW § 130.20 (Consol. 2006). A person is guilty of sexual misconduct when: 1. He or she engages in sexual intercourse with another person without such person's consent; or 2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent. | N.Y. PENAL LAW § 130.05 (Consol. 2006). 3.(e)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 | N.Y. STAT. ANN. § 31-18-15 (LexisNexis 2006). A. The penalty for a second degree felony shall be imprisonment for a term of 9 years and E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed: (5) for a second degree felony, ten thousand dollars. | N.Y. PENAL LAW § 130.05 (Consol. 2006). 3. A person is deemed incapable of consent when he or she is: (a) less than seventeen years old; or (b) mentally disabled; or (3) mentally incapacitated; or (4) physically helpless. |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| New York (cont.) | Criminal sexual act in the third degree. N.Y. PENAL LAW § 130.40 (Consol. 2006). Forcible touching. N.Y. PENAL LAW § 130.52 (Consol. 2006). | N.Y. PENAL LAW § 130.25 (Consol. 2006). A person is guilty of rape in the third degree when: 1. He or she engages in sexual intercourse with another person who is incapable of consent by reason of some factor other than being less than seventeen years old. | 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 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, such as such term is defined in subdivision two of section four hundred of the correctional 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 correctional 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. | N.Y. PENAL LAW § 130.40 (Consol. 2006). Criminal sexual act in the third degree is a class E felony. N.Y. PENAL LAW § 130.52 (Consol. 2006). Forcible touching is a class A misdemeanor. | 3. (e) Marriage is a defense. |
| | Sexual abuse in the third degree. N.Y. PENAL LAW § 130.55 (Consol. 2006). | N.Y. PENAL LAW § 130.40. A person is guilty of criminal sexual act in the third degree when: 1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old; 2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or 3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent. | sexual abuse in the third degree is a class B misdemeanor. N.Y. PENAL LAW § 130.60 (Consol. 2006). Sexual abuse in the second degree is a class A misdemeanor. Sentences of imprisonment for misdemeanors and violation N.Y. PENAL LAW § 70.15 (Consol. 2006). (1): A sentence of imprisonment for a class A misdemeanor shall ... be fixed by the court, and shall not exceed one year. (3)(d): For a class E felony, the term shall be fixed by the court, and shall range from 1 ? to 4 years. | | |
| | Sexual abuse in the second degree. N.Y. PENAL LAW § 130.60 (Consol. 2006). | N.Y. PENAL LAW § 130.52 (Consol. 2006). A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purposes of gratifying the actor's sexual desire. For the purposes of this section, forcible touching includes the squeezing, grabbing or pinching. | Sex Offenses; definition of terms. N.Y. PENAL LAW § 130.00 (Consol. 2006). The following definitions are applicable to this article 1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. 2. "Oral sexual conduct means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina. (b) "Anal sexual conduct" means the conduct between persons consisting | | |

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State **Statute** **Coverage** **Definitions/Notes** **Penalties** **Defenses**

New York
(cont.)

this section, it is an affirmative defense that (a) such other person's incapacity to consent was due solely to being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

N.Y. PENAL LAW § 130.60 (Consol. 2006).

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

1. incapable of consent by reason of some factor other than being less than seventeen years old.

of contact between the penis and anus.

3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing.
8. "Forcible compulsion" means to compel by either: a. use of physical force; or b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or another person will immediately be kidnapped.

Definitions.

N.Y. CORREC § 40 (Consol. 2006).
As used in this article the following terms have the following meanings:

2. "Local correctional facility" means any county jail, county penitentiary, county lockup, city jail, police station jail, town or village jail or lockup, court detention pen or hospital prison ward.
3. "Correctional facility" means any institution operated by the state department of correctional services, any local correctional facility, or any place used, pursuant to a contract with the state or a municipality, for the detention of persons charged with or convicted of a crime, or, for the purpose of this article only, a secure facility operated by the state division for youth.

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| North Carolina | Intercourse and sexual offenses with certain victims; consent no defense N.C. GEN. STAT. § 14-277 (2006). | N.C. GEN. STAT. § 14-277 (2006). (a) If a defendant 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. | N.C. GEN. STAT. § 14-271 (2006). (4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body; provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes. | N.C. GEN. STAT. § 14-277 (2006) (a) A violation of this section is a class E felony. | N.C. GEN. STAT. § 14-277 (2006). (a) Consent is not a defense to a charge under this section. |
| North Dakota | Sexual abuse of wards. N.D. CENT. CODE § 12.1-20-06 (2006). Sexual assault. N.D. CENT. CODE § 12.1-20-07 (2006). | N.D. CENT. CODE § 12.1-20-06 (2006). A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class C felony if 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 the other person. N.D. CENT. CODE § 12.1-20-07 (2006). (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 | <p>CASE NOTE: Custodial sexual offense does not require act by force against the will of another person. It requires that the perpetrator's principal or employer, have custody of the victim.</p> <p><i>State v. Raines</i>, 319 N.C. 258 (1987) (holding that a voluntary patient in a private hospital was in "custody" of the hospital, and an intensive care charge nurse was properly convicted, under a statute criminalizing sexual intercourse with a person in the custody of the offender's employer).</p> | N.D. CENT. CODE § 12.1-20-06 (2006). Sexual abuse of wards is a class C felony. N.D. CENT. CODE § 12.1-20-07(2) (2006). Sexual assault is a class C felony. N.D. CENT. CODE § 12.1-32-01 (2006). (4) The penalty for a class C felony shall be imprisonment for a maximum of 5 years, a fine of \$5,000, or both. | |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| North Dakota (cont.) | | actor has supervisory or disciplinary authority over that other person. | the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires. CASE NOTE: See <i>State v. Ennis</i> , 464 N.W. 2d 378 (1990) (holding that time on probation is not “time spent in custody” within the meaning of N.D. Cent. Code §12.1-32-02 and time on parole, too, is not “time spent in custody” within the meaning of §12.1-32-02). | | |
| Ohio | Sexual Battery. OHIO REV. CODE ANN. § 2907.03 (LexisNexis 2006). | OHIO REV. CODE ANN. § 2907.03 (A) (LexisNexis 2006). (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. (11) The person is confined in a detention facility, and the offender is an employee of that detention facility. | Definitions. OHIO REV. CODE ANN. § 2907.01(A) (LexisNexis 2006). (A) “Sexual conduct” means vaginal intercourse between a male and female; anal intercourse; fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is insufficient to complete vaginal or anal intercourse. | OHIO REV. CODE ANN. § 2907.03 (LexisNexis 2006). (B) Sexual battery is a felony of the third degree. OHIO REV. CODE ANN. § 2929.14 (LexisNexis 2006). (A)(3) The penalty for a felony of the third degree shall be imprisonment for a term of between 1 and 5 years. | OHIO REV. CODE ANN. § 2907.03 (LexisNexis 2006). (A) Marriage is not a defense. |
| | | | CASE NOTE: See <i>State v. Thompson</i> , 33 Ohio St. 3d 1 (1987) (stating that both probationers and parolees have been held to possess U.S. const. Amend. IV rights more limited than other people, because they are considered to be in the constructive, as opposed to actual or physical, custody of the state at all times during their probation or parole). | | |

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| Oklahoma | Rape defined. OKLA. STAT. tit. 21, § 1111 (2005). Rape in the first degree - second degree. OKLA. STAT. tit. 21, § 1114 (2005). Forcible sodomy. OKLA. STAT. tit. 21, § 888 (2005). | OKLA. STAT. tit. 21, § 1111(A) (2005). 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 federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim. OKLA. STAT. tit. 21, § 1114 (2005). A. Rape in the first degree shall include: 3. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or 4. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime. B. In all other cases, rape or rape by instrumentation is rape in the second degree. OKLA. STAT. tit. 21, § 888 (2005). A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the State Penitentiary for a period of not more than twenty (20) years, except as provided in Section 3 of this act. Any person convicted of a second violation of this section, | Punishment of rape in the first degree. OKLA. STAT. tit. 21, § 1115 (2005). Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, not less than five (5) years, in the discretion of the jury, or in case the jury fails or refuses to fix the punishment then the same shall be pronounced by the court. Rape in the second degree a felony. OKLA. STAT. tit. 21, § 1116 (2005). Rape in the second degree is a felony, and punishable by imprisonment in the State Penitentiary for not less than one (1) year nor more than fifteen (15) years'. | OKLA. STAT. tit. 21, § 1111 (2005). (A) Marriage is a defense. | |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Oklahoma (cont.) | | where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. B. The crime of forcible sodomy shall include: 1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or 2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or 3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime; or 4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state. | | | |
| Oregon | Custodial sexual misconduct in the first degree. OR. REV. STAT. § 163.452 (2006). Custodial sexual misconduct in the second degree. OR. REV. STAT. § 163.454 (2006). | OR. REV. STAT. § 163.452 (2006). (1) A person commits the crime of custodial sexual misconduct in the first degree if the person: (a) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is: (A) In the custody of a law enforcement agency following arrest; (B) Confined or detained in a correctional facility; | Definitions. OR. REV. STAT. § 163.305 (2006). As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise: (1) "Deviate sexual intercourse" means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another. (5) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. | OR. REV. STAT. § 163.452 (2006). (4) Custodial sexual misconduct in the first degree is a Class C felony. OR. REV. STAT. § 163.454 (2006). (4) Custodial sexual misconduct in the second degree is a Class A misdemeanor. | OR. REV. STAT. § 163.452 (2006). (2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section. (3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on pro- |

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| Oregon (cont.) | | <p>(C) Participating in an inmate or offender work crew or work release program; or</p> <p>(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and</p> <p>(b) Is employed by or under contract with the state or local agency that:</p> <p>(A) Employs the officer who arrested the other person;</p> <p>(B) Operates the correctional facility in which the other person is confined or detained;</p> <p>(C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or</p> <p>(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).</p> | <p>(6) "Sexual contact" means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.</p> <p>(7) "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.</p> <p>OR. REV. STAT. § 30.642 (2006).</p> <p>(2)"Correctional facility" means a Department of Corrections institution or a jail.</p> | | <p>bation, parole, post-prison supervision or other form of conditional or supervised release.</p> <p>OR. REV. STAT. § 163.454 (2006).</p> <p>(2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.</p> <p>(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.</p> |
| | | <p>OR. REV. STAT. § 163.454 (2006).</p> <p>(1) A person commits the crime of custodial sexual misconduct in the second degree if the person:</p> <p>(a) Engages in sexual contact with another person knowing that the other person is:</p> <p>(A) In the custody of a law enforcement agency following arrest;</p> <p>(B) Confined or detained in a correctional facility;</p> <p>(C) Participating in an inmate or offender work crew or work release program; or</p> <p>(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and</p> <p>(b) Is employed by or under contract with the state or local agency that:</p> <p>(A) Employs the officer who arrested the other person;</p> <p>(B) Operates the correctional facility in which the other person is confined or detained;</p> <p>(C) Is responsible for supervising the other person in a work crew or work release program or on probation,</p> | | | |

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Oregon
(cont.)

parole, post-prison supervision or other form of conditional or supervised release; or
(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

Pennsylvania

Institutional sexual assault.
18 PA. CONS. STAT. § 3124.2 (2005).

18 PA. CONS. STAT. § 3124.2 (2005).
(a) 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 a person who is an employee or agent of the Department of Corrections or a county corrections authority, state 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.

18 PA. CONS. STAT. § 3124.2 (2005).
(b) 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.

Definitions.

18 PA. CONS. STAT. § 3101 (2005).
Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:
"DEVIATE SEXUAL INTERCOURSE:" Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.
"INDECENT CONTACT:" Any touching of the sexual or other intimate parts of the person for the purpose of

18 PA. CONS. STAT. § 106 (2005).
(b)(4) The penalty for a felony of the third degree shall be imprisonment for a term up to 7 years.

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| Pennsylvania (cont.) | | | arousing or gratifying sexual desire, in either person. "SEXUAL INTERCOURSE." In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required. | | |
| Rhode Island | Correctional employees - - Sexual relations with inmates - - Felony R.I. GEN. LAWS § 11-25-24 (2006). | R.I. GEN. LAWS § 11-25-24 (2006). 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 therein or who is otherwise under the direct custodial supervision and control of said employee shall be guilty of a felony. | R.I. GEN. LAWS § 11-37-1 (2006). (8) "Sexual penetration" means: sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genitals or anal openings of another person's body or the victim's own body upon the accused's instruction, but emission of semen is not required. | R.I. GEN. LAWS § 11-25-24 (2006). Violation of this section is a felony, the penalty for which shall be imprisonment for not more than 5 years and/or a fine of not more than \$10,000. | |
| South Carolina | Sexual misconduct with an inmate, patient or offender S.C. CODE ANN. § 44-23-1150 (2005). | S.C. CODE ANN. § 44-23-1150 (2005). (B) An actor is guilty of sexual misconduct when the actor, knowing that the victim is an inmate, offender, or patient voluntarily engages with the victim in an act of sexual intercourse, whether vaginal, oral or anal, or other sexual contact for the purpose of sexual gratification. S.C. CODE ANN. § 44-23-1150 (2005). (D) A person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year. (E) A person who has knowledge of sexual misconduct who has received information in the person's professional capacity and fails to report it to the appropriate law enforcement authority, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and upon | S.C. CODE ANN. § 44-23-1150 (2005). (A) As used in this section: (1) 'Actor' means an employee, volunteer, agent, or contractor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. (2) 'Victim' means an inmate or patient who is confined in or lawfully or unlawfully absent from a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor. | S.C. CODE ANN. § 44-23-1150 (2005). (C)(1) When the sexual misconduct involves an act of sexual intercourse, whether vaginal, oral or anal, the actor is guilty of the felony of sexual misconduct first degree and, upon conviction, must be imprisoned for not more than ten years. (2) When the sexual misconduct does not involve sexual intercourse but involves other sexual contact which is engaged in for sexual gratification, the actor is guilty of the felony of sexual misconduct second degree and, upon conviction, must be imprisoned for not more than five years. | S.C. CODE ANN. § 44-23-1150 (2005). (A)(2) A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor. |

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| South Carolina (cont.) | | conviction, must be imprisoned for not more than six months, or both. | mate parts", as defined in Section 16-3-651(d), of another person's body, or to the fondling of the intimate parts of another person's body, which is done in a manner not required by professional duties, but instead is done to demonstrate affection; sexually stimulate that person or another person, or harass that person. | | |
| | | | Criminal sexual conduct: definitions. S.C. CODE ANN. § 16-3-651 (2005). For the purposes of §§ 16-3-651 to 16-3-659A: (d) "intimate parts" includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being. | | |
| South Dakota | Sexual acts between employees and inmates prohibited. S.D. CODIFIED LAWS § 24-1-26.1 (2006). | S.D. CODIFIED LAWS § 24-1-26.1 (2006). 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 custody, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony. | Definitions. S.D. CODIFIED LAWS § 22-22-2 (2006). "Sexual penetration" means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. | S.D. CODIFIED LAWS § 24-1-26.1 (2006). The violation of this section is a Class 6 felony. | |
| | Sexual contact or penetration by correctional facility employee with inmate -- Penalty S.D. CODIFIED LAWS § 22-22-7.6 (2006). | S.D. CODIFIED LAWS § 22-22-7.6 (2006). 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 custody, 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. | Programs and agencies governed by department. S.D. CODIFIED LAWS § 1-15-1.4 (2006). The Department of Corrections, under the direction and control of the secretary of corrections, shall govern the juvenile corrections programs established subject to § 26-11A-1, the state penitentiary, and other state correctional facilities, parole services, the Board of Pardons and Paroles, and such other agencies as may be created by statute, executive order, and administrative action and placed under the Department of Corrections. | S.D. CODIFIED LAWS § 22-6-1 (2006). (8) The penalty for a Class 6 felony shall be imprisonment in the state penitentiary for a term of 2 years and/or a fine of \$2,000. | |

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| South Dakota (cont.) | | 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 § 26-7A-1 (2006). (15) "Detention," the temporary custody of a child in secured physically restricting facilities for children, sight and sound separated from adult prisoners; (16) "Detention facility," a secured, physically-restricting facility designed, staffed, and operated for children and separated by sight and sound from adult prisoners or a facility for children in the same building or secure perimeter as an adult jail or lockup, where children are sight and sound separated from adult prisoners, where staff in the detention facility are trained and certified by the entity operating facility to work with children, and the facility had been approved as a collocated facility by the Office of Juvenile Justice and Delinquency Prevention. | | |
| Tennessee | Sexual contact with inmates. TENN. CODE ANN § 39-16-408 (2006). Sexual battery by an authority figure. TENN. CODE ANN. § 39-13-527 (2005). | TENN. CODE ANN. § 39-16-408 (2006). It is an offense for a law enforcement officer, correctional employee, vendor or volunteer to engage in sexual contact or sexual penetration, as such terms are defined in §39-13-501, with a prisoner or inmate who is in custody at a penal institution as defined in §39-16-601, whether such conduct occurs on or off the grounds of such institution. TENN. CODE ANN. § 39-13-527 (2005). (a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant, or the defendant by a victim, accompanied by the fact that the victim was, at the time of the offense, thirteen (13) years of age or older, but less than eighteen (18) years of age, and either: (1) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary | TENN. CODE ANN. § 39-16-408 (2006). "Volunteer" means any person who, after fulfilling the appropriate policy requirements, is assigned to a volunteer job and provides a service without pay from the correctional agency except for compensation for those expenses incurred directly as a result of such volunteer service. "Law enforcement officer" and "correctional employee" include a person working in such capacity as a private contractor or employee of a private contractor. TENN. CODE ANN. § 39-13-501 (2005). (6) "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering the immediate area of the victim's, the defendant's, or any other person's intimate part, if that intentional touching can be reasonably | TENN. CODE ANN. § 39-16-408 (2006). A violation of this section is a Class E felony. The authorized term of imprisonment for a Class E felony is not less than 1 year nor more than 6 years. In addition, a fine not to exceed \$3000 may be assessed. TENN. CODE ANN. § 39-13-527 (2005). (b) Sexual battery by an authority figure is a Class C felony. | |

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| Tennessee (cont.) | | power over the victim by virtue of the defendant's legal, professional or occupational status, and used such position of trust or power to accomplish the sexual contact; or (2) The defendant had, at the time of the offense, parental or custodial authority over the victim and used such authority to accomplish the sexual contact. | construed as being for the purpose of sexual arousal or gratification. (7) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, defendant's, or any other person's body, but emission of semen is not required. | | |
| | | | TENN. CODE ANN. § 39-16-601 (2005). (2) "Custody" means under arrest by a law enforcement officer or under restraint by a public servant pursuant to an order of a court; (4) "Penal institution" ... includes any institution or facility used to house or detain a person: (A) convicted of a crime; (B) adjudicated delinquent by a juvenile court; (C) who is direct or indirect custody after a lawful arrest. | | |
| Texas | Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody. TEX. PENAL CODE ANN. § 39.04 (Vernon 2005). | (a) An official of a correctional facility or employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if he intentionally: (2) engages in sexual contact, sexual intercourse or deviate sexual intercourse with an individual in custody. | TEX. PENAL CODE ANN. § 39.04 (Vernon 2005). (e) In this section: (2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment of an offender to a facility operated by or under contract with the TX Youth Commission or a facility operated by or under contract with a juvenile board of a juvenile offender. (4) "Sexual contact" means: (A) "deviate sexual intercourse" as defined by Section 21.01, Penal Code; (B) "sexual contact" as defined by Section 21.01, Penal Code; (C) "sexual intercourse" as defined by Section 21.01, Penal Code; or (D) requests by the mental health services provider for conduct described by Paragraph (A), (B), or (C). "Sexual contact" does not include conduct described by Paragraph (A) or (B) that is a part of | TEX. PENAL CODE ANN. § 39.04(b) (Vernon 2005). An offense under Section (a)(2) is a state jail felony. TEX. PENAL CODE ANN. § 39.04(g) (Vernon 2005). An offense under Subsection (f) is a state jail felony. State jail felony punishment. TEX. PENAL CODE ANN. § 12.35(a)-(b) (Vernon 2005). The penalty for a state jail felony is 180 days to 2 years in the state jail and/or a fine not to exceed \$10,000. TEX. PENAL CODE ANN. § 12.35(c) (Vernon 2005). Additional penalties may apply depending on prior offense history. | |
| | | TEX. PENAL CODE ANN. § 39.04(f) (Vernon 2005). 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. | | | |

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| Texas (cont.) | | | <p>a professionally recognized medical treatment of a patient.</p> <p>Definitions. TEX. PENAL CODE ANN. § 21.01 (Vernon 2005). In this chapter: (1) "Deviate sexual intercourse" means: A) any contact between any part of the genitals of one person and the mouth or anus of another person; or (B) the penetration of the genitals or the anus of another person with an object. (2) "Sexual contact" means, except as provided by Section 21.11, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person. (3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ. (4) "Spouse" means a person to whom a person is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.</p> | | |
| Utah | <p>Custodial sexual relations - custodial sexual misconduct -- definitions - penalties - defenses. UTAH CODE ANN. § 76-5-412 (2006).</p> | <p>UTAH CODE ANN. § 76-5-412 (2006). Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses (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:</p> | <p>UTAH CODE ANN. § 76-5-412 (2006). (1) As used in this section: (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</p> | <p>UTAH CODE ANN. § 76-5-412 (2006). (4)(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 (2)(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. Fines of persons. UTAH CODE ANN. § 76-6-301 (2006). (1) A person convicted of an offense may be sentenced to pay a fine, not</p> | <p>UTAH CODE ANN. § 76-5-412 (2006). (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</p> |

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| Utah (cont.) | | <p>(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-15-601 or other medical facility;</p> <p>(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or</p> <p>(iii) under lawful or unlawful arrest, either with or without a warrant.</p> <p>(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.</p> <p>(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3);</p> <p>(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and</p> <p>(ii) (A) the actor knows that the individual is a person in custody; or</p> <p>(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.</p> <p>(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.</p> <p>(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.</p> <p>(3) Acts referred to in Subsection (2)(a) are:</p> <p>(a) having sexual intercourse with a</p> | <p>with or without a warrant.</p> <p>(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.</p> <p>"Prisoner" defined. UTAH CODE ANN. § 76-5-101 (2006). For purposes of this part "prisoner" means any person who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the Division of Juvenile Justice Services regardless of whether the confinement is legal.</p> | <p>exceeding:</p> <p>(a) \$10,000 for a felony conviction of the first degree or second degree;</p> <p>(b) \$5,000 for a felony conviction of the third degree;</p> <p>(c) \$2,500 for a class A misdemeanor conviction.</p> | <p>alleged offense; or (ii) was unaware of the true age of the person in custody.</p> <p>(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).</p> <p>(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).</p> |

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Utah
(cont.)

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:

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| Utah (cont.) | | <p>(a) touching the anus, buttocks, or any part of the genitals of a person in custody;</p> <p>(b) touching the breast of a female person in custody;</p> <p>(c) otherwise taking indecent liberties with a person in custody; or</p> <p>(d) causing a person in custody to take indecent liberties with the actor or another person.</p> <p>(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:</p> <p>(a) Section 76-5-401, unlawful sexual activity with a minor;</p> <p>(b) Section 76-5-402, rape;</p> <p>(c) Section 76-5-402.1, rape of a child;</p> <p>(d) Section 76-5-402.2, object rape;</p> <p>(e) Section 76-5-402.3, object rape of a child;</p> <p>(f) Section 76-5-403, forcible sodomy;</p> <p>(g) Section 76-5-403.1, sodomy on a child;</p> <p>(h) Section 76-5-404, forcible sexual abuse;</p> <p>(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or</p> <p>(j) Section 76-5-405, aggravated sexual assault.</p> <p>(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:</p> <p>(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or</p> <p>(ii) was unaware of the true age of the person in custody.</p> <p>(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).</p> <p>(8) It is a defense that the commission by the actor of an act under</p> | | | |

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| Utah (cont.) | | Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1). | | | |
| Vermont | SEXUAL EXPLOITATION OF AN INMATE VT. STAT. ANN. tit. 13, § 3257 (2006). | VT. STAT. ANN. tit. 13, § 3257 (2006). (A) No correctional employee, contractor, or other person providing services to offenders on behalf of the department of corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence or furlough shall engage in a sexual act with a person who the employee, contractor, or other person providing services knows. (1) Is confined to a correctional facility; or (2) Is being supervised by the department of corrections while on parole, probation, supervised community sentence or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, person is engaged in a direct supervisory relationship with a supervisee is the supervisee is assigned to the caseload of that person. | | VT. STAT. ANN. tit. 13, § 3257 (2006). (B) A person who violates this subsection (A) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00 or both. | |
| Virginia | Carnal knowledge of an inmate, parolee, probationer, or pretrial offender; penalty. VA. CODE ANN. § 18.2-64.2 (2006). | VA. CODE ANN. § 18.2-64.2 (2006). An accused shall be guilty of carnal knowledge of an inmate, parolee, detainee, probationer, or pretrial or post-trial 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, | VA. CODE ANN. § 18.2-64.2 (2006). 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. | VA. CODE ANN. § 18.2-64.2 (2006). Such offense is a Class 6 felony. Punishment for conviction of felony VA. CODE ANN. § 18.2-10(f) (2006). The penalty for a Class 6 felony is imprisonment for 1-5 years if tried by a jury or up to 12 months if tried by the court and/or a fine not to exceed \$2,500. | |

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| Virginia (cont.) | | a local community correction program or a pretrial 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, a local community corrections program, or a pretrial program; and carnally knows without the use of force, threat or intimidations (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 post-trial offender under the jurisdiction of the department of corrections, the Department of Juvenile Justice, a secure facility or detention home, a local community corrections program, a pretrial program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial program. | | | |
| Washington | Custodial sexual misconduct in the first degree. WASH. REV. CODE ANN. § 9A.44.160 (LexisNexis 2006). Custodial sexual misconduct in the second degree. WASH. REV. CODE ANN. § 9A.44.170 (LexisNexis 2006). | WASH. REV. CODE ANN. § 9A.44.160 (LexisNexis 2006). 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 resident reasonably believes the perpetrator has, the | WASH. REV. CODE ANN. § 9A.44.160 (LexisNexis 2006). (3) Custodial sexual misconduct in the first degree is a class C felony. Maximum sentences for crimes committed July 1, 1984 and after. WASH. REV. CODE ANN. § 9A.20.021 (LexisNexis 2006). (1)(G) The penalty for a class C felony is imprisonment for no more than 5 years and/or a fine of no more than \$10,000. WASH. REV. CODE ANN. § 9A.44.170 (LexisNexis 2006). (3) Custodial sexual misconduct in | WASH. REV. CODE ANN. § 9A.44.160 (LexisNexis 2006). (2) Consent of the victim is not a defense. WASH. REV. CODE ANN. § 9A.44.170 (LexisNexis 2006). (2) Consent of the victim is not a defense. Custodial Sexual Misconduct Defense. WASH. REV. CODE ANN. § 9A.44.180 (LexisNexis 2006). | |

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| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|-----------------------|--|---|-------------------|--|---|
| Washington (cont.) | | 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. | | the second degree is a gross misdemeanor. WASH. REV. CODE ANN. § 9A.20.021 (LexisNexis 2006). (2)(C) The penalty for a gross misdemeanor is imprisonment for up to 1 year and/or a fine of up to \$5,000. | It is an affirmative defense to prosecution under §§ 10 and 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. |
| | | WASH. REV. CODE ANN. § 9A.44.170 (LexisNexis 2006). A person is guilty of custodial 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 resident 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. | | | |
| West Virginia | Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalty. W. VA. CODE ANN. § 61-8B-10 (LexisNexis 2006). | W. VA. CODE ANN. § 61-8B-10 (LexisNexis 2006). (a) Any person, employed by the division of corrections, working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, working at a correctional facility managed by the division of juvenile services pursuant to contract or as an employee of a state agency, employed by a county jail or 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 is guilty of a felony. | | W. VA. CODE ANN. § 61-8B-10 (LexisNexis 2006). (a) Upon conviction thereof, the employee shall be sentenced to one to five years or fined up to \$5,000. W. VA. CODE ANN. § 61-8B-10 (LexisNexis 2006). (b) Upon conviction thereof, the employee shall be sentenced to one to five years or fined up to \$5,000. | W. VA. CODE ANN. § 61-8B-2 Lack of consent. (a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim. (b) Lack of consent results from: (1) Forcible compulsion; or (2) Incapacity to consent; or (3) If the offense charged is sexual abuse, any circumstances in addition to the |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|---------------------------------|---|--|---|--|---|
| West Virginia (cont.) | | W. VA. CODE ANN. § 61-8B-10(a) (LexisNexis 2006). 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 someone said parole officer or probation officer is charged with supervising is guilty of a felony. | | | forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. (C) A person is deemed incapable of consent when such person is: (1) Less than sixteen years old; or (2) Mentally defective; or (3) Mentally incapacitated; or (4) Physically helpless. |
| Wisconsin | Second Degree Sexual Assault. WIS. STAT. ANN. § 940.225 (West 2006). Abuse of residents of penal facilities. WIS. STAT. ANN. § 940.29 (West 2006). | WIS. STAT. ANN. § 940.225 (West 2006). (2)(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section. WIS. STAT. ANN. § 940.225 (West 2006). (2)(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agents supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section. | Definition of jail. WIS. STAT. ANN. § 302.30 (West 2006).. In ss. 302.30 to 302.43, "jail" includes municipal prisons and rehabilitation facilities established under s. 59.53 (8) by whatever name they are known. In s. 302.37 (1) (a) and (3) (a), "jail" does not include lockup facilities. "Lockup facilities" means those facilities of a temporary place of detention at a police station which are used exclusively to hold persons under arrest until they can be brought before a court, and are not used to hold persons pending trial who have appeared in court or have been committed to imprisonment for nonpayment of fines or forfeitures. In s. 302.365, "jail" does not include rehabilitation facilities established under s. 59.53 (8). WIS. STAT. ANN. § 940.225 (West 2006). (5)(ab) "Correctional institution" means a jail or correctional facility, as defined in s. 961.01 (2m), a secured correctional facility, as defined in s. 938.02 (15m), or a secure detention facility, as defined in s. 938.02 (16). WIS. STAT. ANN. § 961.01 (West 2006). (12m) "Jail or correctional | WIS. STAT. ANN. § 940.225 (West 2006). Second Degree Sexual Assault is a Class C felony. WIS. STAT. ANN. § 939.50 (West 2006). The penalty for a Class C felony is a fine not to exceed 100,000 or imprisonment not to exceed 40 years, or both. WIS. STAT. ANN. § 940.29 (West 2006). The abuse of residents of penal facilities is a Class I felony. Classification of felonies. WIS. STAT. ANN. § 939.50 (West 2006). (3)(i) The penalty for a Class I felony shall be imprisonment for a term not to exceed 3 years and/or a fine not to exceed \$10,000. | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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| Wisconsin (cont.) | | <p>WIS. STAT. ANN. § 940.29 (West 2006). Any person in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class I felony.</p> | <p>facility" means any of the following: (a) A Type 1 prison, as defined in s. 301.01 (5). (b) A jail, as defined in s. 302.30. (c) A house of correction. (d) A Huber facility under s. 303.09. (e) A lockup facility, as defined in s. 302.30. (f) A work camp under s. 303.10.</p> <p>WIS. STAT. ANN. § 938.02 (WEST 2006). (15m) "Secured correctional facility" means a correctional institution operated or contracted for by the department of corrections or operated by the department of health and family services for holding in secure custody persons adjudged delinquent. "Secured correctional facility" includes the Mendota juvenile treatment center under s. 46.057 and a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b), or 938.539 (5).</p> <p>WIS. STAT. ANN. § 938.02 (WEST 2006) (16) "Secure detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.</p> <p>WIS. STAT. ANN. § 940.225 (West 2006) (5)(ad) "Correctional staff member" means an individual who works at a correctional institution, including a volunteer.</p> <p>WIS. STAT. ANN. § 940.225 (West 2006) (5)(b) "Sexual contact" means any of the following: 1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually</p> | | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|-------|---------|----------|-------------------|-----------|----------|
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Wisconsin (cont.)

degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.

3. For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.

WIS. STAT. ANN. § 940.225(West 2006).

(5)(C) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

Wyoming

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| Sexual assault in the second degree WYO. STAT. ANN. § 6-2-303 (2006). | WYO. STAT. ANN. § 6-2-303 (2006). (a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting 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. | WYO. STAT. ANN. § 6-2-301 (2006). (a)(iv) Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person. (vii) "Sexual intrusion" means: (A) Any intrusion, however slight, | WYO. STAT. ANN. § 6-2-306 (2006). (a)(ii) Sexual assault in the 2nd degree is a felony punishable by imprisonment for not more than 20 years. | |
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Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
|--|---|--|--|---|---|
| <p>Wyoming (cont.)</p> | | | <p>by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or (B) Sexual intercourse, cummilingus, fellatio, analingus or anal intercourse with or without emission.</p> <p>CASE NOTE: <i>Scadden v. Wyoming</i>, 732 P.2d 1036, 1039 (Wyo. 1987). In <i>Scadden</i>, the Wyoming Supreme Court stated that "a jailer ... [has] power over his prisoner, and therefore, the jailer is in a position of authority over the prisoner." <i>Id</i> at 1042.</p> | | |
| <p>United States</p> <p>(NOTE: This law also covers all federal United States territories including Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands)</p> | <p>Aggravated sexual abuse. 18 U.S.C.S. § 2241 (LexisNexis 2006).</p> <p>Sexual abuse. 18 U.S.C.S. § 2242 (LexisNexis 2006).</p> <p>Sexual abuse of a minor or ward. 18 U.S.C.S. § 2243 (LexisNexis 2006).</p> <p>Abusive sexual contact. 18 U.S.C.S. § 2244 (LexisNexis 2006).</p> | <p>18 U.S.C.S. § 2241 (LexisNexis 2006). (a) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly causes another person to engage in a sexual act (1) by using force against that person, (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both; (b)(1) renders another person unconscious, and thereby engages in a sexual act with that person, or (2) administers to another person by force or threat of force or without the knowledge or permission of that person a drug, intoxicant or other similar substance and thereby (A) substantially impairs the ability of that other person to appraise or control conduct, and (B) engages in a sexual act with that other person;</p> | <p>Definitions for chapter 18 U.S.C.S. § 2246 (LexisNexis 2006). As used in this chapter [18 USC §§ 2241 et seq.],-- (1) the term "prison" means a correctional, detention, or penal facility; (2) the term "sexual act" means-- (A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however slight; (B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; (C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or (D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass,</p> | <p>For offenders with 0 to 1 prior offenses: 18 U.S.C.S. Appx. § 2A3.1(b)(1) (LexisNexis 2006). The base penalty for aggravated sexual abuse shall be imprisonment for a term of 108-135 months. 18 U.S.C.S. Appx. § 2A3.1(a) (LexisNexis 2006). The base penalty for sexual abuse shall be imprisonment for a term of 70-87 months. 18 U.S.C.S. Appx. § 2A3.2(a) (LexisNexis 2006). The base penalty for sexual abuse of a minor shall be imprisonment for a term of 18-24 months. 18 U.S.C.S. Appx. § 2A3.3(a) (LexisNexis 2006). The base penalty for sexual abuse of a ward shall be imprisonment for a term of 4-10 months. 18 U.S.C.S. Appx. § 2A3.4(a)(3) (LexisNexis 2006). The base penalty for abusive sexual</p> | <p>18 U.S.C.S. § 2243 (LexisNexis 2006). (c)(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years. (2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.</p> |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

State Statute Coverage Definitions/Notes Penalties Defenses

United States (cont.)

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| United States (cont.) | <p>or attempts to do so, shall be fined under this title, imprisonment for any term of years, or life, or both. (c) With children. Whoever, in the special maritime and territorial jurisdiction of the U.S. or in a Federal prison or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 but not 16 (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life or both.</p> | <p>degrade, or arouse or gratify the sexual desire of any person; (3) the term "sexual contact" means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; (4) the term "serious bodily injury" means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty; (5) the term "official detention" means--</p> | <p>contact shall be imprisonment for a term of 6-27 months depending on the circumstances. 18 U.S.C.S. § 2244(a) (LexisNexis 2006). Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in or causes sexual contact with or by another person, if so to do would violate - (1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both; (2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;</p> | |
| | <p>18 U.S.C.S. § 2242 (LexisNexis 2006). Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly - (1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or (2) engages in a sexual act with another person if that other person is - (A) incapable of appraising the nature of the conduct; or (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.</p> | <p>(A) detention by a Federal officer or employee, or under the direction of a Federal officer or employee, following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following civil commitment in lieu of criminal proceedings or pending resumption of criminal proceedings that are being held in abeyance, or pending extradition, deportation, or exclusion; or (B) custody by a Federal officer or employee, or under the direction of a Federal officer or employee, for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; but does not include supervision or other control (other than custody during specified hours or days) after release on bail, probation, or parole, or after release following a finding of juvenile delinquency; and</p> | <p>(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or (4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than fifteen years, or both.</p> | |

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody

| State | Statute | Coverage | Definitions/Notes | Penalties | Defenses |
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United States
(cont.)

and territorial jurisdiction of the United States or in a Federal prison or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, knowingly engages in a sexual act with another person who is (1) in official detention; and (2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than five years, or both.

18 U.S.C. § 2244 (LexisNexis 2006). Abusive sexual conduct is sexual conduct in circumstances where sexual acts are punished under this chapter, if the sexual contact, had it been a sexual act, would have violated § 2241, § 2242, or § 2243.

(6) the term "State" means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.

Evaluation

The NIC/WCL Project staff and consultants are evaluating Breaking the Code of Silence: A Correction Officers' Handbook on Identifying and Addressing Sexual Misconduct, to determine how well it serves the field of corrections. We are primarily interested in its usability and applicability.

We would like you to complete the enclosed survey by going to www.imperialresolutions.com/coheval.htm or by filling this in and mailing it back to us at:

The NIC Project
 Washington College of Law
 4801 Massachusetts Ave, N.W.
 Washington, D.C. 20016

Please circle your answer to the following questions:

1. This handbook provides a favorable user/reader experience.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

2. This handbook clearly describes each topic to any interested party.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

3. This handbook treats each topic in a balanced and fair manner.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

4. All topics in this handbook are treated impartially on their merits.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

5. Correctional professionals can easily locate the topic/information they are looking for.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

6. This handbook is a useful/realistic reference for corrections officers.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

7. The use of this handbook will improve my job performance.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

8. This handbook can be understood by staff on every level – line, management, and leadership

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

9. My perception of this handbook compares favorably with my experience with other similar handbooks.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

10. I would recommend this handbook to other correctional professionals.

Strongly Agree Agree Neutral Disagree Strongly Disagree Not Applicable/Don't know

11. How did you first learn about this handbook?

Information and resource assistance through an NIC division

Word of mouth

Training [regional or academy]

Professional book list

Presentation

NIC/WCL Website

Other _____

12. Indicate the last time you contacted the NIC/WCL Project on Addressing Prison Rape for training?

1-12 months ago 13-18 months ago 19-24 months ago 25-36 months ago
37-48 months ago 49-60 months ago more than 61 months ago

13. Indicate the last time you contacted the NIC/WCL Project on Addressing Prison Rape for information or resources?

1-12 months ago 13-18 months ago 19-24 months ago 25-36 months ago
37-48 months ago 49-60 months ago more than 61 months ago

Reader Profile

The following questions are to collect demographic information only and are strictly voluntary.

Please circle your answer to the following questions

1. Job title/occupation:

1. Executive: (such as: Commissioner, Deputy Commissioner, Secretary etc.)
2. Facility Administrator: (such as: Warden, Superintendent, Jail Administrator, etc.)
3. Investigations: (such as: Investigator, Inspector General, Special Agent, etc.)
4. Line Staff: (such as correctional officer, guard etc.)
5. Law Enforcement: (such as: Sheriff, Deputy, Police Officer etc.)
6. Legal: (such as: Prosecutor, Attorney, Counsel, EEO etc.)
7. Advocacy: (such as: Psychologist, Victim Advocate, etc.)
8. Support Personnel: (such as: Human Resources, Training etc.)
9. Other: _____

2. Gender: Male Female

3. Race: African American Arab American/Middle Eastern
 Asian or Pacific Islander Caucasian (White) non-Hispanic
 Hispanic Native American/Alaskan Native
 Other _____

4. Age: Less than 20 20-29 30-39 40-49 50-59 more than 60 years

5. What is your highest level of education?

High School graduate/GED Associates Degree
 BA/BS MA/MS/MSW
 PhD/MD JD

6. How long have you worked in your career field?

Less than 3 years 3 to 5 years 6 to 10 years
 11 to 20 years 21 to 30 years more than 31 years

7. How long have you worked at your current organization?

Less than 3 years 3 to 5 years 6 to 10 years
 11 to 20 years 21 to 30 years more than 31 years

8. What is your current work location?

Northeast Mid-Atlantic Mid-West South
 Southwest Northwest Other _____

Jurisdiction (state or county): _____

9. Type of Facility:

Prison Jail
 Detention Center Private Correctional Facility (Adult/ Juvenile)
 State Juvenile Facility Residential Facility (Adult/ Juvenile)
 Community Supervision Agency Other: _____

10. Your facility or agency is: male only female only mixed gender

Thank you for completing the survey.



Breaking the Code of

SILENCE

Correctional Officers' Handbook on Identifying and Addressing Sexual Misconduct

Brenda V. Smith and Jaime M. Yarussi

National Institute of Corrections/Washington College of Law Project on Addressing Prison Rape
American University Washington College of Law
www.wcl.american.edu/nic