

American University Washington College of Law

Digital Commons @ American University Washington College of Law

Surveys

Content Type

2013

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

Brenda V. Smith

American University Washington College of Law, bvsmith@wcl.american.edu

Follow this and additional works at: <https://digitalcommons.wcl.american.edu/prisonrape-surveys>



Part of the [Human Rights Law Commons](#), and the [Law Enforcement and Corrections Commons](#)

Recommended Citation

Smith, Brenda V., "Fifty State Survey of Criminal Laws Prohibiting Sexual Abuse of Individuals in Custody" (2013). *Surveys*. 1.

<https://digitalcommons.wcl.american.edu/prisonrape-surveys/1>

This Survey is brought to you for free and open access by the Content Type at Digital Commons @ American University Washington College of Law. It has been accepted for inclusion in Surveys by an authorized administrator of Digital Commons @ American University Washington College of Law. For more information, please contact kclay@wcl.american.edu.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Alabama	ALA. CODE § 14-11-31 (West 2013). <u>Prohibited Acts.</u>	ALA. CODE § 14-11-31 (West 2013). <u>Prohibited Acts.</u> (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. (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.	ALA. CODE § 14-11-30 (West 2013). <u>Definitions.</u> (a)(1) <u>Custody</u> 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. (2) <u>Employee.</u> 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. (3) <u>Sexual Conduct.</u> Any of the following acts: (a) <u>Sexual Intercourse.</u> This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required; (b) <u>Sexual Contact-</u> any known touching for the	ALA. CODE § 14-11-31 (West 2013). <u>Custody.</u> (c) Any person violating subsection (a) or (b) shall upon conviction, be guilty of custodial sexual misconduct. (d) Custodial Sexual Misconduct is a Class C felony. ALA. CODE § 13A-5-6 (West 2013). <u>Sentences of imprisonment for felonies.</u> (a) Sentences for felonies shall be for a definite term of imprisonment, which means hard labor within the following limitations: (3) For a Class C felony, not more than 10 years or less than 1 year and 1 day. (5) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, not less than 10 years. ALA. CODE § 13A-5-11 (West 2013). <u>Fines; felonies.</u> (a) A sentence to pay a fine for a felony shall be for a definitive amount, fixed by the court, within the	ALA. CODE § 14-11-31 (West 2013). <u>Custody</u> (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 article.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Alabama Cont'			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) <u>Sexual Intrusion</u> - 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.	following limitations: (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.	
Alaska	ALASKA STAT. § 11.41.410 (West 2013). <u>Sexual assault in the first degree.</u> ALASKA STAT. § 11.41.420 (West 2013). <u>Sexual assault in the second degree.</u> ALASKA STAT. § 11.41.425 (West 2013). <u>Sexual assault in the third degree.</u> ALASKA STAT. § 11.41.427 (West 2013). <u>Sexual assault in the fourth degree.</u>	ALASKA STAT. § 11.41.410 (West 2013). <u>Sexual assault in the first degree.</u> (a) An offender commits the crime of sexual assault in the first degree if, (1) the offender engages in sexual penetration with another person without the consent of that person; (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person; (3) the offender engages in sexual penetration with another 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; or (4) the offender engages in sexual penetration with a person who the	ALASKA STAT. § 11.81.900 (West 2013). <u>Definitions.</u> (a) For purposes of this title, unless the context requires otherwise, (9) <u>Correctional facility</u> means premises, or a portion of premises, used for the confinement of persons under official detention; (40) <u>Official detention</u> means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;	ALASKA STAT. § 11.41.410 (West 2013). <u>Sexual assault in the first degree.</u> (b) Sexual assault in the first degree is an unclassified felony. ALASKA STAT. § 12.55.125 (West 2013). <u>Sentences of imprisonment for felonies.</u> (i) a defendant convicted of (1) sexual assault in the first degree or sexual abuse of a minor in the first	ALASKA STAT. § 11.41.432 (West 2013). <u>Defenses.</u> (a) It is a defense to a crime charged under sexual assault in the first degree, sexual assault in the second degree, sexual assault in the third degree or sexual assault in the fourth degree 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

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Alaska Cont'		<p>offender knows is unaware that a sexual act is being committed and (A) the offender is a health care worker; and (B) the offense takes place during the course of professional treatment of the victim.</p> <p>ALASKA STAT. § 11.41.420 (West 2013). <u>Sexual assault in the second degree.</u></p> <p>(a) An offender commits the crime of sexual assault in the second degree if, (1) the offender engages in sexual contact with another person without consent of that person; (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. (3) the offender engages in sexual penetration with a person who the offender knows is (A) mentally incapable; (B) incapacitated; or (C) unaware that a sexual act is being committed; or (4) the offender engages in sexual contact with a person who the offender knows is unaware that a sexual act is being committed and (A) the offender is a health care worker; and (B) the offense takes place during the course of professional treatment of the victim.</p> <p>ALASKA STAT. § 11.41.425 (2013). <u>Sexual assault in the third degree.</u></p> <p>(a) An offender commits the crime of sexual assault in the third degree if the offender (1) engages in sexual contact with a person who the offender knows is (A) mentally incapable;</p>	<p>(58) <u>Sexual Contact</u> 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) <u>Sexual Penetration</u> (A) means genital intercourse, cunnilingus, fellatio, anal intercourse, or an intrusion, however slight, of an object or any part of a person's body into the genital or</p>	<p>degree may be sentenced to a definitive term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges. (See AS 12.55.155—12.55.175).</p> <p>ALASKA STAT. § 11.41.420 (West 2013). <u>Sexual assault in the second degree.</u></p> <p>(b) Sexual assault in the second degree is a class B felony.</p> <p>ALASKA STAT. § 12.55.125 (West 2013). <u>Sentences of imprisonment for felonies.</u></p> <p>(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. (See AS 12.55.155—12.55.175).</p> <p>ALASKA STAT. § 11.41.425(b) (West 2013). <u>Sexual assault in the third degree.</u></p>	<p>prosecution for sexual assault in the first degree or sexual assault in the second degree, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant. (c) It is an affirmative defense to a crime charged under <u>AS 11.41.425(a)(5)</u> or <u>11.41.427(a)(4)</u> that the offender and the person on probation or parole had, before the person was placed on probation or parole, a dating relationship or a sexual relationship, and the relationship continued until the date of the alleged offense.</p> <p>ALASKA STAT. § 11.41.410(a)(1) (West 2013) The offender engages in sexual penetration with another person without the consent of that person.</p> <p>ALASKA STAT. § 11.41.420(a)(1) (West 2013). The offender engages in sexual contact with another person without consent of that person.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Alaska Cont'		<p>(B) incapacitated; or (C) unaware that a sexual act is being committed; (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; (3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; (4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency; (5) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, engages in sexual penetration with a person with reckless disregard that the person is on probation or parole; or (6) while employed as a juvenile; or probation officer or as a juvenile facility staff, engages in sexual penetration with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.</p> <p>ALASKA STAT. § 11.41.427 (West 2013). <u>Sexual assault in the fourth degree.</u></p> <p>(a) An offender commits the crime of sexual assault in the fourth degree if</p>	<p>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.</p> <p>ALASKA STAT. § 11.41.425 (2013). Definitions</p> <p>(b) In this section, (1) "juvenile facility staff" means a person employed in a juvenile detention or treatment facility; (2) "juvenile probation officer" means a person assigned to supervise another person 18 or 19 years of age who is committed to the probationary supervision of the Department of Health and Social Services (3) "parole officer" means a person</p>	<p>Sexual assault in the third degree is a class C felony.</p> <p>ALASKA STAT. § 12.55.125 (West 2013). <u>Sentences of imprisonment for felonies.</u></p> <p>(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 definite term within the following presumptive ranges. (See AS 12.55.155—12.55.175).</p> <p>ALASKA STAT. § 11.41.427 (West 20013). <u>Sexual assault in the fourth degree.</u></p> <p>(b) Sexual assault in the fourth degree is a class A misdemeanor.</p> <p>ALASKA STAT. § 12.55.135 West (2013). <u>Sentences of imprisonment for misdemeanors.</u></p> <p>(a) A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Alaska Cont'		<p>(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or</p> <p>(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person;</p> <p>(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency;</p> <p>(4) while employed by the state or a municipality of the state as a probation officer or parole officer, or while acting as a probation officer or parole officer in the state, the offender engages in sexual contact with a person with reckless disregard that the person is on probation or parole; or</p> <p>(5) while employed as a juvenile probation officer or as a juvenile facility staff, the offender engages in sexual contact with a person 18 or 19 years of age with reckless disregard that the person is committed to the custody or probationary supervision of the Department of Health and Social Services.</p>	<p>appointed by the commissioner of corrections or employed by a correctional facility in this state to perform the duties of supervising the parole of prisoners under AS 33.16</p> <p>(4) "peace officer" means "peace officer" means</p> <p>(A) an officer of the state troopers;</p> <p>(B) a member of the police force of a municipality;</p> <p>(C) a village public safety officer;</p> <p>(D) a regional public safety officer;</p> <p>(E) a United States marshal or deputy marshal; and</p> <p>(F) an officer whose duty it is to enforce and preserve the public peace;</p> <p>(5) "probation officer" includes a</p> <p>(A) a person appointed by the commissioner of corrections or employed by a correctional facility in this state to perform the duties of a probation officer under AS 33.05;</p> <p>or</p> <p>(B) person who supervises a participant in a specialty court, including a therapeutic or wellness court addressing alcohol or drug use, a court addressing the needs of veterans, an adult or juvenile mental health court, a fetal alcohol spectrum disorder court, or a family care or preservation court.</p>	<p>ALASKA STAT. § 12.55.035 (West 2013).</p> <p><u>Fines.</u></p> <p>(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.</p> <p>(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</p> <p>(1) \$500,000 for sexual assault in the first degree, sexual abuse of a minor in the first degree;</p> <p>(2) \$250,000 for a class A felony;</p> <p>(3) \$100,000 for a class B felony;</p> <p>(4) \$50,000 for a class C felony;</p> <p>(5) \$10,000 for a class A misdemeanor.</p> <p>(ALASKA STAT. ANN. § 12.55.036 discusses Day fines).</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arizona	ARIZ. REV. STAT. ANN. § 13-1409 (West 2013). <u>Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification; definitions</u>	ARIZ. REV. STAT. ANN. § 13-1409 (West 2013). <u>Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification, definitions</u>	ARIZ. REV. STAT. ANN. § 13-1409 (West 2013). <u>Definitions</u>	ARIZ. REV. STAT. ANN. § 13-1409 (West 2013). <u>Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification; definitions</u>	ARIZ. REV. STAT. ANN. § 13-1419 (West 2013). <u>Unlawful sexual conduct; correctional employees; persons in custody; classification; definition.</u>
Arizona Cont'	ARIZ. REV. STAT. ANN. § 13-1419 (West 2013). <u>Unlawful sexual conduct; correctional facilities; classification; definition.</u>	<p>A. An adult probation department employee or juvenile court employee commits unlawful sexual conduct if the employee knowingly coerces the victim to engage in sexual contact, oral sexual contact or sexual intercourse by either:</p> <ol style="list-style-type: none"> 1. Threatening to negatively influence the victim's supervision or release status. 2. Offering to positively influence the victim's supervision or release status. <p>ARIZ. REV. STAT. ANN. § 13-1419 (West 2013). <u>Unlawful sexual conduct; correctional facilities; classification; definition.</u></p> <p>A. A person commits unlawful sexual conduct by engaging in any act of a sexual nature with an offender who is in the custody of 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 or with an offender who is under the supervision of either department or a city or county.</p>	<p>C. For the purposes of this section:</p> <p>1. "Adult probation department employee or juvenile court employee" means an employee of an adult probation department or the juvenile court who either:</p> <ol style="list-style-type: none"> (a) Through the course of employment, directly provides treatment, care, control or supervision to a victim. (b) Provides presentence or predisposition reports directly to a court regarding the victim. <p>2. "Victim" means a person who is either of the following:</p> <ol style="list-style-type: none"> (a) Subject to conditions of release or supervision by a court. (b) A minor who has been referred to the juvenile court. <p>ARIZ. REV. STAT. ANN. § 13-1419 (West 2013). <u>Definitions.</u></p> <p>A. For the purposes of this subsection, <u>person</u> means a person who:</p> <ol style="list-style-type: none"> 1. Is employed by the state department of corrections or the department of juvenile corrections. 2. Is employed by a 	<p>B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least fifteen years of age and under eighteen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.</p> <p>ARIZ. REV. STAT. ANN. § 13-1419 (West 2013). <u>Unlawful sexual conduct; correctional employees; persons in custody; classification; definition.</u></p> <p>C. Unlawful sexual conduct with an offender under 15 years of age is a class 2 felony. Unlawful sexual conduct with an offender between 15 and 17 years of age is a class 3 felony. All other unlawful sexual</p>	<p>B. This section does not apply to 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.</p> <p>D. 2. Does not include an act done pursuant to a bona fide medical exam or lawful internal search.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arizona Cont'			<p>private prison facility or a city or county jail.</p> <p>3. 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.</p> <p>4. Is an official visitor, volunteer or agency representative of the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail.</p> <p>D. For the purposes of this section, <u>any act of a sexual nature</u>;</p> <p>1. Includes the following:</p> <p>(a) Any completed, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.</p> <p>(b) Any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.</p> <p>(c) Any act of photographing, videotaping, filming, digitally recording or other viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either:</p> <p>(i) While the prisoner or offender is in a state</p>	<p>conduct is a class 5 felony.</p> <p>ARIZ. REV. STAT. ANN. § 13-702 (West 2013).</p> <p>First time felony offenders; sentencing; definition</p> <p>Class 2 Mitigated- 3 years Minimum- 4 years Maximum- 10 years Aggravated- 12.5 years</p> <p>Class 3 Mitigated- 2 years Minimum- 2.5 years Maximum- 7 years Aggravated-8.75 years</p> <p>Class 5 Mitigated- .5 years Minimum- .75 years Maximum- 2 years Aggravated- 2.5 years</p> <p>(ARIZ. REV. STAT. ANN. § 13-601 discusses classification of offenses).</p> <p>ARIZ. REV. STAT. ANN. § 13-703 (West 2013).</p> <p><u>Repetitive offenders; sentencing</u></p> <p>Class 2: Mitigated- 3 years Minimum- 4 years Maximum- 28 years Aggravated- 35 years</p> <p>Class 3 Mitigated- 2 years</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arizona Cont'			<p>of undress or partial dress.</p> <p>(ii) While the prisoner or offender is urinating or defecating.</p> <p>2. Does not include an act done pursuant to a bona fide medical exam or lawful internal search.</p> <p>ARIZ. REV. STAT. ANN. § 13-1401 (West 2013). <u>Definitions.</u></p> <p>In this chapter, unless the context otherwise requires:</p> <p>1. <u>Oral sexual contact</u> means oral contact with the penis, vulva or anus.</p> <p>2. <u>Sexual contact</u> 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.</p> <p>3. <u>Sexual intercourse</u> 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.</p> <p>4. <u>Spouse</u> means a person who is legally married and cohabiting.</p> <p>5. <u>Without consent</u> includes any of the following:</p> <p>(a) The victim is coerced by the immediate use or threatened use of force against a person or property.</p> <p>(b) The victim is</p>	<p>Minimum- 2.5 years Maximum- 20 Aggravated- 25 years</p> <p>Class 5 Mitigated- .5 years Minimum- .75 years Maximum- 6 years Aggravated- 7.5 years</p> <p>Ariz. Rev. STAT. ANN. § 13-801 (West 2013). <u>Fines for Felonies.</u></p> <p>A. A sentence to pay a fine for a felony shall be a sentence to pay an amount fixed by the court not more than \$150,000.</p> <p>B. A judgment that the defendant shall pay a fine, with or without the alternative of imprisonment, shall constitute a lien in like manner as a judgment for money rendered in a civil action.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arizona Cont'			<p>incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subdivision, <u>mental defect</u> 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.</p> <p>(c) The victim is intentionally deceived as to the nature of the act.</p> <p>(d) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.</p> <p>ARIZ. REV. STAT. ANN. § 13-2501 (West 2007). <u>Definitions.</u></p> <p>In this chapter, unless the context otherwise requires:</p> <p>2. <u>Correctional facility</u> means any place used for the confinement or control of a person:</p> <p>(a) Charged with or convicted of an offense;</p> <p>or</p> <p>(b) Held for extradition;</p> <p>or</p> <p>(c) Pursuant to an order of court for law enforcement purposes.</p> <p>Lawful transportation or movement incident to</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arizona Cont'			<p>correctional facility confinement pursuant to this paragraph is within the control of a correctional facility. However, for purposes of this chapter, being within the control of a correctional facility does not include release on parole, on community supervision, on probation or by other lawful authority upon the condition of subsequent personal appearance at a designated place and time.</p> <p>3. <u>Custody</u> 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.</p> <p>4. <u>Escape</u> means departure from custody or from a juvenile secure care facility as described in § 41-2816, a juvenile detention facility or an adult correctional facility in which a person is held or detained with knowledge that such departure is unpermitted or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period.</p> <p>ARIZ. REV. STAT. ANN. § 41-2816 (West 2013).</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			Secure care facilities; <u>rehabilitative services</u> ; <u>length of stay guidelines</u> A. The department shall operate and maintain or contract for secure care facilities for the custody, treatment, rehabilitation and education of youth who pose a threat to public safety, who have engaged in a pattern of conduct characterized by persistent and delinquent offenses that, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting or who have had their conditional liberty revoked pursuant to § 41- 2819.		
Arkansas	ARK. CODE ANN. § 5-14-124 (West 2013). <u>Sexual assault in the first degree.</u> ARK. CODE ANN. § 5-14-125 (West 2013). <u>Sexual assault in the second degree.</u> ARK. CODE ANN. § 5-14-126 (West 2013). <u>Sexual assault in the third degree.</u>	ARK. CODE ANN. § 5-14-124 (West 2013). <u>Sexual assault in the first degree.</u> (a) A person commits sexual assault in the first degree if: (1) The person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is: (A) Employed with the Department of Correction, the Department of Community Correction, the Department of 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 Human Services, any city or county jail or juvenile detention facility, or their contractors or agents; (B) A mandated reporter under § 12-18-402(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	ARK. CODE ANN. § 5-14-101(1) (West 2013). <u>Definitions.</u> As used in this chapter: (1) <u>deviate sexual activity</u> means any act of sexual gratification involving: (A) the penetration, however slight, of the anus or mouth of one person by the penis of another person; or (B) the penetration, however slight, of the labia majora or anus of one person by any body member or foreign instrument manipulated by another person. (2) <u>Sexual contact</u> means any act of sexual gratification involving the touching, directly, or through clothing, of the	ARK. CODE ANN. § 5-14-124 (West 2013). <u>Sexual Assault in the first degree.</u> (d) Sexual assault in the first degree is a Class A felony. ARK. CODE ANN. § 5-4-401 (West 2013). <u>Felonies, incarceration.</u> (a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations: (2) For a Class A felony, the sentence shall be not less than 6 years nor more than 30 years.	ARK. CODE ANN. § 5-14-124 (West 2013). <u>Sexual Assault in the first degree.</u> (b) It is no defense to a prosecution under this section that the victim consented to the conduct. (c) It is an affirmative defense to a prosecution under subdivision (a)(3) of this section that the actor was not more than three (3) years older than the victim. ARK. CODE ANN. § 5-14-125 (West 2007). <u>Sexual Assault in the second degree.</u> (B) For the purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a
Arkansas Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arkansas Cont'		<p>activity; or</p> <p>(C) 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; or</p> <p>(2) The person is a teacher, principal, athletic coach, or counselor in a public or private school in kindergarten through grade twelve (K–12) and the actor;</p> <p>(A) Engages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is:</p> <p>(i) Less than twenty-one (21) years of age; and</p> <p>(ii) A student enrolled in the public or private school employing the actor; and</p> <p>(B) Is in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity.</p> <p>ARK. CODE ANN. § 5-14-125 (West 2013). <u>Sexual assault in the second degree.</u></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 18 years of age or older, engages in sexual contact with another person who is:</p> <p>(A) Less than 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 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-</p>	<p>sex organs, buttocks, or an anus of a person or the breast of a female; and</p> <p>(3) <u>Sexual intercourse</u> means penetration, however slight, of the labia majora by a penis.</p> <p>(10) "<u>Sexual contact</u>" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female; and</p> <p>(11) "<u>Sexual intercourse</u>" means penetration, however slight, of the labia majora by a penis.</p>	<p>ARK. CODE ANN. § 5-4-201 (West 2013). <u>Imposition of fines.</u></p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine:</p> <p>(1) Not exceeding \$15,000 if the conviction is of a Class A felony.</p> <p>ARK. CODE ANN. § 5-14-125 (West 2013). <u>Sexual Assault in the second degree.</u></p> <p>(b)(1) Sexual assault in the second degree is a Class B felony.</p> <p>ARK. CODE ANN. § 5-4-401 (West 2013). <u>Felonies, incarceration.</u></p> <p>(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:</p> <p>(3) For a Class B felony, the sentence shall be not less than 5 years nor more than 20 years.</p> <p>ARK. CODE ANN. § 5-4-201 (West 2013). <u>Imposition of fines.</u></p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine:</p> <p>(1) Not exceeding \$15,000 if the</p>	<p>defense to a prosecution.</p> <p>(5)(A) Being less than 18 years of age, engages in sexual contact with another person who is:</p> <p>(i) Less than 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 years older than the victim if the victim is less than twelve years of age; or</p> <p>(ii) Four years older than the victim if the victim is 12 years of age or older; or</p> <p>(6) Is a teacher, principal, athletic coach, or counselor in a public or private school in a grade kindergarten through twelve (K–12), in a position of trust or authority, and uses his or her position of trust or authority over the victim to engage in sexual contact with victim who is:</p> <p>(A) A student enrolled in the public or private school; and</p> <p>(B) Less than twenty-one (21) years of age.</p> <p>ARK. CODE ANN. § 5-14-126 (West 2013). <u>Sexual Assault in the third degree.</u></p> <p>(2)(B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Arkansas Cont'		<p>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>ARK. CODE ANN. § 5-14-126 (West 2013). <u>Sexual assault in the third degree.</u></p> <p>(a) A person commits sexual assault in the third degree if the person:</p> <p>(1) Engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse and the person</p> <p>(A) 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 Health and Human Services, or any city or county jail;</p> <p>(B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Corrections, Department of Community Correction, Department of Health and Human Services, or any city or county jail; or</p> <p>(C) 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 and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or</p> <p>(2)(A) Being a minor engages in sexual intercourse or deviate sexual activity with another person who is:</p> <p>(i) Less than 14 years of age and;</p> <p>(ii) Not the person's spouse.</p>		<p>conviction is of a Class B felony.</p> <p>ARK. CODE ANN. § 5-14-125 (West 2013). <u>Sexual Assault in the second degree.</u></p> <p>(b)(2) Sexual assault in the second degree is a Class D felony if committed by a person less than 18 years of age with another person who is:</p> <p>(A) Less than 14 years of age; and</p> <p>(B) Not the person's spouse.</p> <p>ARK. CODE ANN. § 5-4-401 (West 2013). <u>Felonies, incarceration.</u></p> <p>(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:</p> <p>(5) For a Class D felony, the sentence shall not exceed 6 years.</p> <p>ARK. CODE ANN. § 5-4-201 (West 2013). <u>Imposition of fines.</u></p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine:</p> <p>(2) Not exceeding \$10,000 if the conviction is of a Class D felony.</p>	<p>than 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>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				<p>ARK. CODE ANN. § 5-14-126 (West 2013). <u>Sexual Assault in the third degree.</u></p> <p>(c) Sexual assault in the third degree is a Class C Felony.</p> <p>ARK. CODE ANN. § 5-4-401 (West 2013). <u>Felonies, incarceration.</u></p> <p>(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations: (5) For a Class C felony, the sentence shall be not less than 3 years nor more than 10 years.</p> <p>ARK. CODE ANN. § 5-4-201 (West 2013). <u>Imposition of fines.</u></p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine: (2) Not exceeding \$ 10,000 if the conviction is of a Class C felony.</p>	
California	CAL. PENAL CODE § 289.6 (West 2013). <u>Public entity employees, officers, agents, volunteers or peace officials; sexual activity with confined consenting adult; defense; application;penalty.</u>	CAL. PENAL CODE § 289.6 (West 2013). <u>Public entity employees, officers, agents, volunteers or peace officials; sexual activity with confined consenting adult; defense; application;penalty.</u> (a)(1) An employee or officer of a public entity health facility, or an employee, officer, or agent of a private person or entity that provides a health facility or staff for a health facility under contract with public entity, who engages in sexual	CAL. PENAL CODE § 286 (West 2013). <u>Sodomy; punishment.</u> (a) <u>Sodomy</u> is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however	CAL. PENAL CODE § 289.6 (West 2013). <u>Public entity employees, officers, agents, volunteers or peace officials; sexual activity with confined consenting adult; defense; application;penalty.</u> (g) Any violation of	CAL. PENAL CODE § 289.6 (West 2013). <u>Public entity employees, officers, agents, volunteers or peace officials; sexual activity with confined consenting adult; defense; application;penalty.</u> (e) Consent by a confined person or
California Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
California Cont'		<p>activity with a consenting adult who is confined in a health facility is guilty of a public offense.</p> <p>(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 department, board or authority under Department of Corrections and Rehabilitation or a facility under contract with a department, board or authority under the Department of Corrections and Rehabilitation 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>slight, is sufficient to complete the crime of sodomy.</p> <p>CAL. PENAL CODE § 288a (West 2013). <u>Oral Copulation; punishment.</u></p> <p>(a) <u>Oral copulation</u> 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 (West 2013). <u>Forcible acts of sexual penetration; punishment.</u></p> <p>(k) As used in this section: (1) <u>Sexual penetration</u> is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.</p> <p>CAL. PENAL CODE § 289.6 (West 2013). <u>Public entity employees, officers, agents, volunteers or peace officials; sexual activity with confined consenting adult; defense; application; penalty.</u></p>	<p>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>(h) Any violation of paragraph (2) or (3) of subdivision (a) shall be punished by imprisonment in a county jail not exceeding 1 year or by a fine not exceeding \$10,000, or by both fine and imprisonment</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>(j) Anyone who is convicted of a felony violation of this section who is employed by a department, board, or authority within the Department of Corrections and Rehabilitation 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 eligible to be hired or reinstated by a department, board, or authority within the Youth and Adult Correctional Agency.</p> <p>CAL. PENAL CODE §</p>	<p>parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.</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 examination(s) or treatment(s), including clinical treatment(s).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
California Cont'			<p>(3)(b) As used in this section, the term <u>public entity</u> means the state, federal government, a city, a county, a city and county, a joint county jail district, or any entity created as a result of a joint powers agreement between two or more public entities.</p> <p>(3)(c) As used in this section, the term <u>detention facility</u> means</p> <p>(1) prison, jail, camp or other correctional facility used for the confinement of adults, juveniles, or both adults and minors.</p> <p>(2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.</p> <p>(3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.</p> <p>(4) A vehicle used to transport confined persons during their period of confinement.</p> <p>(5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.</p> <p>(d) As used in this section, <u>sexual activity</u> means: (1) Sexual intercourse, (2)</p>	<p>18 (West 2013). <u>Punishment of felony not otherwise prescribed; alternate sentence to county jail</u></p> <p>(a) Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony is punishable by imprisonment for 16 months, or two or three years in the state prison unless the offense is punishable pursuant to <u>subdivision (h) of Section 1170</u></p> <p>(h) this subdivision where the term is not specified in the underlying offense shall be punishable by a term of imprisonment in a county jail for 16 months, or two or three years.</p> <p>(2) Except as provided in paragraph (3), a felony punishable pursuant to this subdivision shall be punishable by imprisonment in a county jail for the term described in the underlying offense.</p> <p>(b) Every offense which is prescribed by any law of the state to be a felony punishable by imprisonment or by a fine, but without an alternate sentence to the county jail for a period not exceeding</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
California Cont'			<p>Sodomy, (3) Oral copulation, (4) Sexual penetration, (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>CAL. HEALTH & SAFETY CODE § 1250 (West 2013). <u>Definitions</u></p> <p>As used in this chapter health facility means any facility, place or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer, and includes the following types: (j)(1) <u>Correctional treatment</u> center means a health facility operated by the Department of Correction Rehabilitation, the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or a county, city, or city and county law enforcement agency</p>	<p>one year, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.</p> <p>CAL. PENAL CODE § 19 (West 2013). <u>Punishment for misdemeanor.</u></p> <p>Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding 6 months, or by fine not exceeding \$1,000, or by both.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			that, as determined by the state department, provides inpatient health services to that portion of the inmate population who do not require a general acute care level of basic services. This definition shall not apply to those areas of a law enforcement facility that houses inmates or wards that may be receiving outpatient services and are housed separately for reasons of improved access to health care, security and protection. The health services provided by a correctional treatment center may provide the following services: laboratory, radiology, perinatal, and any other services approved by the state department.		
Colorado	<p>COLO. REV. STAT. § 18-3-404 (West 2013). <u>Unlawful sexual Contact.</u></p> <p>COLO. REV. STAT. § 18-7-701 (West 2013). <u>Sexual conduct in Penal Institutions.</u></p>	<p>COLO. REV. STAT. §18-3-404 (West 2013). <u>Unlawful sexual Contact.</u></p> <p>((1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:</p> <p>(a) The actor knows that the victim does not consent; or</p> <p>(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or</p> <p>(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or</p> <p>(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or</p> <p>(e) Repealed by <u>Laws 1990, H.B.90-</u></p>	<p>COLO. REV. STAT. § 18-7-701 (West 2013). <u>Sexual conduct in penal institutions.</u></p> <p>(2)(a) <u>Correctional institution</u>" means a correctional facility, as defined in <u>section 17-1-102(1.7), C.R.S.</u>, a local jail, as defined in <u>section 17-1-102(7), C.R.S.</u>, operated by or under contract with the department of corrections, a jail, a facility operated by or under contract with the department of human services in which juveniles are or may be lawfully held for detention or</p>	<p>COLO. REV. STAT. §18-3-404 (West 2013). <u>Unlawful Sexual Contact.</u></p> <p>(2)(a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in <u>section 18-1.3-501(3)</u>.</p> <p>(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor</p>	<p>COLO. REV. STAT. §18-3-404(1)(a) (West 2013). Consent is a defense.</p> <p>COLO. REV. STAT. §18-3-404(1)(g) (West 2013). Bona fide medical purposes is a defense.</p> <p>COLO. REV. STAT. §18-3-404(1)(f) (West 2013). Lawful search is a defense.</p> <p>COLO. REV. STAT. §18-3-404 (West 2013). Lack of knowledge is a defense.</p>
Colorado Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Colorado Cont'		<p>1133, § 25, eff. July 1, 1990.</p> <p>(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or</p> <p>(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.</p> <p>(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 the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.</p> <p>COLO. REV. STAT. §18-7-701 (West 2013).</p> <p><u>Sexual conduct in Penal Institutions.</u></p> <p>(1) An employee, contract employee or volunteer of a criminal justice facility or an individual who performs work or volunteer functions in a correctional institution who engages in sexual conduct with a person who is in lawful custody in a correctional institution commits the offense of sexual conduct in a correctional institution.</p> <p>(4)(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 correctional institution or for the department of corrections, the department of human services, or a community corrections program; or</p> <p>(b) The sexual conduct includes sexual intrusion or sexual penetration and is</p>	<p>commitment for the commission of a crime, or a facility of a community corrections program as defined in <u>section 17-27-102(3), C.R.S.</u></p> <p>(.</p> <p>(2)(b) <u>Sexual conduct</u> means <u>sexual contact</u> as defined in § 18-3-401(4), <u>sexual intrusion</u> as defined in § 18-3-401(5), or <u>sexual penetration</u> as defined in § 18-3-401(6). It does not include acts of an employee of a correctional institution 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>COLO. REV. STAT. § 16-1-104 (West 2013).</p> <p><u>Definitions.</u></p> <p>(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</p>	<p>compels the victim to submit by use of such force, intimidation, or threat as specified in <u>section 18-3-402(4)(a), (4)(b), or (4)(c)</u> 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.</p> <p>(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of <u>section 18-1.3-406</u>; except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.</p> <p>(4) A person who is convicted on or after July 1, 2013, of unlawful sexual contact under this section, upon conviction, shall be advised by the court that the person has no right:</p> <p>(a) To notification of the termination of parental rights and no standing to object to the termination of parental rights for a child conceived as a result of the commission of that</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Colorado Cont'		committed by a volunteer.	<p>definition is specifically limited or the context indicates that it is inapplicable.</p> <p>(7.5) “<u>Correctional facility</u>” means any facility under the supervision of the department of corrections in which persons are or may be lawfully held in custody as a result of conviction of a crime.</p> <p>(9) <u>Custody</u> means the restraint of a person's freedom in any significant way.</p> <p>COLO. REV. STAT. § 18-3-401 (West 2013). <u>Definitions.</u></p> <p>As used in this part 4, unless the context otherwise requires:</p> <p>(1) <u>Actor</u> means the person accused of a sexual offense pursuant to this part 4.</p> <p>(3.5) One in a <u>position of trust</u> includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including</p>	<p>offense;</p> <p>(b) To allocation of parental responsibilities, including parenting time and decision-making responsibilities for a child conceived as a result of the commission of that offense;</p> <p>(c) Of inheritance from a child conceived as a result of the commission of that offense; and</p> <p>(d) To notification of or the right to object to the adoption of a child conceived as a result of the commission of that offense.</p> <p>COLO. REV. STAT. § 18-1.3-501 (West 2013). <u>Misdemeanors classified – penalties.</u></p> <p>(1)(a) Except as otherwise provided in paragraph (d) of this subsection (1), misdemeanors are divided into 3 classes that are distinguished from one another by the following penalties that are authorized upon conviction except as provided in subsection (1.5) of this section:</p> <p>Class 1 minimum sentence – 6 months imprisonment, or \$500 fine, or both;</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Colorado Cont'			<p>foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.</p> <p>(4) <u>Sexual contact</u> 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.</p> <p>(5) <u>Sexual intrusion</u> 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 construed as being for the purposes of sexual arousal, gratification, or abuse.</p> <p>(6) <u>Sexual penetration</u> 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>COLO. REV. STAT. § 17-</p>	<p>maximum sentence – 18 months imprisonment, or \$5,000, or both.</p> <p>COLO. REV. STAT. § 18-7-701 (West 2013). <u>Sexual conduct in penal institutions.</u></p> <p>(3) Sexual conduct in a correctional 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 correctional institution or by an employee, contract employee, or individual who performs work functions in a correctional institution or for the department of corrections, the department of human services, or a community corrections program.</p> <p>COLO. REV. STAT. § 18-1.3-401 (West 2013). <u>Felonies classified – presumptive penalties.</u></p> <p>(V)(A) As to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes which are</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Colorado Cont'			<p>1-102 (West 2013). <u>Definitions.</u></p> <p>As used in this title, unless the context otherwise requires:</p> <p>(1.7) <u>Correctional facility</u> 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) <u>Department</u> means the department of corrections.</p> <p>(6.5) <u>Inmate</u> 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) <u>Local jail</u> means a jail or an adult detention center of a county or city and county.</p> <p>(7.3) <u>Private contract prison</u> means any private prison facility operated by a county, city and county, or private corporation located in this state; except that <u>private contract prison</u> does not include any local jail, multi-jurisdictional jail, or community corrections center.</p>	<p>distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction: a class 5 felony is a minimum imprisonment of 1 year and a maximum of 3.</p> <p>COLO. REV. STAT. § 18-1.3-401 (West 2013). <u>Felonies classified – presumptive penalties.</u></p> <p>(III)(A) As to any person sentenced for a felony committed on or after July 1, 1985, except as otherwise provided in sub-paragraph (E) of this subparagraph (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies: a class 5 felony is a minimum sentence of \$1,000 and a maximum of \$100,000.</p> <p>COLO. REV. STAT. § 18-7-701 (West 2013). <u>Sexual conduct in penal institutions.</u></p> <p>(4) Sexual conduct in</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Colorado Cont'				<p>a correctional institution is a class 6 felony if:</p> <p>(a) the sexual conduct consists solely of sexual contact and is committed by an employee or contract employee of a correctional institution or by an employee, contract employee, or individual who performs work functions in a correctional institution or for the department of corrections, the department of human services, or a community corrections program;; or</p> <p>(b) the sexual conduct includes sexual intrusion or sexual penetration and is committed by a volunteer.</p> <p>COLO. REV. STAT. § 18-1.3-401 (West 2013). <u>Felonies classified – presumptive penalties.</u></p> <p>(V)(A) As to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				<p>presumptive ranges of penalties which are authorized upon conviction: a class 6 felony is a minimum imprisonment of 1 year and a maximum of 18 months.</p> <p>COLO. REV. STAT. § 18-1.3-401 (West 2013). <u>Felonies classified – presumptive penalties.</u></p> <p>(III)(A) As to any person sentenced for a felony committed on or after July 1, 1985, except as otherwise provided in sub-paragraph (E) of this subparagraph (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies: a class 6 felony is a minimum sentence of \$1,000 and a maximum of \$100,000.</p> <p>COLO. REV. STAT. § 18-7-701 (West 2013). <u>Sexual conduct in penal institutions.</u></p> <p>(5) Sexual conduct in a correctional institution is a class 1 misdemeanor if the</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				<p>sexual conduct consists solely of sexual contact and is committed by a volunteer.</p> <p>COLO. REV. STAT. § 18-1.3-501 (West 2013). <u>Misdemeanors classified – penalties.</u></p> <p>(1)(a) Misdemeanors are divided into three classes which are distinguished from one another by the following penalties which are authorized upon conviction except as provided in subsection (1.5) of this section: Class 1 minimum sentence – 6 months imprisonment, or \$500 fine, or both; maximum sentence – 18 months imprisonment, or \$5,000, or both.</p>	
Connecticut	<p>CONN. GEN. STAT. § 53a-71 (West 2013). <u>Sexual assault in the second degree: Class C or B felony.</u></p> <p>CONN. GEN. STAT. § 53a-73a (West 2007). <u>Sexual assault in the fourth degree: Class A misdemeanor or class D felony.</u></p>	<p>CONN. GEN. STAT. § 53a-71 (West 20013). <u>Sexual assault in the second degree: Class C or B felony.</u></p> <p>(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual intercourse; or (3) such other person is physically</p>	<p>CONN. GEN. STAT. § 53a-65 (West 2013). <u>Definitions.</u></p> <p>As used in this part, except section 53a-70b, the following terms have the following meanings: (1) <u>Actor</u> means a person accused of sexual assault. (2) <u>Sexual intercourse</u> means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is</p>	<p>CONN. GEN. STAT. § 53a-71 (West 2013). <u>Sexual assault in the second degree: Class C or B felony.</u></p> <p>(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</p>	<p>CONN. GEN. STAT. § 53a-67 (West 2007). <u>Affirmative Defenses</u></p> <p>(a) In any prosecution for an offense under this part based on the victim's being mentally incapacitated, physically helpless or impaired because of mental disability or disease, it shall be an affirmative defense that the actor, at the time such actor engaged in the conduct constituting the offense, did not know of such condition of the victim.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Connecticut Cont'		<p>helpless; or</p> <p>(4) such other person is less than 18 years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or</p> <p>(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.</p> <p>(6) the actor is a psychotherapist and such other person is</p> <p>(A) a patient of the actor and the sexual intercourse occurs during the psychotherapy sessions,</p> <p>(B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or</p> <p>(C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or</p> <p>(7) the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or</p> <p>(8) the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or</p> <p>(9) the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and</p> <p>(A) is a secondary school student and receives such coaching or instruction in a secondary school setting,</p> <p>(B) is under 18 years of age; or</p> <p>(10) the actor is 20 years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under 18 years of age; or</p>	<p>limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or anal opening of the victim's body.</p> <p>(3) <u>Sexual contact</u> 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 or for the purpose of degrading or humiliating such person.</p> <p>(4) <u>Impaired because of mental disability or disease</u> means that a person suffers from a mental disability or disease which renders such person incapable of appraising the nature of such person's conduct.</p> <p>(5) <u>Mentally incapacitated</u> means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating</p>	<p>the sentence imposed may not be suspended or reduced by the court.</p> <p>CONN. GEN. STAT. § 53a-35(a) (West 2013). <u>Imprisonment for any felony committed on or after July 1, 1981: Definite sentences; terms authorized.</u></p> <p>For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines or provides the penalty for the crime specifically provides otherwise, the term shall be fixed by the court as follows: (6) For a class B felony other than manslaughter in the first degree with a firearm a term of not less than 1 year nor more than 20 years,</p> <p>(7) For a class C felony, a term not less than 1 year nor more than 10 years,</p> <p>CONN. GEN. STAT. § 53a-73a (West 2013). <u>Sexual assault in the fourth degree: Class A misdemeanor or class D felony.</u></p> <p>(b) Sexual assault in the fourth degree is a</p>	<p>CONN. GEN. STAT. § 53a-65(3) (West 2013). Marriage is a defense to sexual contact.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Connecticut Cont'		<p>(11) such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.</p> <p>CONN. GEN. STAT. § 53a-73a (West 2007). <u>Sexual assault in the fourth degree: Class A misdemeanor or class D felony.</u></p> <p>(a) A person is guilty of sexual assault in the fourth degree when:</p> <p>(1) Such person intentionally subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or</p> <p>(B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or</p> <p>(C) mentally defective or mentally incapacitated to the extent that such other person is unable to consent to such sexual contact, or</p> <p>(D) physically helpless, or</p> <p>(E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or</p> <p>(F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or</p> <p>(2) such person subjects another person to sexual contact without such other person's consent; or</p> <p>(3) such person engages in sexual contact with an animal or dead body; or</p> <p>(4) such person is a psychotherapist and subjects another person to sexual contact who is</p> <p>(A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or</p> <p>(B) a patient or former patient of the actor and such patient or former patient is</p>	<p>substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.</p> <p>(6) <u>Physically helpless</u> means that a person is (a) unconscious, or (b) for any other reason is physically unable to resist an act of sexual intercourse or sexual contact or to communicate unwillingness to an act of sexual intercourse or sexual contact..</p> <p>(7) <u>Use of force</u> means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.</p> <p>(8) <u>Intimate parts</u> means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.</p> <p>(9) <u>Psychotherapist</u> means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, martial and family therapist, mental health services provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.</p> <p>(10) <u>Psychotherapy</u> means the professional</p>	<p>class A misdemeanor, or if the victim of the offenses is under 16 years of age, a Class D felony.</p> <p>CONN. GEN. STAT. § 53a-35(a) (West 2007). <u>Imprisonment for any felony committed on or after July 1, 1981: Definite sentences; terms authorized.</u></p> <p>For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and, unless the section of the general statutes that defines or provides the penalty for the crime specifically provides otherwise, the term shall be fixed by the court as follows:</p> <p>(8) For a Class D felony, a term not more than 5 years.</p> <p>CONN. GEN. STAT. § 53a-36 (West 2013). <u>Imprisonment for misdemeanor: Maximum and minimum sentences.</u></p> <p>A sentence of imprisonment for a misdemeanor shall be a definite sentence and the term shall be fixed by the court as follows:</p> <p>(1) For a class A misdemeanor, a term not to exceed 1 year</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Connecticut Cont'		<p>emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age.</p>	<p>treatment, assessment or counseling of a mental or emotional illness, symptom or condition. (11) <u>Emotionally dependent</u> means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by a sexual intercourse with the psychotherapist. (12) <u>Therapeutic deception</u> means a representation by a psychotherapist that sexual contact by or sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment. (13) <u>School employee</u> means (A) A teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary or secondary school or working in a public or private elementary or secondary school, or (B) any other person who, in the performance of his or</p>	<p>except that when a person is found guilty under § 53a-61(a)(3) or 53a-61a, the term shall be 1 year and such sentence shall not be suspended or reduced. (NOTE CONN. GEN. STAT. § 53a-61(a)(3) or 53a-561(a) discuss assault in the third degree)</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>her duties, has regular contact with students and who provides services to or on behalf of students enrolled in (i) a public elementary, middle or high school, pursuant to a contract with the local or regional board of education, or (ii) a private elementary, middle or high school, pursuant to a contract with the supervisory agent of such private school.</p> <p>NOTE: <i>See State v. Straub</i>, 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).</p>		
Delaware	<p>DEL. CODE ANN. tit. 11, § 1259 (West 2013). <u>Sexual relations in detention facility; class G felony.</u></p>	<p>DEL. CODE ANN. tit. 11, § 1259 (West 2013). <u>Sexual relations in detention facility; class G felony.</u></p> <p>A person is guilty of sexual relations in a detention facility when, being an employee working at a detention facility, a contractor or employee of a contractor at a detention facility, or a volunteer at a detention facility, the person engages in consensual sexual intercourse or sexual penetration with a person in custody on the premises of a detention facility.</p>	<p>DEL. CODE ANN. tit. 11, § 1258 (West 2013). <u>Escape and offenses relating to custody; definitions.</u></p> <p>As used in §§ 1251-1257 of this title: (1) <u>Detention facility</u> 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</p>	<p>DEL. CODE ANN. tit. 11, § 1259 (West 2013). <u>Sexual relations in detention facility; class G felony.</u></p> <p>Violation of this section shall be a class G felony.</p> <p>DEL. CODE ANN. tit. 11, § 4205 (West 2013). <u>Sentence for felonies.</u></p> <p>(a) A sentence of</p>	<p>DEL. CODE ANN. tit. 11, § 1259 (West 2013). <u>Sexual relations in detention facility; class G felony.</u></p> <p>It shall be no defense that such conduct was consensual.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>defined in § 901 of Title 10; or</p> <p>c. Held for extradition or as a material witness; or</p> <p>d. Otherwise confined pursuant to an order of a court.</p> <p>(2) <u>Custody</u> means restraint by a public servant pursuant to an arrest, detention or an order of a court.</p> <p>(3) <u>Contraband</u> 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.</p> <p>(4) <u>Escape</u> means departure from the place in which the actor is held or detained with knowledge that such departure is unpermitted.</p> <p>(5) <u>Other place having custody of such person</u> 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</p>	<p>incarceration for a felony shall be a definite sentence.</p> <p>(b) The term of incarceration which the court may impose for a felony is fixed as follows:</p> <p>(7) For a class G felony up to 2 years to be served at Level V.</p> <p>DEL. CODE ANN. tit. 11, § 4205 (West 2013).</p> <p><u>Sentence for felonies.</u></p> <p>(k)The penalty may include fines and penalties as the court deems appropriate.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>Department of Correction or any other state agency.</p> <p>DEL. CODE ANN. tit. 11, § 761 (West 2013). <u>Definitions generally applicable to sexual offenses.</u></p> <p>(e) <u>"Position of trust, authority or supervision over a child"</u> includes, but is not limited to: (1) Familial, guardianship or custodial authority or supervision; or (2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or (3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or (4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors,</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or</p> <p>(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or</p> <p>(6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or</p> <p>(7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>care or supervision of a child or children.</p> <p>(f) <u>"Sexual contact"</u> 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; or (3) Intentionally causing or allowing another person to touch 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.</p> <p>(g) <u>Sexual intercourse</u> 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 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.</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>(i) <u>Sexual penetration</u> means:</p> <p>(1) The unlawful placement of an object, as defined in subsection (c) of this section, inside the anus or vagina of another person; or</p> <p>(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.</p> <p>(j) <u>Without consent</u> means:</p> <p>(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</p> <p>(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Delaware Cont'			<p>(3) The defendant knew that the victim 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, such that resistance by the victim could no reasonably have been manifested. For purposes of this paragraph, <u>health professional</u> includes all individuals 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</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>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>NOTE: <i>See Smith v. State</i>, 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>D.C. CODE ANN. § 22-3013 (West 2013). <u>First degree sexual abuse of a ward.</u></p> <p>D.C. CODE ANN. § 22-3014 (West 2013). <u>Second degree sexual abuse of a ward.</u></p>	<p>D.C. CODE ANN. § 22-3013 (West 2013). <u>First degree sexual abuse of a ward.</u></p> <p>Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a</p>	<p>D.C. CODE ANN. § 22-3001 (West 2013). <u>Definitions.</u></p> <p>(1) <u>Actor</u> means a person accused of any offense proscribed under this chapter.</p> <p>(2) <u>Bodily injury</u> means injury involving loss or impairment of the function of a bodily member, organ, or</p>	<p>D.C. CODE ANN. § 22-301 (West 2007). <u>First degree sexual abuse of a ward.</u></p> <p>The penalty for first degree sexual abuse of a ward shall be imprisonment for not more than 10 years or fined not more than \$25,000. .</p>	<p>D.C. CODE ANN. § 22-3017 (West 2013). <u>Defenses to sexual abuse of a ward, patient, or client.</u></p> <p>(a) Consent is not a defense to prosecution under §§ 22-3013 to 22-3016, prosecuted alone or in conjunction with charges under § 22-3018. That the defendant and</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
District of Columbia Cont'		<p>ward, patient, client, or prisoner, who engages in a sexual act with a ward, patient, client, or prisoner, or causes a ward, patient, client or prisoner to engage in or submit to a sexual act.</p> <p>D.C. CODE ANN. § 22-3014 (West 2013). <u>Second degree sexual abuse of a ward.</u></p> <p>Any staff member, employee, contract employee, consultant, or volunteer at a hospital, treatment facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, a bus driver or attendant, or person who participates in the transportation of a ward, patient, client, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, or prisoner, who engages in a sexual act with a ward, patient, client, or prisoner, or causes a ward, patient, client or prisoner to engage in or submit to a sexual contact.</p>	<p>mental faculty, or physical disfigurement, disease, sickness, or injury involving significant pain.</p> <p>(3) <u>Child</u> means a person who has not yet attained the age of 16 years.</p> <p>(4) <u>Consent</u> means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.</p> <p>(5) <u>Force</u> means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.</p> <p>(5A) <u>Minor</u> means a person who has not yet attained the age of 18 years.</p> <p>(6) <u>Official custody</u> means:</p> <p>(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</p>	<p>D.C. CODE ANN. § 22-3014 (West 2013). <u>Second degree sexual abuse of a ward.</u></p> <p>(2) The penalty for second degree sexual abuse of a ward shall be imprisonment for not more than 5 years or fined in an amount not to exceed \$12,500 or both.</p>	<p>victim were married or in a domestic partnership at the time of the offense is a defense, which the defendant must prove by a preponderance of the evidence, to a prosecution under §§ 22-3013 to 22-3016, prosecuted alone or in conjunction with charges under § 22-3018 (NOTE: D.C. CODE ANN. § 22-3018 discusses attempts to commit sexual offenses).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
District of Columbia Cont'			<p>civil commitment proceedings, or pending extradition, deportation, or exclusion;</p> <p>(B) custody for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearances, work and recreation; or</p> <p>(C) probation or parole.</p> <p>(8) <u>Sexual act</u> means:</p> <p>(A) The penetration, however slight, of the anus or vulva of another by a penis;</p> <p>(B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or</p> <p>(C) The penetration, however slight, of the anus or vulva 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.</p> <p>(D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.</p> <p>(9) <u>Sexual contact</u> means the touching with any clothed or unclothed body part or any object, 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</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
District of Columbia Cont'			<p>of any person.</p> <p>(10) <u>Significant relationship</u> includes:</p> <p>(A) A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;</p> <p>(B) A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same dwelling as the victim;</p> <p>(C) The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and</p> <p>(D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor.</p>		
Florida	FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of</u>	FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force; malicious battery and sexual misconduct prohibited;</u>	FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force;</u>	FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of</u>	FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force;</u>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'	<p>force; malicious battery and sexual misconduct prohibited; reporting required; penalties.</p> <p>FLA. STAT. ANN. § 951.221 (West 2013). Sexual misconduct between detention facility employees and inmates; penalties</p> <p>FLA. STAT. ANN. § 794.011 (West 2013). Sexual battery.</p>	<p><u>reporting required; penalties.</u></p> <p>(3)(b)(2) Any employee of the department or a private correctional facility 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.</p> <p>(d) Each employee who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct pursuant to this subsection shall immediately prepare, date, and sign an independent report specifically describing the nature of the force used or the nature of the sexual misconduct, the location and time of the incident, and the persons involved. The report shall be delivered to the inspector general of the department with a copy to be delivered to the warden of the institution or the regional administrator. The inspector general shall immediately conduct an appropriate investigation, and, if probable cause is determined that a violation of this subsection has occurred, the respective state attorney in the circuit in which the incident occurred shall be notified.</p> <p>(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.</p> <p>(b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with regard to reports required in their section.</p> <p>(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.</p> <p>As part of the correctional-officer training program, the Criminal Justice Standards and Training Commission</p>	<p>malicious battery and sexual misconduct prohibited; reporting required; penalties.</p> <p>(3)(b)(1) As used in this paragraph, the term <u>sexual misconduct</u> means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object, but does not include an act done for a bona fide medical purpose or an internal search conducted in the lawful performance of the employee's duty.</p> <p>FLA. STAT. ANN. § 794.011 (West 2013). Sexual battery.</p> <p>(1)(a) <u>consent</u> means intelligent, knowing, voluntary consent and does not include submission</p> <p>(b) <u>Mentally defective</u> means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.</p> <p>(c) <u>Mentally incapacitated</u> means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person</p>	<p>force; malicious battery and sexual misconduct prohibited; reporting required; penalties.</p> <p>(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.</p> <p>FLA. STAT. ANN. § 775.082 (West 2013). <u>Penalties; applicability of sentencing structures; mandatory minimum sentences for certain re-offenders previously released from prison.</u></p> <p>(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.</p> <p>FLA. STAT. ANN. § 775.083 (West 2013). <u>Fines.</u></p> <p>(c) \$5,000 when the conviction is of a felony of the third degree.</p> <p>FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force; malicious battery and sexual</u></p>	<p>malicious battery and sexual misconduct prohibited; reporting required; penalties.</p> <p>(3)(b)(3) The consent of the inmate or offender supervised by the department in the community to any act of sexual misconduct may not be raised as a defense to a prosecution under this paragraph.</p> <p>(b)(4) This paragraph does not apply to any employee of the department who is legally married to an inmate or an offender supervised by the department in the community, nor does it apply to any employee who has no knowledge, and would have no reason to believe, that the person with whom the employee has engaged in sexual misconduct is an inmate or an offender under community supervision of the department.</p> <p>FLA. STAT. ANN. § 951.221 (West 2013).</p> <p>The consent of an inmate to any act of sexual misconduct may not be raised as a defense to prosecution under this section.</p> <p>FLA. STAT. ANN. § 794.011 (West 2013). <u>Sexual battery.</u></p> <p><u>(3) Consent is a defense under this section.</u></p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'		<p>shall develop course materials for inclusion in the appropriate required course specifically designed to explain the parameters of this subsection and to teach sexual assault identification and prevention methods and techniques. FLA. STAT. ANN. § 951.221 (West 2013). Sexual misconduct between detention facility employees and inmates; penalties</p> <p>(1) Any employee of a county or municipal detention facility or of a private detention facility under contract with a county commission who engages in sexual misconduct with an inmate or an offender supervised by the facility without committing the crime of sexual battery commits a felony of the third degree.</p> <p>(2) Notwithstanding prosecution, any violation of this section, as determined by the administrator of the facility, constitutes sufficient cause for dismissal of the violator from employment, and such person may not again be employed in any capacity in connection with the correctional system.</p> <p>FLA. STAT. ANN. § 794.011 (West 2013). <u>Sexual battery.</u></p> <p>(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141 .</p> <p>(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082 , s. 775.083 , s. 775.084 , or s. 794.0115 .</p> <p>(3) A person who commits sexual battery upon a person 12 years of age or older,</p>	<p>without his or her consent.</p> <p>(d) Offender means a person accused of a sexual offense in violation of a provision of this chapter.</p> <p>(e) <u>Physically helpless</u> means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.</p> <p>(g) <u>Serious personal injury</u> means great bodily harm or pain, permanent disability, or permanent disfigurement.</p> <p>(h) <u>Sexual battery</u> 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 bona fide medical purpose.</p> <p>(j) <u>Physically incapacitated</u> means bodily impaired or handicapped and substantially limited in ability to resist or flee.</p> <p>FLA. STAT. ANN. § 943.10 (West 2013). <u>Definitions.</u></p> <p>The following words and phrases as used in §§ 943.085-943.255 are defined as follows: (1) <u>Law enforcement officer</u> means any person who is elected, appointed or employed</p>	<p>misconduct <u>prohibited; reporting required; penalties.</u></p> <p>(4)(a) Any employee required to report pursuant to this section who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.</p> <p>FLA. STAT. ANN. § 775.082 (West 2013). <u>Penalties; applicability of sentencing structures; mandatory minimum sentences for certain re-offenders previously released from prison.</u></p> <p>(4)(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year.</p> <p>FLA. STAT. ANN. § 775.083 (West 2013). <u>Fines.</u></p> <p>(d): \$1,000 when the conviction is of a misdemeanor of the first degree.</p> <p>FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force; malicious battery and sexual misconduct</u></p>	<p>(4) Consent is a defense <u>under this section.</u></p> <p>(9) For prosecution under paragraph (4)(g) acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'		<p>without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082 , s. 775.083 , s. 775.084 , or s. 794.0115 .</p> <p>(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082 , s. 775.083 , s. 775.084 , or s. 794.0115 :</p> <p>(a) When the victim is physically helpless to resist.</p> <p>(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.</p> <p>(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.</p> <p>(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.</p> <p>(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.</p> <p>(f) When the victim is physically incapacitated.</p> <p>(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1) , (2) , (3) , (6) , (7) , (8) , or (9) , who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253 , or any other person in a position of control or authority in a probation, community</p>	<p>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.</p> <p>(2) <u>Correctional officer</u> means any person who 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 <u>correctional officer</u> does not include any</p>	<p><u>prohibited; reporting required; penalties.</u></p> <p>(4) (b) Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with regard to reports required in this section commits a misdemeanor of the first degree, punishable as provided in § 775.082 or § 775.083.</p> <p>FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.</u></p> <p>(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 an incident where force was used or an incident of sexual misconduct commits felony of the third degree, punishable as provided in § 775.082, § 775.083 or § 775.084.</p> <p>FLA. STAT. ANN. § 775.082 (West 2013). <u>Penalties; applicability of sentencing structures; mandatory minimum</u></p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'		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. (5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082 , s. 775.083 , s. 775.084 , or s. 794.0115.	secretarial, clerical, or professionally trained personnel. (3) <u>Correctional probation officer</u> 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) <u>Employing agency</u> 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	sentences for certain <u>re-offenders previously released from prison.</u> (4)(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years. FLA. STAT. ANN. § 775.083 (West 2013). <u>Fines.</u> (c) \$5,000 when the conviction is of a felony of the third degree. FLA. STAT. ANN. § 944.35 (West 2013). <u>Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.</u> (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 § 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. (NOTE: FLA. STAT. ANN. § 110.227 discusses	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'			<p>facility.</p> <p>(5) <u>Commission</u> means the Criminal Justice Standards and Training Commission.</p> <p>FLA. STAT. ANN. § 944.02 (West 2013). <u>Definitions.</u></p> <p>(1) <u>Commission</u> means the Parole Commission.</p> <p>(2) <u>Correctional system</u> means all prisons and other state correctional institutions now existing or hereafter created under the jurisdiction of the Department of Corrections.</p> <p>(3) <u>Department</u> means the Department of Corrections.</p> <p>(6) <u>Prisoner</u> means any person who is under civil or criminal arrest and in the lawful custody of any law enforcement official, or any person committed to or detained in any municipal or county jail or state prison, prison farm, or penitentiary, or to the custody of the department pursuant to lawful authority.</p> <p>(8) <u>State correctional institution</u> means any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked or maintained, under the custody and</p>	<p>suspensions, dismissals, reductions in pay, demotions, layoffs, transfers, and grievances).</p> <p>FLA. STAT. ANN. § 951.221 (West 2013).</p> <p>(1) Any employee of a county or municipal detention facility or of a private detention facility under contract with a county commission who engages in sexual misconduct, as defined in with an inmate or an offender supervised by the facility without committing the crime of sexual battery commits a felony of the third degree</p> <p>FLA. STAT. ANN. § 775.082 (West 2013). <u>Penalties;</u> <u>applicability of sentencing structures;</u> <u>mandatory minimum sentences for certain re-offenders</u> <u>previously released from prison.</u></p> <p>(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.</p> <p>FLA. STAT. ANN. § 775.083 (West 2013). <u>Fines.</u></p> <p>(c) \$5,000 when the conviction is of a felony of the third</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'			<p>jurisdiction of the department. FLA. STAT. ANN. § 944.710 (West 2013). <u>Definitions.</u></p> <p>(3) "Private correctional facility" means any facility, which is not operated by the department, for the incarceration of adults or juveniles who have been sentenced by a court and committed to the custody of the department. (4) "Private correctional officer" means any full-time or part-time employee of a private vendor whose primary responsibility is the supervision, protection, care, and control of prisoners within a private correctional facility.</p>	<p>degree.</p> <p>FLA. STAT. ANN. § 775.082 (West 2013). <u>Penalties;</u> <u>applicability of sentencing structures;</u> <u>mandatory minimum sentences for certain re-offenders</u> <u>previously released from prison.</u></p> <p>(1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.</p> <p>(3) A person who has been convicted of any other designated felony may be punished as follows: (a) 1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30. 2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years. 3. Except as provided</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Florida Cont'				<p>in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.</p> <p>4. For a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:</p> <p>a. A term of imprisonment for life; or</p> <p>b. A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).</p> <p>(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.</p> <p>(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.</p> <p>FLA. STAT. ANN. § 775.083 (West 2013) <u>Fines.</u></p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				(a)\$15,000, when the conviction is of a life felony. (b) \$10,000, when the conviction is of a felony of the first or second degree.	
Georgia	GA. CODE ANN. § 16-6-5.1 (West 2013). <u>Sexual assault.</u>	GA. CODE ANN. § 16-6-5.1 (West 2007). <u>Sexual assault.</u> (. (b) A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person: (2) Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of the same probation or parole office; (3) Is an employee or agent of a law enforcement agency and engages in sexual contact with such other individual who the actor knew or should have known is being detained by or is in the custody of any law enforcement agency; (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, facility providing child welfare and youth services, who engages in sexual contact with such other individual who the actor knew or should have known is in the custody of such facility. (c) A person who is an actual or purported practitioner of psychotherapy commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling or the actor uses the treatment or counseling relationship to facilitate sexual contact between the actor and	GA. CODE ANN. § 16-6-5.1 (West 2013). <u>Sexual Assault.</u> (a)As used in this Code section, the term: (1) <u>Actor</u> means a person accused of sexual assault. (2) <u>Intimate parts</u> means the genital area, groin, inner thighs, buttocks, or breasts of a person. (3) <u>Psychotherapy</u> means the professional treatment or counseling of a mental or emotional illness, symptom, or condition. (4) <u>Sexual contact</u> means any contact between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor. The definition of <u>sexual contact</u> in § 16-6-5.1(a)(4) excludes contact between married persons. GA. CODE ANN. § 49-5-3. (West 2007). <u>Definitions</u> (15) "Probation" means	GA. CODE ANN. § 16-6-5.1 (West 2007). <u>Sexual Assault.</u> (f) A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than 25 years or by a fine not to exceed \$100,000.00, or both; provided, however, that: (1) Except as provided in paragraph (2) of this subsection, any person convicted of the offense of sexual assault of a child under the age of 16 years shall be punished by imprisonment for not less than 25 nor more than 50 years and shall, in addition, be subject to the sentencing and punishment provisions of <u>Code Section 17-10-6.2</u> ; and (2) If at the time of the offense the victim of the offense is at least 14 years of age but less than 16 years of age and the actor is	GA. CODE ANN. § 16-6-5.1 (West 2013). <u>Sexual Assault.</u> (e) Consent of the victim shall not be a defense to a prosecution under this subsection. The definition of <u>sexual contact</u> in § 16-6-5.1(a)(4) excludes contact between married persons.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Georgia Cont'		such individual.	a legal status created by court order following adjudication in a delinquency case, whereby a child or youth is permitted to remain in the community, subject to supervision by the court or an agency designated by the court and subject to being returned to court at any time during the period of probation.	18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2 .	
Hawaii	HAW. REV. STAT. ANN. § 707-731 (West 2013). Sexual assault in the second degree.	HAW. REV. STAT. ANN. § 707-731 (West 2013). Sexual assault in the second degree.	HAW. REV. STAT. ANN. § 707-700 (West 2013). Definitions of terms in this chapter.	HAW. REV. STAT. ANN. § 707-731 (West 2013). Sexual assault in the second degree.	HAW. REV. STAT. ANN. § 707-732 (West 2013). Sexual assault in the third degree
Hawaii Cont'	HAW. REV. STAT. ANN. § 707-732 (West 2013). Sexual assault in the third degree.	(1) A person commits the offense of sexual assault in the second degree if: (a) The person knowingly subjects another person to an act of sexual penetration by compulsion; (b) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or (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, as defined in § 710-1000(13), 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. HAW. REV. STAT. ANN. § 707-732 (West 2013). Sexual assault in the third degree.	Deviate sexual intercourse: means any act of sexual gratification between a person and an animal or a corpse, involving the sex organs of one and the mouth, anus, or sex organs of the other. 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. Sexual penetration means: (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or	(2) Sexual assault in the second degree is a class B felony. HAW. REV. STAT. ANN. § 706-660 (West 2013). Sentence of imprisonment for class B and C felonies; ordinary terms. A person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in § 706-660.1 relating to the use of firearms in certain felony offenses and § 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the	(c) The person knowingly engages in sexual contact with a person who is at least 14 years old but less than 16 years old or causes the minor to have sexual contact with the person; provided that: (ii) The person is not legally married to the minor.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Hawaii Cont'		<p>(1) A person commits the offense of sexual assault in the third degree if:</p> <p>(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;</p> <p>(b) The person knowingly subjects to sexual contact another person who is less than 14 years old or causes such a person to have sexual contact with the person;</p> <p>(c) The person knowingly engages in sexual contact with a person who is at least 14 years old but less than 16 years old or causes the minor to have sexual contact with the person; provided that:</p> <p>(i) The person is not less than 5 years older than the minor; and</p> <p>(ii) The person is not legally married to the minor;</p> <p>(d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;</p> <p>(e) The person, while employed:</p> <p>(i) In a state correctional facility;</p> <p>(ii) By a private company providing services at a correctional facility;</p> <p>(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;</p> <p>(iv) By a private correctional facility operating in the State of Hawaii; or</p> <p>(v) As a law enforcement officer as defined in § 710-1000(13), 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.</p> <p>(f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.</p>	<p>anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. As used in this definition, 'genital opening' includes the anterior surface of the vulva and labia majora; or</p> <p>(2) Cunnilingus or analingus, whether or not actual penetration has occurred.</p> <p>For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.</p> <p>HAW. REV. STAT. ANN. §710-1000 (West 2007). <u>Definitions of terms in this chapter.</u></p> <p>In this chapter, unless a different meaning plainly is required:</p> <p>(3) <u>Custody</u> means restraint by a public servant pursuant to arrest, detention, or order of a court;</p> <p>(4) <u>Detention facility</u> means any place used for the confinement of a person:</p> <p>(a) Arrested for, charged with, or convicted of a criminal offense; or</p> <p>(b) Confined pursuant to chapter 571; or</p> <p>(c) Held for extradition; or</p> <p>(d) Otherwise confined pursuant to an order of a court.</p> <p>(13) <u>Law enforcement officer</u> means any public</p>	<p>maximum length of imprisonment which shall be as follows:</p> <p>(1) For a class B felony - 10 years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with § 706-669125.</p> <p>HAW. REV. STAT. ANN. § 707-732 (West 2013). <u>Sexual assault in the third degree.</u></p> <p>(2) Sexual assault in the third degree is a class C felony.</p> <p>HAW. REV. STAT. ANN. § 706-660 (West 2013). <u>Sentence of imprisonment for class B and C felonies; ordinary terms.</u></p> <p>A person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in § 706-660.1 relating to the use of firearms in certain felony offenses and § 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			servant, whether employed by the State or subdivisions thereof or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, whether that duty extends to all offenses or is limited to a specific class of offenses.	shall be as follows: (2) For a class C felony – 5 years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with § 706-669125.	
Idaho	IDAHO CODE ANN. § 18-6110 (West 2013). <u>Sexual contact with a prisoner.</u>	IDAHO CODE ANN. § 18-6110 (West 2013). <u>Sexual contact with a prisoner.</u> It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in § 18-101A, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in § 18-101A. (2) It is a felony for any supervising officer, as that term is defined in <u>section 18-101A, Idaho Code</u> , to knowingly have sexual contact with any parolee or probationer, as those terms are defined in <u>section 18-101A, Idaho Code</u> , who is not the person's spouse. IDAHO CODE ANN. § 18-101B (West 2013). <u>Criminal laws applicable to out-of-state prisoners and personnel of private correctional facilities.</u>	IDAHO CODE ANN. § 18-6110 (West 2013). <u>Sexual Contact with a prisoner.</u> <u>Sexual contact</u> means sexual intercourse, genital-genital, manual-anal, manual-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex. IDAHO CODE ANN. § 18-101A (West 2013). <u>Definitions.</u> (1) <u>Correctional facility</u> means a facility for the confinement of prisoners or juvenile offenders. 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," "juvenile correctional center," "Idaho security medical	IDAHO CODE ANN. § 18-6110 (West 2013). <u>Sexual contact with a prisoner.</u> Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.	IDAHO CODE ANN. § 18-6110 (2013). <u>Sexual contact with a prisoner.</u> The sexual contact must be with a prisoner who is not the employee's spouse.
Idaho Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Idaho Cont'		state of Idaho.	<p>program," "detention institution (facility)," "county jail," "jail," "private prison (facility)" or "private correctional facility," or those facilities that detain juvenile offenders pursuant to a contract with the Idaho department of juvenile corrections.</p> <p>(2) <u>In-state prisoner</u> means any person who has been charged with or convicted of a crime in the state of Idaho or who is being detained pursuant to a court order, and</p> <p>(a) Who is being housed in any state, local or private correctional facility, or</p> <p>(b) Who is being transported in any manner within or through the state of Idaho.</p> <p>(3) <u>Local correctional facility</u> 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.</p> <p>(4) <u>Out-of-state prisoner</u> or <u>out-of-state inmate</u> means a person who is convicted of and</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Idaho Cont'			<p>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 on parole or probation in Idaho or being housed in any state, local or private correctional facility in the state of Idaho, or who is being transported in any manner within or through the state of Idaho.</p> <p>(6) Prisoner means a person who has been convicted of a crime in the state of Idaho or who is being detained pursuant to a court order,, 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. The term shall be construed to include references to terms including, but not limited to "inmate", "convict", "detainee", and other similar terms, and shall include "out-of-state prisoner" and "out-of-state inmate"</p> <p>(7) <u>Private correctional facility or private prison (facility)</u> means a correctional facility constructed or operated</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Idaho Cont'			<p>in the state of Idaho by a private prison contractor.</p> <p>(8) <u>Private prison contractor</u> 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>(10) <u>State correctional facility</u> 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> <p>(12) "Juvenile offender" means a person younger than eighteen (18) years of age or who was younger than eighteen (18) years of age at the time of any act, omission, or status for which the person is being detained in a correctional facility</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			pursuant to court order.		
Illinois	720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u>	720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u> (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 person who is in the custody of that treatment and detention facility. (b) A probation or supervising officer, surveillance agent, or aftercare specialist commits the offense of custodial sexual misconduct when the probation or supervising officer, surveillance agent, or aftercare specialist 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 or employee so engaging in the sexual conduct or sexual penetration.	720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u> (g) In this Section: (0.5) " <u>Aftercare specialist</u> " means any person employed by the Department of Juvenile Justice to supervise and facilitate services for persons placed on aftercare release. (1) <u>Custody</u> means: (i) pretrial incarceration or detention; (ii) incarceration or detention under a sentence or commitment to a State or local penal institution; (iii) parole, aftercare release 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 Commitment Act. (2) <u>Penal system</u> means any system which includes institutions as defined in Section 2-14 of this Code or a county shelter care or detention home established under Section 1 of the County Shelter Care and Detention Home Act. (2.1) <u>Treatment and detention facility</u> means	720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u> (c) Custodial sexual misconduct is a Class 3 felony. 730 ILL. COMP. STAT. ANN. 5/5-4.5-40 (West 2013). <u>Class 3 Felonies; Sentence</u> (a) TERM. The sentence of imprisonment shall be a determinate sentence of not less than 2 years and not more than 5 years. 720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u> (d) Any person convicted of violating this Section immediately shall forfeit his or her employment with a penal system, treatment and detention facility, or conditional release program.	720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2013). <u>Custodial sexual misconduct.</u> (e) For purposes of this Section, the consent of the probationer, parolee, releasee, or inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act shall not be a defense to a prosecution under this Section. (f) This section does not apply to: (1) Any employee, probation or supervising officer, surveillance agent, or aftercare specialist 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, surveillance agent, or aftercare specialist 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.
Illinois Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Illinois Cont'			<p>any Department of Human Services facility established for the detention or civil commitment of person under the Sexually Violent Persons Act.</p> <p>(2.2) <u>Conditional release</u> means a program of treatment and services, vocational services, and alcohol or other drug abuse treatment provided to any person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act;</p> <p>(3) <u>Employee</u> means:</p> <p>(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,</p> <p>(ii) a contractual employee of a penal system, or</p> <p>(iii) a contractual employee of a treatment and detention facility.</p> <p>(5) <u>Probation officer</u> means any person employed in a probation or court services department as defined in Section 9b of the Probation and Probation Officers Act.</p> <p>(6) <u>Supervising officer</u> means any person employed to supervise persons placed on parole</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Illinois Cont'			<p>or mandatory supervised release with the duties described in Section 3-14-2 of the certified Code of Corrections.</p> <p>(7) <u>Surveillance agent</u> means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act.</p> <p>720 ILL. COMP. STAT. ANN. § 5/11-0.1 (West 20013).</p> <p><u>Definitions.</u></p> <p>(<u>Sexual conduct</u> 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.</p> <p><u>Sexual penetration</u> 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</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Illinois Cont'			<p>part of the body of one person or of any animal or object into the sex 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>730 ILL. COMP. STAT. ANN. 110/9b (West 2013). <u>Definitions.</u></p> <p>(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. 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>720 ILL. COMP. STAT. ANN. 5/2-14 (West 2013). <u>Penal Institution.</u></p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			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.		
Indiana	<p>IND. CODE ANN. § 35-44.1-3-10 (West 2013). <u>Sexual misconduct by service provider and detainee.</u></p> <p><u>Note: This section is current until July 2014 at which time it is repealed. It is being replaced with a new section containing the same definition but a different title, "Other sexual conduct" § 35-31.5-2-221.5. Definitions will not change.</u></p>	<p>IND. CODE ANN. § 35-44.1-3-10 (West 2013). <u>Sexual misconduct by service provider and detainee.</u></p> <p>(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 C felony.</p> <p>(c) A service provider at least 18 years of age who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is:</p> <ol style="list-style-type: none"> (1) less than 18 year of age; and (2) subject to lawful detention; <p>commits sexual misconduct, a Class B felony.</p>	<p>IND. CODE ANN. § 35-44.1-3-10 (West 2013). <u>Sexual misconduct by service provider with detainee.</u></p> <p>(a) As used in this section, <u>service provider</u> 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.</p> <p>IND. CODE ANN. § 35-31.5-2-186 (West 2007). <u>Lawful detention defined.</u></p> <p>(a) <u>Lawful detention</u> means:</p> <ol style="list-style-type: none"> (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 	<p>IND. CODE ANN. § 35-44.1-3-10 (West 2013). <u>Sexual misconduct by service provider with detainee.</u></p> <p>(b) Sexual misconduct of a service provider is a class C felony.</p> <p>IND. CODE ANN. § 35-50-2-1 (West 2013). <u>Definitions.</u></p> <p>(c)(4) The minimum sentence for a Class C felony is 2 years</p> <p>IND. CODE ANN. § 35-44.1-3-10 (West 2007). <u>Sexual misconduct by service provider with detainee.</u></p> <p>(c) Sexual misconduct of a service provider with a person who is less than 18 years of age and subject to lawful detention is a class B felony.</p> <p>IND. CODE ANN. § 35-50-2-1 (West 2013).</p>	<p>IND. CODE ANN. § 35-44.1-3-10 (West 2013). <u>Sexual misconduct by service provider with detainee.</u></p> <p>(c) It is not a defense that an act described in subsection (b) or (c) was consensual.</p> <p>(d) This section does not apply to sexual intercourse or deviate sexual conduct between spouses.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Indiana Cont'			<p>criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;</p> <p>(6) detention for extradition or deportation;</p> <p>(7) placement in a community corrections program's residential facility;</p> <p>(8) electronic monitoring;</p> <p>(9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or</p> <p>(10) any other detention for law enforcement purposes.</p> <p>(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.</p> <p>IND. CODE ANN. § 35-13.5-2-221.5 (West 2013).</p> <p><u>Deviate sexual conduct defined.</u></p> <p><u>Deviate sexual conduct</u> means an act involving:</p> <p>(1) a sex organ of one person and the mouth or anus of another person; or</p> <p>(2) the penetration of the sex organ or anus of a person by an object.</p> <p>IND. CODE ANN. § 35-31.5-2-302 (West</p>	<p><u>Definitions .</u></p> <p>(c)(3) The minimum sentence for a Class B felony is imprisonment for 6 years.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Indiana Cont'			<p>2013). <u>Sexual intercourse defined.</u></p> <p><u>Sexual intercourse</u> means an act that includes any penetration of the female sex organ by the male sex organ.</p>		
Iowa	Iowa Code § 709.16 (West 2013). <u>Sexual misconduct with offenders and juveniles.</u>	<p>IOWA CODE § 709.16 (West 2013). <u>Sexual misconduct with offenders and juveniles.</u></p> <p>1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.</p> <p>2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.</p> <p>3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.</p>	<p>IOWA CODE § 709.16 (West 2013). <u>Sexual misconduct with offenders and juveniles.</u></p> <p>(2)(b) For the purposes of this subsection, a <u>juvenile placement facility</u> means any of the following:</p> <p>(1) A child foster care facility licensed under § 237.4.</p> <p>(2) Institutions controlled by the department of human services listed in § 218.1.</p> <p>(3) Juvenile detention and juvenile shelter care homes approved under § 232.142.</p> <p>(4) Psychiatric medical institutions for children licensed under chapter 135H.</p> <p>(5) Facilities for the treatment of persons with substance-related disorders as defined in § 125.2.</p> <p>IOWA CODE § 702.17 (West 2007). <u>Sex act.</u></p> <p>The term <u>sex act</u> or <u>sexual activity</u> means any sexual contact between two or more persons by: penetration</p>	<p>IOWA CODE § 709.16 (West 2013). <u>Sexual misconduct with offenders and juveniles.</u></p> <p>Engaging in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services, a juvenile placed at such a facility, or a prisoner incarcerated in a county jail is an aggravated misdemeanor.</p> <p>IOWA CODE § 903.1(2) (West 2013). <u>Maximum sentence for misdemeanants.</u></p> <p>2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed 2 years.</p> <p>There shall be a fine of at least \$625 but not to exceed \$6,250.</p> <p>When a judgment of conviction of an</p>	(NOTE : IOWA CODE. makes no reference to defenses from prosecution for sexual misconduct with offenders and juveniles).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Iowa Cont'			<p>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 pursuant to chapter 148, 148C, 151, or 152; ejaculation onto the person of another; or by use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.</p> <p>IOWA CODE § 237.4 (West 2007). <u>License required – exceptions.</u></p> <p>An individual or an agency, as defined in § 237.1, shall not provide child foster care unless the individual or agency obtains a license issued by the administrator under this chapter. However, a license is not required for the following”</p> <p>1. An individual providing child foster care for a total of not more than 20 days in 1 calendar year.</p> <p>2. A residential care facility licensed under chapter 135C which is approved for the care fo children.</p>	<p>aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than 1 year the term shall be an indeterminate term.</p> <p>IOWA CODE § 903B.2 (West 2013). <u>Special sentence -- class "D" felonies or misdemeanors.</u></p> <p>A person convicted of a misdemeanor or a class "D" felony offense under chapter 709, § 726.2, or § 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 board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Iowa Cont'			<p>3. A hospital licensed under chapter 135B.</p> <p>4. A health care facility licensed under chapter 135C.</p> <p>5. A juvenile detention home or juvenile shelter care home approved under § 232.142.</p> <p>6. An institution listed in § 218.1.</p> <p>7. A facility licensed under chapter 125.</p> <p>8. An individual providing child care as a babysitter at the request of a parent, guardian or relative having lawful custody of the child.</p> <p>IOWA CODE § 218. (West 2013). Institutions controlled.</p> <p>The director of human services shall have the general and full authority given under statute to control, manage, direct, and operate the following institutions under the director's jurisdiction, and may at the director's discretion assign the powers and authorities given the director by statute to any one of the deputy directors, division administrators, or officers or employees of the divisions of the department of human services:</p> <ol style="list-style-type: none"> 1. Glenwood state resource center. 2. Woodward state resource center. 3. Mental health institute, Cherokee, 	<p>provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. 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 2 years upon any first revocation, and 5 years upon any second or subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under § 903A.2.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Iowa Cont'			<p>Iowa.</p> <p>4. Mental health institute, Clarinda, Iowa.</p> <p>5. Mental health institute, Independence, Iowa</p> <p>6. Mental health institute, Mount Pleasant, Iowa.</p> <p>7. State training school.</p> <p>8. Iowa juvenile home.</p> <p>9. Other facilities not attached to the campus of the main institution as program developments require.</p> <p>IOWA CODE § 125.2 (West 2013). Definitions.</p> <p>For purposes of this chapter, unless the context clearly indicate otherwise:</p> <p>9. Facility means an institution, a detoxification center, or an installation providing care, maintenance and treatment for substance–related disorders licensed by the department under § 125.13, hospitals licensed under chapter 135B, or the state mental health institutes designated by chapter 226.</p>		
Kansas	KAN. STAT. ANN. § 21-5512 (West 2012). <u>Unlawful sexual relations.</u>	<p>KAN. STAT. ANN. § 21-5512 (West 2012). <u>Unlawful sexual relations.</u></p> <p>(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:</p>	<p>KAN. STAT. ANN. § 75-5202 (West 2012). <u>Definitions.</u></p> <p>As used in K.S.A. 75-5201 et seq. and amendments thereto, unless the context clearly requires</p>	<p>KAN. STAT. ANN. § 21-5512(West 2012). <u>Unlawful sexual relations.</u></p> <p>(b) Unlawful sexual relations as defined in: (1) Subsection (a)(5)</p>	<p>KAN. STAT. ANN. § 21-3520 (West 2012). <u>Unlawful sexual relations.</u></p> <p>(a) Marriage is a defense. Consent is not a defense. (a)(2);(a)(6)(B); (a)(10);</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'		<p>(1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer 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</p> <p>(2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or post-release supervision, 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 who 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 an inmate who has been released and is currently on parole, conditional release or postrelease supervision;; or</p> <p>(3) the offender is a law enforcement officer, jail employee, or employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail; or</p> <p>(4) the offender is a law enforcement officer, employee of a juvenile detention facility or sanctions house, or employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house; or</p>	<p>otherwise:</p> <p>(c) <u>Inmate</u> means any person incarcerated in any correctional institution of the state of Kansas.</p> <p>(d) <u>Correctional institution</u> 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.</p> <p>(f) <u>Corrections officer</u> 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 under the custody of the secretary.</p> <p>(g) <u>Parole officer</u></p>	<p>is a severity level 4, person felony; and</p> <p>(2) subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10) or (a)(11) is a severity level 5, person felony.</p> <p>.</p> <p>(c)(1) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of <u>K.S.A. 21-5503</u>, and amendments thereto, the provisions of <u>K.S.A. 21-5503</u>, and amendments thereto, shall apply, not this section.</p> <p>(2) If an offender violates the provisions of this section by engaging in consensual sexual intercourse which would constitute a violation of subsection (b)(1) of <u>K.S.A. 21-5506</u>, and amendments thereto, the provisions of subsection (b)(1) of <u>K.S.A. 21-5506</u>, and amendments thereto, shall apply, not this section.</p> <p>(3) If an offender violates the provisions of this section by engaging in sodomy which would constitute a violation of subsection (a)(3), (a)(4) or (b) of <u>K.S.A. 21-5504</u>, and amendments thereto,</p>	<p>& (a)(11) Lack of knowledge of status of offender is a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'		<p>(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 with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility; or</p> <p>(6) the offender is an employee of the juvenile justice authority or employee of a contractor, who is under contract to provide direct supervision and offender control services to the juvenile justice authority and (A) 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 has been:</p> <p>(i) Released on conditional release from a juvenile correctional facility under the supervision and control of the juvenile justice authority or juvenile community supervision agency; or</p> <p>(ii) placed in the custody of the juvenile justice authority under the supervision and control of the juvenile justice authority or juvenile community supervision agency; and</p> <p>(B) 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>(7) the offender is an employee of the department of social and rehabilitation services or the employee of a contractor who is under contract to provide service in a social and rehabilitation services institution or to the department of social and rehabilitation services and the person with whom the offender is engaging in consensual intercourse lewd fondling or touching, or sodomy is a person 16 years of age or older who is a patient in such institution or in the custody of the secretary of social and rehabilitation services;</p> <p>(8) the offender is a worker, volunteer, or person in a position of authority in a</p>	<p>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>KAN. STAT. ANN. § 38-2302 (West 2012). <u>Definitions.</u></p> <p>As used in this code, unless the context otherwise requires:</p> <p>(d) <u>Educational institution</u> means all schools at the elementary and secondary levels.</p> <p>(e) <u>Educator</u> means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.</p> <p>(NOTE: KAN. STAT.</p>	<p>the provisions of subsection (a)(3), (a)(4) or (b) of <u>K.S.A. 21-5504</u>, and amendments thereto, shall apply, not this section.</p> <p>(4) If an offender violates the provisions of this section by engaging in lewd fondling or touching which would constitute a violation of subsection (b)(2) of <u>K.S.A. 21-5506</u>, and amendments thereto, the provisions of subsection (b)(2) of <u>K.S.A. 21-5506</u>, and amendments thereto, shall apply, not this section.</p> <p>KAN. STAT. ANN. § 21-6611 (West 2012). <u>Fines, crimes committed on or after July 1, 1993.</u></p> <p>(2) for any felony ranked in severity levels 1 through 5 of the nondrug grid as provided in <u>K.S.A. 21-6804</u>, and amendments thereto, or in severity levels 2 or 3 of the drug grid committed prior to July 1, 2012, or in severity levels 3 or 4 of the drug grid committed on or after July 1, 2012, as provided in <u>K.S.A. 21-6805</u>, and amendments thereto, a sum not exceeding \$300,000</p> <p>KAN. STAT. ANN. §</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'		<p>family foster home licensed by the department of health and environment 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 a foster child placed in the care of such family foster home</p> <p>(9) the offender is a teacher or other person in a position of authority 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 a student enrolled at the school where the offender is employed. If the offender is the parent of the student, the provisions of subsection (b) of <u>K.S.A. 21-5604</u>, and amendments thereto, shall apply, not this subsection; or</p> <p>(10) the offender is a court service officer or the employee of a contractor who is under contract to provide supervision services for persons under court service supervision 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 has been placed on probation under the supervision and control of court services 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 the supervision of court services; or</p> <p>(11) the offender is a community correctional services officer or the employee of a contractor who is under contract to provide supervision services for persons under community corrections supervision 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 has been assigned to a community correctional services program under the supervision and control of community corrections and the offender has knowledge that the person</p>	<p>ANN. § 72-89b03 discusses information regarding identity of specified pupils, disclosure requirements; criminal acts, reports to law enforcement agencies and state board of education; school safety and security policies, availability; civil liability, immunity)</p> <p>(f) <u>Institution</u> means the following institutions: Atchison juvenile correctional facility, the Larned juvenile correctional facility, and the Kansas juvenile correctional complex.</p> <p>(h) <u>Jail</u> 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:</p> <p>(A) Total separation of the juvenile and adult facility spatial area such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities;</p> <p>(B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping and generally living activities; and</p> <p>(C) separate juvenile and adult staff, including management, security staff and direct</p>	<p>21-6804 (West 2012). Sentencing grid for nondrug crimes; authority and responsibility of sentencing court; presumptive disposition (a) The provisions of this section shall be applicable to the sentencing guidelines grid for nondrug crimes. The following sentencing guidelines grid shall be applicable to nondrug felony crimes: Level Four: Maximum: 43 months Usual case: 41 months Minimum: 38 months Level Five: Maximum: 34 months Usual Case: 32 months Minimum: 31 months</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'		with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is currently under the supervision of community corrections.	<p>care staff such as recreational, educational and counseling.</p> <p>(i) <u>Juvenile</u> means a person to whom one or more of the following applies, the person:</p> <p>(1) Is 10 or more years of age but less than 18 years of age;</p> <p>(2) is alleged to be a juvenile offender; or</p> <p>(3) has been adjudicated as a juvenile offender and continues to be subject to the jurisdiction of the court.</p> <p>(j) <u>Juvenile correctional facility</u> means a facility operated by the commissioner for the commitment of juvenile offenders.</p> <p>(k) <u>Juvenile corrections officer</u> 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.</p> <p>(l) <u>Juvenile detention facility</u> means a public or private facility licensed pursuant to article 5 chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.</p> <p>(n) <u>Juvenile offender</u></p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'			<p>means a person who commits an offense while 10 or more years of age but less than 18 years of age which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:</p> <p>(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 amendment thereto;</p> <p>(2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated, and amendment thereto;</p> <p>(3) a person under 18 years of age who previously has been:</p> <p>(A) Convicted as an adult under the Kansas criminal code;</p> <p>(B) sentenced as an adult under the Kansas criminal code following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 2006 Supp. 38-2364, and amendments thereto; or</p> <p>(C) convicted or sentenced as an adult in another state or foreign jurisdiction under</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'			<p>substantially similar procedures described in K.S.A. 2006 Supp. 38-2347, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.</p> <p>(o) <u>Law enforcement officer</u> 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.</p> <p>(p) <u>Parent</u> when used in relation to a juvenile, includes a guardian and every person who is, by law, liable to maintain, care for or support the juvenile.</p> <p>(r) <u>Sanctions house</u> 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 perimeters of the facility, or which relies on locked room and 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.</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kansas Cont'			(t) Youth residential facility means any home foster home or structure which provides 24-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 or article 70 of chapter 75 of the Kansas Statutes Annotated, and amendments thereto.		
Kentucky	KY. REV. STAT. ANN. § 510.120 (West 2013). <u>Sexual abuse in the second degree.</u>	KY. REV. STAT. § 510.120 (West 2013). <u>Sexual abuse in the second degree.</u> (1) A person is guilty of sexual abuse in the second degree when: (a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability; (b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or (c) Being a jailer employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, 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 or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, the detention facility, or the contracting entity, to sexual contact.	KY. REV. STAT. § 520.010 (West 2013). <u>Definitions for chapter.</u> (2) <u>Custody</u> 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) <u>Detention facility</u> 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. (5) <u>Escape</u> means departure from custody or the detention facility in which a person is held or detained when the departure is	KY. REV. STAT. § 510.120 (West 2013). <u>Sexual abuse in the second degree.</u> (2) Sexual abuse in the second degree is a Class A misdemeanor. KY. REV. STAT. § 532.090 (West 2013). <u>Sentence of imprisonment for a misdemeanor.</u> A sentence of imprisonment for a misdemeanor shall be a definite term and shall be fixed within the following maximum limitations: (1) For a Class A misdemeanor, the term shall not exceed 12 months.	KY. REV. STAT. § 510.120 (West 2013). <u>Sexual abuse in the second degree.</u> (2) In any prosecution under subsection (1)(b) of this section, it is a defense that: (a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and (b) The other person was at least fourteen (14) years old; and (c) The actor was less than five (5) years older than the other person. KY. REV. STAT. § 510.020 (West 2013). <u>Lack of consent.</u> (1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim. (2) Lack of consent results from: (a) Forcible compulsion; (b) Incapacity to consent; or

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kentucky Cont'			<p>unpermitted, or failure to return to custody or detention following a temporary leave granted for a specific purpose or for a limited period; and (6) <u>Penitentiary</u> includes any facility operated by the Department of Corrections and the confines of any work detail or other detail, whether under guard or not, under the custody and control of the Department of Corrections.</p> <p>KY. REV. STAT. § 510.010 (West 2013) (7) <u>Sexual contact</u> 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.</p> <p>KY. REV. STAT. § 600.020 (West 2013). <u>Definitions for KRS Chapters 600-645</u></p> <p>As used in KRS Chapter 600 to 645, unless the context otherwise requires: (27) <u>Foster Family home</u> means a private home in which children are placed for foster family care under supervision of the cabinet or a licensed child-placing agency;</p> <p>KY. REV. STAT. § 532.045 (West 2013). <u>Persons prohibited from probation or conditional</u></p>		<p>(c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct. (3) A person is deemed incapable of consent when he or she is: (a) Less than 16 years old; (b) Mentally retarded or suffers from a mental illness; (c) Mentally incapacitated; (d) Physically helpless; or (e) Under the care of custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency. (4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and not court order is in effect prohibiting contact between the parties.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Kentucky Cont'			<p>discharge; procedure when probation or conditional discharge not prohibited.</p> <p>(1) As used in this section: (a) <u>Position of authority means</u> but is not limited to the position occupied by a biological parent, adoptive parent, stepparent, foster parent, relative, household member, adult youth leader, recreational staff, or volunteer who is an adult, adult athletic manage, adult coach, teacher, classified school employee, certified school employee, counselor, staff, or volunteer for either a residential facility, as holding facility as defined in KRS 600.020, or a detention facility as defined in KRS 520.010(4), staff or volunteer with a youth services organization, religious leader, health-care provider, or employer; (b) <u>Position of special trust</u> means a position occupied by a person in a position of authority who by reason of that position is able to exercise undue influence over the minor.</p>		
Louisiana	LA. REV. STAT. ANN. § 14:134.1 (West 2013). <u>Malfeasance in</u>	LA. REV. STAT. ANN. § 14:134.1 (West 2013). <u>Malfeasance in office; sexual conduct prohibited with persons confined in</u>	LA. REV. STAT. ANN. § 14:134.1 (West 2013). C. For purposes of this	LA. REV. STAT. ANN. § 14:134.1 (West 2013). <u>Malfeasance in office;</u>	(NOTE : LA. REV. STAT. ANN. makes no reference to defenses from prosecution for

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Louisiana Cont'	office; sexual conduct prohibited with persons confined in correctional institutions.	<p><u>correctional institutions.</u></p> <p>A. It shall be unlawful and constitute malfeasance in office for any of the following persons to engage in sexual intercourse or any other sexual conduct with a person who is under their supervision and who is confined in a prison, jail, work release facility, or correctional institution, or who is under the supervision of the division of probation and parole:</p> <p>(1) A law enforcement officer.</p> <p>(2) An officer, employee, contract worker, or volunteer of the Department of Public Safety and Corrections or any prison, jail, work release facility, or correctional institution.</p>	<p>Section, "law enforcement officer" shall include commissioned police officers, sheriffs, deputy sheriffs, marshals, deputy marshals, correctional officers, constables, wildlife enforcement agents, state park wardens, and probation and parole officers.</p> <p>LA. REV. STAT. ANN. § 15:1181 (West 2013). <u>Definitions.</u></p> <p>In this Part the terms enumerated have the following meanings:</p> <p>(5) <u>Prison</u> means any state or local jail, prison, or other correctional facility that incarcerates or detains juveniles or adults accused of, convicted of, sentenced for, or adjudicated delinquent for violation of criminal law.</p> <p>(6) <u>Prisoner</u> means any person subject to incarceration, detention, or admission to any prison who is accused of, convicted of, sentenced for, or adjudicated delinquent for a violation of criminal law or the terms or conditions of parole, probation, pretrial release, or a diversionary program. Status as a "prisoner" is determined as of the time the cause of action arises. Subsequent events, including post trial judicial action or</p>	<p>sexual conduct prohibited with persons confined in correctional institutions.</p> <p>B. 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.</p>	malfeasance in office: sexual conduct prohibited with persons confined in correctional institutions).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Louisiana Cont'			<p>release from custody, shall not affect such status.</p> <p>LA. REV. STAT. ANN. § 15:742 (West 2013). <u>Definitions.</u></p> <p>(1) <u>Correctional facility employee</u> means any employee of any jail, prison, or correctional facility.</p> <p>(2) <u>Private correctional facility</u> means a correctional facility owned and operated by a private entity.</p>		
Maine	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013). <u>Gross sexual assault.</u></p> <p>ME. REV. STAT. ANN. tit. 17-A, § 255-A (West 2013). <u>Unlawful sexual contact.</u></p> <p>ME. REV. STAT. ANN. tit. 17-A, § 260 (West 2007). <u>Unlawful sexual touching.</u></p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013). <u>Gross sexual assault.</u></p> <p>2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person.</p> <p>F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student.</p> <p>G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility,</p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 251 (West 2013). <u>Definitions and general provisions.</u></p> <p>1. In this chapter the following definitions apply.</p> <p>C. <u>Sexual act</u> means:</p> <p>(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;</p> <p>(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</p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013). <u>Gross sexual assault.</u></p> <p>2.E. Violation of this paragraph is a Class B crime;</p> <p>F. Violation of this paragraph is a Class C crime;</p> <p>G. Violation of this paragraph is a Class C crime</p> <p>H. Violation of this paragraph is a Class B crime;</p> <p>I. Violation of this paragraph is Class C crime; or</p> <p>J. Violation of this paragraph is a Class C crime.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 255-A (West 2013). <u>Unlawful sexual contact.</u></p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013). <u>Gross sexual assault.</u></p> <p>2. Marriage is a defense.</p> <p>J. It is an affirmative defense under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 255-A 1.1 (West 2013). <u>Unlawful sexual contact.</u></p> <p>Marriage is a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maine Cont'		<p>facility operate by a family child care provider, children's residential care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person.</p> <p>H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person.</p> <p>I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client for mental health therapy of the actor</p> <p>J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and 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 the other person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 255-A (West 2013). <u>Unlawful sexual contact.</u></p> <p>1. I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a</p>	<p>purpose of causing bodily injury or offensive physical contact.</p> <p>A sexual act may be proved without allegation or proof of penetration.</p> <p>D. <u>Sexual contact</u> 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.</p> <p>G. <u>Sexual touching</u> means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 755 (West 2013). <u>Escape.</u></p> <p>3. As used in this section, <u>official custody</u> 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</p>	<p>1.I. Violation of this paragraph is a Class D crime;</p> <p>J. Violation of this paragraph is a Class C crime;</p> <p>K. Violation of this paragraph is a Class D crime;</p> <p>L. Violation of this paragraph is a Class C crime;</p> <p>M. Violation of this paragraph is a Class C crime;</p> <p>N. Violation of this paragraph is a Class B crime;</p> <p>O. Violation of this paragraph is a Class C crime;</p> <p>P. Violation of this paragraph is a Class B crime;</p> <p>Q. Violation of this paragraph is a Class D crime;</p> <p>R. Violation of this paragraph is a Class C crime;</p> <p>S. Violation of this paragraph is a Class E crime;</p> <p>T. Violation of this paragraph is a Class D crime;</p> <p>U. Violation of this paragraph is a Class D crime;</p> <p>V. Violation of this paragraph is a Class C crime.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 260 (West 2013). <u>Unlawful sexual touching.</u></p> <p>1.E. Unlawful sexual touching is a Class D</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maine Cont'		<p>hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person.</p> <p>J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration.</p> <p>K. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student.</p> <p>L. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration.</p> <p>M. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person.</p> <p>N. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration.</p> <p>O. The other person submits as a result of compulsion.</p> <p>P. The other person submits as a result of compulsion and the sexual contact includes penetration.</p>	<p>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.</p>	<p>crime;</p> <p>F. Violation of this paragraph is a Class D crime;</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 1252 (West 2013). <u>Imprisonment for crimes other than murder.</u></p> <p>2. The court shall set the term of imprisonment as follows:</p> <p>B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years.</p> <p>C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;</p> <p>D. In the case of a Class D crime, the court shall set a definite period of less than one year.</p> <p>E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.</p> <p>ME. REV. STAT. ANN. tit. 5, § 3360-I (West 2013). <u>Funding sources.</u></p> <p>As part of the sentence or fine imposed, the court shall impose an assessment of \$25 on any person convicted of a Class B crime or a class C crime and \$10 on any person</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maine Cont'		<p>Q. The actor owns, operates or is an employee of an organization. program or residence that is operated, administered, licensed or funded by the Department of Health and 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 other person as a person with an intellectual disability or autism.</p> <p>R. The actor owns, operates or in an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and 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 other person as a person with intellectual disability or autism and the sexual contact includes penetration.</p> <p>S. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled.</p> <p>T. The other person, not the actor's spouse, is in fact less than 18 years of age and is enrolled in a private or public elementary school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration.</p> <p>U. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to other person and the other</p>		<p>convicted of a Class D crime or a Class E crime.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2013). <u>Gross sexual assault.</u></p> <p>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.</p> <p>A. When the prior conviction is a Class A crime, enhance the basic period of incarceration by at least 4 years of imprisonment;</p> <p>B. when the prior conviction is a Class B crime, enhance the basic period of incarceration by at least 2 years of imprisonment;</p> <p>C. when the prior conviction is a Class C crime, enhance the basic period of incarceration by at least one year of imprisonment.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maine Cont'		<p>person, not the actor's spouse is a patient or client of the actor V. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client of the actor for mental health therapy and the sexual contact includes penetration.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 260 (West 2013). <u>Unlawful sexual touching.</u></p> <p>1. Unlawful sexual touching. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:</p> <p>E. The other person, not the actor's spouse, is under official supervision as a probationer or parolee, a sex offender on supervised release, a prisoner on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person.</p> <p>F. The other person, not the actor's spouse is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student.</p>			

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maine Cont'					
Maryland	MD. CODE ANN., CRIM. LAW § 3-314 (West 2013). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child.</u>	MD. CODE ANN., CRIM. LAW § 3-314 (West 2013). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child.</u> (b)(1) This subsection applies to: (i) a correctional employee; (ii) any other employee of the Department of Public Safety and Correctional Services or a correctional facility; (iii) an employee of a contractor providing goods or services to the Department of Public Safety and Correctional Services or a correctional facility; and (iv) any other individual working in a correctional facility, whether on a paid or volunteer basis. (2) A person described in paragraph (1) of this subsection may not engage in sexual contact, vaginal intercourse, or a sexual act with an inmate. (c) A person may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual confined in a child care institution licensed by the Department, a detention center for juveniles, or a facility listed in § 9-226(b) of the Human Services Article.	MD. CODE ANN., CRIM. LAW § 3-314 (West 2013). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child.</u> (a)(1) In this section the following words have the meanings indicated. (2)(i) <u>Correctional employee</u> means a: 1. correctional officer, as defined in § 8-201 of the Correctional Services Article; or 2. managing official or deputy managing official of a correctional facility. (ii) <u>Correctional employee</u> includes a sheriff, warden, or other official who is appointed or employed to supervise a correctional facility. (3)(i) <u>Inmate</u> has the meaning stated in § 1- 101 of this article. (ii) <u>Inmate</u> includes an individual confined in a community adult rehabilitation center. MD. CODE ANN., CORR. SERVS. § 8-201 (West 2013). <u>Definitions.</u> (e)(1) <u>Correctional officer</u> means a member of a correctional unit whose duties relate to the investigation, care,	MD. CODE ANN., CRIM. LAW § 3-314 (West 2013). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child.</u> (d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both. (e) A sentence imposed for violation of this section may be separate from and consecutive to or concurrent with a sentence for another crime under §§ 3-303 through 3-312 of this subtitle.	(NOTE : MD. CODE ANN., CRIM. LAW makes no reference to defenses from prosecution for sexual conduct between correctional or juvenile justice employee and inmate or confined child).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maryland Cont'			<p>custody, control, or supervision of inmates and individuals who:</p> <p>(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.</p> <p>(2) <u>Correctional officer</u> does not include:</p> <p>(i) the head or deputy head of a correctional unit; or</p> <p>(ii) a sheriff, warden, or superintendent or an individual with an equivalent title who is appointed or employed by a unit of government to exercise equivalent supervisory authority.</p> <p>(g)(1) <u>Correctional unit</u> 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:</p> <p>(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.</p> <p>(2) <u>Correctional unit</u> includes those facilities as set forth in § 9-226 of the Human Services Article and other facilities as designated by the Secretary of Juvenile Services.</p> <p>(h)(1) <u>Department of Juvenile Services</u></p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maryland Cont'			<p>employee means a youth supervisor, youth counselor, direct care worker, or other employee of the Department 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.</p> <p>(2) <u>Department of Juvenile Services employee</u> 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.</p> <p>MD. CODE ANN., CRIM. LAW § 1-101 (West 2013). <u>Definitions.</u></p> <p>(d) <u>Correctional facility</u> means a facility that is operated for the purpose of detaining or confining adults who are</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maryland Cont'			<p>charged with or found guilty of a crime.</p> <p>(h) "Division of Parole and Probation" means the Division of Parole and Probation in the Department of Public Safety and Correctional Services.</p> <p>(i) <u>Inmate</u> means an individual who is actually or constructively detained or confined in a correctional facility.</p> <p>(j) <u>Local correctional facility</u> means a correctional facility that is operated:</p> <p>(1) by one or more counties; or (2) by a municipal corporation.</p> <p>(o)(1) <u>State correctional facility</u> means a correctional facility that is operated by the State.</p> <p>(2) <u>State correctional facility</u> includes:</p> <p>(i) the Patuxent Institution;</p> <p>(ii) the Baltimore City Detention Center; and</p> <p>(iii) the centralized booking facility in Baltimore City that is operated by the Division of Pretrial Detention and Services in the Department of Public Safety and Correctional Services.</p> <p>MD. CODE ANN., CRIM. LAW § 3-301 (West 2013).</p> <p><u>Definitions.</u></p> <p>(e)(1) <u>Sexual act</u> means any of the following acts, regardless of whether semen is</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maryland Cont'			<p>emitted:</p> <ul style="list-style-type: none"> (i) analingus; (ii) cunnilingus; (iii) fellatio; (iv) anal intercourse, including penetration, however slight, of the anus; or (v) an act: <ul style="list-style-type: none"> 1. in which an object penetrates, however slightly, into another individual's genital opening or anus; and 2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party. <p>(2) Sexual act does not include:</p> <ul style="list-style-type: none"> (i) vaginal intercourse; or (ii) an act in which an object penetrates an individual's genital opening or anus for an accepted medical purpose. <p>(f)(1) <u>Sexual contact</u>, as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party.</p> <p>(2) Sexual contact includes and act:</p> <ul style="list-style-type: none"> (i) in which a part of an individual's body, except the penis, mouth, or tongue, penetrates, however slightly, into another individual's genital opening or anus; and (ii) that can reasonably 		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Maryland Cont'			<p>be construed to be for sexual arousal or gratification, or for the abuse of either party.</p> <p>(3) Sexual contact does not include:</p> <p>(i) a common expression of familial or friendly affection; or</p> <p>(ii) an act for an accepted medical purpose.</p> <p>(g)(1) <u>Vaginal intercourse</u> means genital copulation, whether or not semen is emitted.</p> <p>(2) Vaginal intercourse includes penetration, however slight, of the vagina.</p>		
Massachusetts	<p>MASS. ANN. LAWS ch. 268, § 21A (West 2013).</p> <p><u>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</u></p>	<p>MASS. ANN. LAWS ch. 268, § 21A (West 2013).</p> <p><u>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</u></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>MASS. ANN. LAWS ch. 125, § 1 (West 2013).</p> <p><u>Definitions.</u></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>(d) <u>correctional facility</u>, any building, enclosure, space or structure used for the custody, control and rehabilitation of committed offenders and of such other persons as may be placed in custody therein in accordance with law;</p> <p>(e) <u>correctional institution</u>, correctional facility;</p> <p>(g) <u>department</u>, the department of correction;</p> <p>(i) <u>inmate</u>, committed</p>	<p>MASS. ANN. LAWS ch. 268, § 21A (West 2013).</p> <p><u>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</u></p> <p>A person who violates this section shall be punished by imprisonment for not more than 5 years in a state prison or by a fine of \$10,000 or both.</p>	<p>MASS. ANN. LAWS ch. 268, § 21A (West 2013).</p> <p><u>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</u></p> <p>In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Massachusetts Cont'			<p>offender or such other person as is placed in custody in a correctional facility in accordance with law.</p> <p>j) <u>institution</u>, facility;</p> <p>(k) <u>penal institution</u>, correctional facility;</p> <p>(l) <u>prison</u>, correctional facility;</p> <p>(m) <u>prisoner</u>, a committed offender and such other person as is placed in custody in a correctional facility in accordance with law;</p> <p>(n) <u>state correctional facility</u>, any correctional facility owned, operated, administered or subject to the control of the department of correction, including but not limited to: Massachusetts Correctional Institution, Cedar Junction; Massachusetts Correctional Institution, Norfolk; Massachusetts Correctional Institution, Concord; Massachusetts Correctional Institution, Framingham; Massachusetts Correctional Institution, Bridgewater; Massachusetts Correctional Institution, Plymouth; Massachusetts Correctional Institution, Warwick; Massachusetts Correctional Institution, Monroe;</p> <p>(o) <u>state prison</u>, Massachusetts Correctional Institution, Cedar Junction.</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Massachusetts Cont'			<p>MASS. ANN. LAWS ch. 268, § 21A (West 2013).</p> <p><u>Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.</u></p> <p>For purposes of this section, <u>sexual relations</u> includes intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by § 22 or 24 of chapter 265 or § 2,3,35 of 53A of chapter 272.</p> <p>(MASS. ANN. LAWS ch. 265, § 22 discusses sexual intercourse or unnatural sexual intercourse, ch. 265, § 24 discusses assault with intent to commit rape, ch. 272, § 2 discusses prostitution or unlawful sexual intercourse, ch. 272, § 3 discusses drugging a person for the purposes of engaging in sexual intercourse, ch. 272 § 35 discusses unnatural and lascivious acts, and ch. 272, § 53A discusses engaging in sexual conduct for a fee)</p>		
Michigan	MICH. COMP. LAWS SERV. § 750.520c (West 2013). <u>Second degree criminal sexual conduct.</u>	<p>MICH. COMP. LAWS SERV. § 750.520c (West 2013). <u>Second degree criminal sexual conduct.</u></p> <p>(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:</p> <p>(a) That other person is under 13 years of</p>	<p>MICH. COMP. LAWS § 750.520a (West 2013). <u>Definitions.</u></p> <p>(m) <u>Physically helpless</u> means that a person is unconscious, asleep, or for any other reason is physically unable to communicate</p>	<p>MICH. COMP. LAWS § 750.520c (West 2013). <u>Criminal sexual conduct in the second degree; felony.</u></p> <p>(2) Criminal sexual conduct in the second degree is a felony</p>	<p>MICH. COMP. LAWS SERV. § 750.520c(1)(i)-(l) (West 2013).</p> <p>Lack of knowledge of status as offender is a defense. (NOTE : MICH. COMP. LAWS make no</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Michigan Cont'		<p>age.</p> <p>(b) That other person is at least 13 but less than 16 years of age and any of the following:</p> <p>(i) The actor is a member of the same household as the victim.</p> <p>(ii) The actor is related by blood or affinity to the fourth degree to the victim.</p> <p>(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.</p> <p>(iv) The actor is a teacher, substitute teacher, or administrator of the public or nonpublic school in which that other person is enrolled.</p> <p>(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</p> <p>(vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual contact occurs during the period of that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, <u>MCL 722.111</u>.</p> <p>(c) Sexual contact occurs under circumstances involving the commission of any other felony.</p> <p>(d) The actor is aided or abetted by 1 or more other persons and either of the</p>	<p>unwillingness to an act.</p> <p>(q) <u>Sexual contact</u> includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:</p> <p>(i) Revenge.</p> <p>(ii) To inflict humiliation.</p> <p>(iii) Out of anger.</p> <p>(r) <u>Sexual penetration</u> 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 another person's body, but emission of semen is not required.</p> <p>MICH. COMP. LAWS § 330.2001b (West 2013). <u>Meanings of words and phrases.</u></p> <p>(2) <u>Prisoner</u> means a person confined in a state correction facility, but does not include any of the following:</p> <p>(a) A person confined pursuant to an order of a juvenile division of the probate court or the family division of circuit court.</p>	<p>punishable by imprisonment for not more than 15 years.</p>	<p>reference to defenses from prosecution for criminal sexual conduct in the second degree; felony).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Michigan Cont'		<p>following circumstances exists:</p> <p>(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).</p> <p>(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.</p> <p>(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)</p> <p>(g) The actor knows or has reason to know that the person is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:</p> <p>(i) The actor is related to the victim by blood or affinity to the fourth degree.</p> <p>(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.</p> <p>(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 department of corrections who knows that the other person is under the jurisdiction of the department of corrections.</p> <p>(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility, who knows that the other person is under the jurisdiction of the department of corrections.</p> <p>(k) That other person is a prisoner or</p>	<p>(b) A person confined in a place of detention.</p> <p>(c) A person who is on parole from a state correctional facility.</p> <p>(3) <u>Protective environment</u> means an environment that supports mental health services in accordance with a prisoner's individual plan of services.</p> <p>(4) <u>State correctional facility</u> means a facility that houses prisoners and is operated by the department of corrections, and also includes a youth correctional facility operated by the department of corrections or a private vendor under section 20g of 1953 PA 232, MCL 791.220g.</p> <p>MICH. COMP. LAWS §791.220g (West 2013). <u>Youth correctional facility; contracting with private vendor.</u></p> <p>Sec. 20g. (1) The department may establish a youth correctional facility which shall house only prisoners committed to the jurisdiction of the department who are 19 years of age or less. If the department establishes or contracts with a private vendor for the operation of a youth correctional facility, following intake processing in a department operated</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Michigan Cont'		<p>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.</p> <p>(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 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.</p>	<p>facility, the department shall house all male prisoners who are 16 years of age or less at the youth correctional facility unless the department determines that the prisoner should be housed at a different facility for reasons of security, safety, or because of the prisoner's specialized physical or mental health care needs.</p>		
Minnesota	<p>MINN. STAT. § 609.344 (West 2013). <u>Criminal sexual conduct in the third degree.</u></p> <p>MINN. STAT. § 609.345 (West 2007). <u>Criminal sexual conduct in the fourth degree.</u></p>	<p>MINN. STAT. § 609.344 (West 2013). <u>Criminal sexual conduct in the third degree.</u></p> <p>Subd. 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: (a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense; (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;</p>	<p>MINN. STAT. § 609.341 (West 2013). <u>Definitions.</u></p> <p>Subd. 2. Actor means a person accused of criminal sexual conduct.</p> <p>Subd. 5. <u>Intimate parts</u> includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.</p> <p>Subd. 6. <u>Mentally impaired</u> means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.</p> <p>Subd. 7. <u>Mentally incapacitated</u> means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement,</p>	<p>MINN. STAT. § 609.344 (West 2013). <u>Criminal sexual conduct in the third degree.</u></p> <p>Subd. 2. Except as otherwise provided in § 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine not more than \$30,000 or both. A person convicted under this section is also subject to conditional release under § 609.3455. (MINN. STAT. § 609.3455 discusses dangerous sex offenders, life sentences, and conditional release)</p> <p>MINN. STAT. § 609.345 (West 2013). <u>Criminal sexual</u></p>	<p>MINN. STAT. § 609.344&5 (West 2013). <u>Criminal sexual conduct in the fourth degree.</u></p> <p>Subd. 1.(m) Consent by the complainant is not a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Minnesota Cont'		<p>(c) the actor uses force or coercion to accomplish the penetration;</p> <p>(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;</p> <p>(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:</p> <p>(i) the actor or an accomplice used force or coercion to accomplish the penetration;</p> <p>(ii) the complainant suffered personal injury; or</p> <p>(iii) the sexual abuse involved multiple acts committed over an extended period of time.</p> <p>(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:</p> <p>(i) during the psychotherapy session; or</p> <p>(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.</p> <p>(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;</p> <p>(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;</p> <p>(k) the actor accomplishes the sexual</p>	<p>lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.</p> <p>Subd. 9. <u>Physically helpless</u> means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.</p> <p>Subd. 10. <u>Position of authority</u> includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.</p> <p>Subd. 11.(a) <u>Sexual contact</u> 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:</p> <p>(i) the intentional</p>	<p>conduct in the <u>fourth degree</u>.</p> <p>Subd. 2. Except as otherwise provided in § 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 10 years or to a payment of a fine not more than \$20,000 or both. A person convicted under this section is also subject to conditional release under § 609.3455. (MINN. STAT. § 609.3455 discusses dangerous sex offenders, life sentences, and conditional release)</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Minnesota Cont'		<p>penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;</p> <p>(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:</p> <p>(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or</p> <p>(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;</p> <p>(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, , or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;</p> <p>(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or</p> <p>(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.</p>	<p>touching by the actor of the complainant's intimate parts, or</p> <p>(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 under 13 years of age or mentally impaired, or</p> <p>(iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority,</p> <p>(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or</p> <p>(v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.</p> <p>(c) <u>Sexual contact with a person under 13</u> means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Minnesota Cont'		<p>MINN. STAT. § 609.345 (West 2013). <u>Criminal sexual conduct in the fourth degree.</u></p> <p>Subd. 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:</p> <p>(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;</p> <p>(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;</p> <p>(c) the actor uses force or coercion to accomplish the sexual contact;</p> <p>(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;</p> <p>(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither</p>	<p>intent.</p> <p>Subd. 12. <u>Sexual penetration</u> means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:</p> <p>(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or</p> <p>(2) any intrusion however slight into the genital or anal openings:</p> <p>(i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;</p> <p>(ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or</p> <p>(iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Minnesota Cont'		<p>mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:</p> <p>(i) the actor or an accomplice used force or coercion to accomplish the contact;</p> <p>(ii) the complainant suffered personal injury; or</p> <p>(iii) the sexual abuse involved multiple acts committed over an extended period of time.</p> <p>(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:</p> <p>(i) during the psychotherapy session; or</p> <p>(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;</p> <p>(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;</p> <p>(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;</p> <p>(k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense;</p> <p>(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:</p> <p>(i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or</p> <p>(ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in</p>	<p>Subd. 16. <u>Patient</u> means a person who seeks or obtains psychotherapeutic services.</p> <p>Subd. 17. <u>Psychotherapist</u> means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.</p> <p>Subd. 18. <u>Psychotherapy</u> means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.</p> <p>Subd. 21. <u>Special transportation service</u> means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Minnesota Cont'		<p>private. Consent by the complainant is not a defense;</p> <p>(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;</p> <p>(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or</p> <p>(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.</p>			
Mississippi	<p>MISS. CODE ANN. § 97-3-104 (West 2013).</p> <p><u>Sex between law-enforcement official and offender.</u></p>	<p>MISS. CODE ANN. § 97-3-104 (West 2013).</p> <p><u>Sex between law-enforcement official and offender.</u></p> <p>It is unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal, other officer, or employee of a law enforcement agency or correctional facility to engage in any sexual penetration, or other sexual act with any offender,, with the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility or who is serving on probation, parole, earned-release supervision, post-</p>	<p>MISS. CODE ANN. § 97-3-97 (West 2013).</p> <p><u>Sexual battery, definitions.</u></p> <p>(a) <u>Sexual penetration</u> 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</p>	<p>MISS. CODE ANN. § 97-3-104 (West 2013).</p> <p><u>Sex between law-enforcement official and offender.</u></p> <p>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.</p>	<p>MISS. CODE ANN. § 97-3-104 (West 2013).</p> <p><u>Sex between law-enforcement official and offender.</u></p> <p>Consent is not a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Mississippi Cont'		release supervision, earned probation or any other form of correctional supervision. (2) It is unlawful for any civilian with supervisory or custodial authority over an offender to engage in any sexual penetration, or other sexual act with the offender, with the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility.	person's body. (b) A <u>mentally defective person</u> is one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct. (c) A <u>mentally incapacitated person</u> is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent. (d) A <u>physically helpless person</u> is one who is unconscious or one who for any other reason is physically incapable of communicating an unwillingness to engage in an act.		
Missouri	MO. REV. STAT. § 566.145 (West 2013). <u>Sexual contact with prisoner or offender—</u> <u>definitions—penalty--consent not a defense.</u> MO. REV. STAT. § 217.405 (West 2013). <u>Offender abuse, penalty--employees not to use physical force, exceptions.</u> MO. REV. STAT. §	MO. REV. STAT. § 566.145 (West 2013). <u>Sexual contact with prisoner or offender—definitions—penalty--consent not a defense.</u> 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. § 566.145 (West 2013). <u>Sexual contract with prisoner or offender—</u> <u>definitions—penalty--consent not a defense.</u> 2. For the purposes of this section the following terms shall mean: (1) <u>Offender</u> , includes any person in the custody of a prison or correctional facility and any person who is under the supervision of the	MO. REV. STAT. § 566.145 (West 2013). <u>Sexual contact with prisoner or offender—</u> <u>definitions—penalty--consent not a defense.</u> 3. Sexual contact with a prisoner or offender is a class D felony. MO. REV. STAT. § 558.011 (West 2013). <u>Sentence of imprisonment.</u>	MO. REV. STAT. § 566.145 (West 2013). <u>Sexual contact with prisoner or offender—</u> <u>definitions—penalty--consent not a defense.</u> 4. Consent of a prisoner or offender is not an affirmative defense.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Missouri Cont'	217.410 (West 2013). <u>Abuse of offender, duty to report, penalty -- confidentiality of report, immunity from liability -- harassment prohibited.</u>	<p>MO. REV. STAT. § 217.405 (West 2013). <u>Offender abuse, penalty--employees not to use physical force, exceptions.</u></p> <p>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.</p> <p>(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.</p> <p>MO. REV. STAT. § 217.410 (West 2013). <u>Abuse of offender, duty to report, penalty --confidentiality of report, immunity from liability -- harassment prohibited.</u></p> <p>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.</p> <p>(5) Upon receipt of a report, the department shall initiate an investigation within 24 hours.</p> <p>(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.</p> <p>(NOTE: As used in the statute, the word “department” refers to the Missouri Department of Corrections).</p>	<p>state board of probation and parole;</p> <p>(2) Prisoner, includes any person who is in the custody of a jail, whether pretrial or after disposition of a charge.</p> <p>MO. REV. STAT. § 566.010 (West 2013). <u>Chapter definitions.</u></p> <p>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 or for the purpose of terrorizing the victim;</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><u>terms—conditional release.</u></p> <p>1. The terms of imprisonment, including both prison and conditional release terms are:</p> <p>(4) For a class D felony, a term of years not to exceed 4 years.</p> <p>MO. REV. STAT. § 217.405 (West 2013). <u>Offender abuse, penalty—employees not to use physical force, exceptions.</u></p> <p>2. Offender abuse is a class C felony.</p> <p>MO. REV. STAT. § 558.011 (West 2013). <u>Sentence of imprisonment, terms—conditional release.</u></p> <p>1. The terms of imprisonment, including both prison and conditional release terms are:</p> <p>3) For a class C felony, a term of years not to exceed 7 years;</p> <p>MO. REV. STAT. § 217.410 (West 2013). <u>Abuse of offender duty to report penalty. -- confidentiality of report, immunity from liability -- harassment prohibited.</u></p> <p>3. Any person</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			(4) <u>Sexual intercourse</u> , any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.	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 (West 2013). <u>Sentence of imprisonment, terms—conditional release.</u> 1. The terms of imprisonment, including both prison and conditional release terms are: (5) For a class A misdemeanor, a term not to exceed 1 year;	
Montana Montana Cont'	MONT. CODE ANN. § 45-5-502 (2013). <u>Sexual assault.</u> MONT. CODE ANN. § 45-5-503 (2013). <u>Sexual intercourse without consent.</u> MONT. CODE ANN. § 45-5-204 (2013). <u>Mistreating prisoners</u>	MONT. CODE ANN. § 45-5-502 (2013). <u>Sexual assault.</u> (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault. MONT. CODE ANN. § 45-5-503 (2013). <u>Sexual intercourse without consent.</u> (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. MONT. CODE ANN. § 45-5-204 (2013). <u>Mistreating prisoners</u> (1) A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, the person purposely or knowingly:	MONT. CODE ANN. § 45-5-501 (2013). <u>Definition.</u> (1)(a) used in 45-5-503, the term <u>without consent</u> means: (i) the victim is compelled to submit by force against the victim or another; or (ii) subject to subsection (1)(b) and (1)(c), the victim is incapable of consent because the victim is: (E) 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	MONT. CODE ANN. § 45-5-502 (2013). <u>Sexual assault.</u> (2)(a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. (b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.	MONT. CODE ANN. § 45-5-502 (2013). <u>Sexual assault.</u> (5)(a) Consent is ineffective under this section if: (i) 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. (ii) less than 14 years old and the offender is 3 or more years older than the victim;

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Montana Cont'		<p>(a) assaults or otherwise injures a prisoner;</p> <p>(b) intimidates, threatens, endangers, or withholds reasonable necessities from the prisoner with the purpose to obtain a confession from the prisoner or for any other purpose; or</p> <p>(c) violates any civil right of a prisoner.</p>	<p>disciplinary authority over the victim, unless the act is part of a lawful search.</p> <p>(F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:</p> <p>(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and</p> <p>(II) is an employee, contractor, or volunteer of the youth care facility; or</p> <p>(G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:</p> <p>(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and</p> <p>(II) is an employee, contractor, or volunteer of the facility or community-based service.</p> <p>(b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising</p>	<p>(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.</p> <p>(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.</p> <p>MONT. CODE ANN. § 45-5-503 (2013). <u>Sexual intercourse without consent.</u></p> <p>(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2</p>	<p>(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:</p> <p>(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and</p> <p>(B) is an employee, contractor, or volunteer of the youth care facility; or</p> <p>(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:</p> <p>(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and</p> <p>(B) is an employee, contractor, or volunteer of the facility or community-based service.</p> <p>(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.</p> <p>(c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Montana Cont'			<p>authority.</p> <p>(c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.</p> <p>MONT. CODE ANN. § 45-2-101 (2013). <u>General definitions.</u></p> <p>Unless otherwise specified in the statute, all words must be taken in the objective standard rather than in the subjective, and unless a different meaning plainly is required, the following definitions apply in this title:</p> <p>(6) <u>Child or children</u> means any individual or individuals under 18 years of age, unless a different age is specified.</p> <p>(16) <u>Conviction</u> means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent</p>	<p>years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.</p> <p>(3)(a) (3)(a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in <u>46-18-219</u> and <u>46-18-222</u>. persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the</p>	<p>the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Montana Cont'			<p>jurisdiction authorized to try the case without a jury.</p> <p>(17) <u>Correctional institution</u> means a state prison, detention center, multijurisdictional detention center, private detention center, regional correctional facility, private correctional facility, or other institution for the incarceration of inmates under sentence for offenses or the custody of individuals awaiting trial or sentence for offenses.</p> <p>(21) <u>Deviate sexual relations</u> means form of sexual intercourse with an animal.</p> <p>(31) <u>Inmate</u> means a person who is confined in a correctional institution.</p> <p>(50) (a) <u>Official detention</u> means imprisonment resulting from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society.</p> <p>(b) Official detention does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful</p>	<p>state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.</p> <p>(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:</p> <p>(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or</p> <p>(ii) punished as provided in 46-18-219.</p> <p>(4)(a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Montana Cont'			<p>arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.</p> <p>(55) <u>Peace officer</u> means a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority.</p> <p>(58) <u>Physically helpless</u> means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.</p> <p>(67) <u>Sexual contact</u> means touching of the sexual or other intimate parts of the person of another, directly or through clothing, in order to knowingly or purposely:</p> <p>(a) cause bodily injury to or humiliate, harass, or degrade another; or</p> <p>(b) arouse or gratify the sexual response or desire of either party.</p> <p>(68)(a) <u>Sexual intercourse</u> means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by a body member of another person, or penetration of the vulva or anus of one person by a foreign instrument or object manipulated by another person to</p>	<p>defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p> <p>(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.</p> <p>(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>knowingly or purposely:</p> <p>(i) cause bodily injury or humiliate, harass, or degrade; or</p> <p>(ii) arouse or gratify the sexual response or desire of either party.</p>	<p>the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in <u>46-18-244</u>.</p> <p>MONT. CODE ANN. § 45-5-204 (2013). <u>Mistreating prisoners</u></p> <p>(2) A person convicted of the offense of mistreating prisoners shall be removed from office or employment and shall be imprisoned in the state prison for a term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.</p>	
Nebraska	<p>NEB. REV. STAT. ANN. § 28-322.01 (West 2013). <u>Sexual abuse of an inmate or parolee.</u></p> <p>NEB. REV. STAT. ANN. 28-322.02 (West 2013). <u>Sexual abuse of an inmate or parolee in the first degree; penalty.</u></p> <p>NEB. REV. STAT. ANN. § 28-322.03 (West 2013).</p>	<p>NEB. REV. STAT. ANN. § 28-322.01 (West 2013). <u>Sexual abuse of an inmate or parolee.</u></p> <p>A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318.</p> <p>NEB. REV. STAT. ANN. § 28-322.02 (West 2013). <u>Sexual abuse of an inmate or parolee in the first degree; penalty.</u></p> <p>Any person who subjects an inmate or</p>	<p>NEB. REV. STAT. ANN. § 28-318 (West 2013). <u>Terms, defined.</u></p> <p>(1) <u>Actor</u> means a person accused of sexual assault;</p> <p>(2) <u>Intimate parts</u> means the genital area, groin, inner thighs, buttocks, or breasts;</p> <p>(3) <u>Past sexual behavior</u> means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;</p> <p>(4) <u>Serious personal</u></p>	<p>NEB. REV. STAT. ANN. § 28-322.02 (West 2013). <u>Sexual abuse of an inmate or parolee in the first degree; penalty.</u></p> <p>Sexual abuse of an inmate or parolee in the first degree is a Class III felony.</p> <p>NEB. REV. STAT. ANN. § 28-105 (West 2013). <u>Felonies;</u></p>	<p>NEB. REV. STAT. ANN. § 28-322.01 (West 2013). <u>Sexual abuse of an inmate or parolee.</u></p> <p>It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Nebraska Cont'	Sexual abuse of an inmate or parolee in the second degree; penalty.	<p>parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree.</p> <p>NEB. REV. STAT. ANN. § 28-322.03 (West 2013).</p> <p><u>Sexual abuse of an inmate or parolee in the second degree; penalty.</u></p> <p>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.</p>	<p><u>injury</u> means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;</p> <p>(5) <u>Sexual contact</u> 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.</p> <p>(6) <u>Sexual penetration</u> 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</p>	<p><u>classification of penalties; sentences; where served; eligibility for probation.</u></p> <p>(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into 9 classes which are distinguished from one another by the following penalties which are authorized upon conviction: The penalty for a Class III felony is imprisonment for a maximum of 20 years or a \$25,000 fine, or both, and minimum imprisonment of 1 year.</p> <p>NEB. REV. STAT. ANN. § 28-322.03 (West 2013).</p> <p><u>Sexual abuse of an inmate or parolee in the second degree; penalty.</u></p> <p>Sexual abuse of an inmate or parolee in the second degree is a Class IV felony.</p> <p>NEB. REV. STAT. ANN. § 28-105 (West 2013).</p> <p><u>Felonies; classification of penalties; sentences; where served; eligibility for probation.</u></p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Nebraska Cont'			<p>reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.</p> <p>NEB. REV. STAT. ANN. § 28-322.04 (West 2013)</p> <p>(1) For purposes of this section:</p> <p>(a) Person means an individual employed by the Department of Health and Human Services and includes, but is not limited to, any individual working in central administration or regional service areas or facilities of the department and any individual to whom the department has authorized or delegated control over a protected individual or a protected individual's activities, whether by contract or otherwise; and</p> <p>(b) Protected individual means an individual in the care or custody of the department.</p> <p>NEB. REV. STAT. ANN. § 28-322 (West 2013). <u>Sexual abuse of an inmate or parolee; terms, defined.</u></p> <p>For purposes of sections 28-322 to 28-322.03:</p> <p>(1) <u>Inmate or parolee</u> means any individual confined in a facility operated by the Department of Correctional Services or</p>	<p>(1) For purposes of the Nebraska Criminal Code and any statute passed by the Legislature after the date of passage of the code, felonies are divided into 9 classes which are distinguished from one another by the following penalties which are authorized upon conviction: The penalty for a Class IV imprisonment for a maximum of 5 year, or a \$10,000 fine or both, and no minimum.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Nebraska Cont'			<p>a city or county correctional or jail facility or under parole supervision; and</p> <p>(2) <u>Person</u> means</p> <p>(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,</p> <p>(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</p> <p>(c) an individual employed by the Office of Probation Administration who performs official duties</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.		
Nevada Nevada Cont'	NEV. REV. STAT. ANN. § 212.187 (West 2013). <u>Voluntary sexual conduct between prisoner and another person; penalty.</u>	NEV. REV. STAT. ANN. § 212.187 (West 2013). <u>Voluntary sexual conduct between prisoner and another person; penalty.</u> 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 (West 2013). <u>Voluntary sexual conduct between prisoner and another person; penalty.</u> 3. As used in this section, <u>sexual conduct</u> : (a) Includes acts of masturbation,, sexual penetration 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. § 193.022 (West 2012). <u>"Prisoner" defined.</u> <u>Prisoner</u> includes any person held in custody under process of law, or under lawful arrest.	NEV. REV. STAT. ANN. § 212.187 (West 2013). <u>Voluntary sexual conduct between prisoner and another person; penalty.</u> 1. Voluntary sexual conduct between prisoner and another person is a category D felony. NEV. REV. STAT. ANN. § 193.130 (West 2012). <u>Categories and punishment of felonies.</u> 1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that	(NOTE : NEV. REV. STAT. ANN. makes no reference to defenses from prosecution for voluntary sexual conduct between prisoner and another person; penalty).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Nevada Cont'				may be imposed must not exceed 40 percent of the maximum term imposed. 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.	
New Hampshire	N.H. REV. STAT. ANN. § 632-A:2 (West 2013). <u>Aggravated Felonious Sexual Assault.</u> N.H. REV. STAT. ANN. § 632-A:3 (West 2013). <u>Felonious Sexual Assault.</u>	N.H. REV. STAT. ANN. § 632-A:2 (West 2013). <u>Aggravated Felonious Sexual Assault.</u> I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances: (d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future. (i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist. (j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and: (1) the actor is a member of the same household as the victim; or (2) the actor is related by blood or affinity to the victim.	N.H. REV. STAT. ANN. § 632-A:1 (West 2013). <u>Definitions.</u> In this chapter: I. <u>Actor</u> means a person accused of a crime of sexual assault. I-b. <u>Genital openings</u> means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum. III. <u>Serious personal injury</u> means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ. IV. <u>Sexual contact</u> means the intentional touching whether	N.H. REV. STAT. ANN. § 632-A:3 (West 2013). <u>Felonious Sexual Assault.</u> 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. N.H. REV. STAT. ANN. § 625:9 (West 2013). <u>Classification of crimes.</u> III.(a)(2) Class B felonies are crimes so designated by statute within or outside this	N.H. REV. STAT. ANN. § 632-A:2 (West 2013). <u>Aggravated Felonious Sexual Assault.</u> (j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age. (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 (West 2013). <u>Felonious Sexual Assault.</u> III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Hampshire Cont'		<p>(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.</p> <p>(l) When the victim is less than 13 years of age.</p> <p>(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.</p> <p>(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:</p> <p>(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</p> <p>(2) When the actor is a probation or parole officer or 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.</p> <p>II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.</p> <p>III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.</p> <p>N.H. REV. STAT. ANN. § 632-A:3 (West</p>	<p>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.</p> <p>V. <u>Sexual penetration</u> means:</p> <p>(a) Sexual intercourse; or</p> <p>(b) Cunnilingus; or</p> <p>(c) Fellatio; or</p> <p>(d) Anal intercourse; or</p> <p>(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</p> <p>(f) Any intrusion, however slight, of any part of the victim's body into genital or anal openings of the actor's body;</p> <p>(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.</p> <p>(h) Emission is not required as an element of any form of sexual penetration.</p>	<p>code and any crime defined outside of this code for which the maximum penalty, exclusive of fine, is imprisonment in excess of 1 year but not in excess in 7 years.</p>	<p>IV(b) Consent of the victim under any of the circumstances set forth in subparagraph IV shall not be a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Hampshire Cont'		<p>2013). <u>Felonious Sexual Assault.</u></p> <p>A person is guilty of a class B felony if such person:</p> <p>I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA § 632-A:2; or</p> <p>II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or</p> <p>III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.</p> <p>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:</p> <p>(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</p> <p>(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.</p>			
New Jersey	N.J. REV. STAT. ANN. § 2C:14-2 (West 2013). <u>Sexual assault.</u>	<p>N.J. REV. STAT. ANN. § 2C:14-2 (West 2013). <u>Sexual assault.</u></p> <p>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:</p> <p>(1) The victim is less than 13 years old</p> <p>(2) The victim is at least 13 but less than 16 and</p> <p>(a) The actor is related to the victim by blood or affinity to the third degree, or</p> <p>(b) the actor has supervisory or</p>	<p>N.J. REV. STAT. ANN. § 2A:61B-1 (West 2013). <u>Definitions; civil remedy; period of limitations; evidence; close circuit testimony; confidentiality; in camera proceedings; damages.</u></p> <p>a. As used in this act:</p> <p>(1) Sexual abuse means an act of sexual contact</p>	<p>N.J. REV. STAT. ANN. § 2C:14-2 (West 2013). <u>Sexual assault.</u></p> <p>Aggravated sexual assault is a crime of the first degree.</p> <p>N.J. REV. STAT. ANN. § 2C:43-6 (West 2013). <u>Sentence of imprisonment for</u></p>	<p>N.J. REV. STAT. ANN. § 2C:14-5 (West 2013). <u>Provisions generally applicable to Chapter 14.</u></p> <p>a. The prosecutor shall not be required to offer proof that the victim resisted, or resisted to the utmost, or reasonably resisted the sexual assault in any offense proscribed by this chapter.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Jersey Cont'		<p>disciplinary power over the person by virtue of the actor's legal, professional or occupational status.</p> <p>(7) The victim is one whom the actor knew or should have known was physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.</p> <p>b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.</p> <p>c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:</p> <p>(1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;</p> <p>(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> <p>(3) The victim is at least 16 but less than 18 years old and:</p> <p>(a) The actor is related to the victim by blood or affinity to the third degree; or</p> <p>(b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or</p> <p>(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;</p> <p>(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.</p>	<p>or sexual penetration between a child under the age of 18 years and an adult. A parent, resource family parent, guardian or other person standing in loco parentis within the household who knowingly permits or acquiesces in sexual abuse by any other person also commits sexual abuse, except that it is an affirmative defense if the parent, resource family parent, guardian or other person standing in loco parentis was subjected to, or placed in, reasonable fear of physical or sexual abuse by the other person so as to undermine the person's ability to protect the child.</p> <p>(2) Sexual contact means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of sexually arousing or sexually gratifying the actor. Sexual contact of the adult with himself must be in view of the victim whom the adult knows to be present.</p> <p>(3) <u>Sexual penetration</u> means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or</p>	<p>crime; <u>ordinary terms</u>; <u>mandatory terms</u>.</p> <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>N.J. REV. STAT. ANN. § 2C:43-3 (West 2013). <u>Fines and restitution.</u></p> <p>A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:</p> <p>a. (1) \$200,000 when the conviction is of a crime of the first degree:</p> <p>N.J. REV. STAT. ANN. § 2C:14-2 (West 2013). <u>Sexual assault.</u></p> <p>Sexual assault is a crime of the second degree.</p> <p>N.J. REV. STAT. ANN. § 2C:43-6 (West 2013). <u>Sentence of imprisonment for</u></p>	<p>b. No actor shall be presumed to be incapable of committing a crime under this chapter because of age or impotency or marriage to the victim.</p> <p>c. It shall be no defense to a prosecution for a crime under this chapter that the actor believed the victim to be above the age stated for the offense, even if such a mistaken belief was reasonable.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Jersey Cont'			vagina either by the adult or upon the adult's instruction.	<p>crime; ordinary terms; mandatory terms.</p> <p>a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:</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> <p>N.J. REV. STAT. ANN. § 2C:43-3 (West 2013).</p> <p><u>Fines and restitution.</u></p> <p>A person who has been convicted of an offense may be sentenced to pay a fine, to make restitution, or both, such fine not to exceed:</p> <p>a. (2) \$150,000 when the conviction is of a crime of the second degree.</p>	
New Mexico	N.M. STAT. ANN. § 30-9-11 (West 2013). <u>Criminal sexual penetration.</u>	<p>N.M. STAT. ANN. § 30-9-11. (West 2013). <u>Criminal sexual penetration.</u></p> <p>C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life.</p> <p>D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:</p> <p>(1) on a child under thirteen years of age;</p>	<p>N.M. STAT. ANN. § 30-9-11 (West 2013). <u>Criminal sexual penetration.</u></p> <p>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,</p>	<p>N.M. STAT. ANN. § 30-9-11 (West 2013). <u>Criminal sexual penetration.</u></p> <p>C. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.</p> <p>D. Whoever commits criminal sexual</p>	<p>N.M. STAT. ANN. § 30-9-11. (West 2013). <u>Criminal sexual penetration.</u></p> <p>B. Criminal sexual penetration does not include medically indicated procedures.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Mexico Cont'		<p>or</p> <p>(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.</p> <p>E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:</p> <p>(1) by the use of force or coercion on a child 13 to 18 years of age;</p> <p>(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;</p> <p>(3) by the use of force or coercion that results in personal injury to the victim;</p> <p>(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons.</p> <p>(5) in the commission of any other felony; or</p> <p>(6) when the perpetrator is armed with a deadly weapon.</p> <p>F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.</p> <p>G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:</p> <p>(1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or</p> <p>(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of</p>	<p>to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.</p> <p>N.M. STAT. ANN. § 33-1-2 (West 2013).</p> <p><u>Definitions.</u></p> <p>As used in the Corrections Act:</p> <p>C. Corrections facility means any facility or program controlled or operated by the state or any of its agencies or departments and supported wholly or in part by state funds for the correctional care of persons, including but not limited to:</p> <p>(1) the "penitentiary of New Mexico", which consists of the penitentiary at Santa Fe and other places in the state designated by the secretary; and</p> <p>(2) the parole board to the extent delegated by the Parole Board Act.</p>	<p>penetration in the first degree is guilty of a first degree felony.</p> <p>E. Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony.</p> <p>F. Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.</p> <p>G. Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.</p> <p>N.M. STAT. ANN. § 31-18-15 (West 2007).</p> <p><u>Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions.</u></p> <p>A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:</p> <p>(2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment;</p> <p>(3) for a first degree felony, eighteen years imprisonment;</p> <p>(6) for a second degree felony , 9 years imprisonment.</p> <p>and</p> <p>(9) for a third degree</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New Mexico Cont'		that child, learns while performing services in or for a school that the child is a student in a school.		<p>felony, three years imprisonment; or (10) for a fourth degree felony, eighteen months imprisonment.</p> <p>E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed: (2) for a first degree felony for aggravated criminal sexual penetration, seventeen thousand five hundred dollars (\$17,500); (3) for a first degree felony, fifteen thousand dollars (\$15,000); (6) for a second degree felony \$10,000 dollars. (9) for a third or fourth degree felony, five thousand dollars (\$5,000).</p> <p>N.M. STAT. ANN. § 30-9-11 (West 2013). <u>Criminal sexual penetration.</u></p> <p>Whoever commits criminal sexual penetration in the second degree when the victim is a child who is 13 to 18 years of age is guilty of a second degree felony for a sexual offense against a child and, shall be sentenced to a minimum term of imprisonment of 3 years which shall not</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				<p>be suspended or deferred.</p> <p>N.M. STAT. ANN. § 31-18-15) (West 2013).</p> <p><u>Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions.</u></p> <p>E. The court may, in addition to the imposition of a basic sentence of imprisonment, impose a fine not to exceed:</p> <p>(5) for a secondary degree felony for a sexual offense against a child, \$12,500.</p>	
New York	<p>N.Y. PENAL LAW § 130.20 (Consol. 2013). <u>Sexual misconduct.</u></p> <p>N.Y. PENAL LAW § 130.52 (Consol. 2013). <u>Forcible touching.</u></p> <p>N.Y. PENAL LAW § 130.55 (Consol. 2013). <u>Sexual abuse in the third degree.</u></p> <p>N.Y. PENAL LAW § 130.60 (Consol. 2013). <u>Sexual abuse in the second degree.</u></p> <p>N.Y. PENAL LAW § 130.25 (Consol. 2013). <u>Rape in the third</u></p>	<p>N.Y. PENAL LAW § 130.20 (Consol. 2013). <u>Sexual misconduct.</u></p> <p>A person is guilty of sexual misconduct when:</p> <ol style="list-style-type: none"> 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. 3. He or she engages in sexual conduct with an animal or a dead human body. <p>N.Y. PENAL LAW § 130.52 (Consol. 2013). <u>Forcible touching.</u></p> <p>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</p>	<p>N.Y. PENAL LAW § 130.05 (Consol. 2013). <u>Sex offenses; lack of consent.</u></p> <p>1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.</p> <p><u>2. Lack of consent</u> results from:</p> <ol style="list-style-type: none"> (a) Forcible compulsion; or (b) Incapacity to consent; or (c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in 	<p>N.Y. PENAL LAW § 130.20 (Consol. 2013). <u>Sexual misconduct.</u></p> <p>Sexual misconduct is a class A misdemeanor.</p> <p>N.Y. PENAL LAW § 70.15 (Consol. 2013). <u>Sentences of imprisonment for misdemeanors and violation.</u></p> <p>1. Class A misdemeanor. A sentence shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed 1 year.</p>	<p>N.Y. PENAL LAW § 130.20 (Consol. 2013). <u>Sexual misconduct.</u></p> <p>Consent is a defense, but only when the victim is not preventing from consenting under the terms in § 130.05.</p> <p>N.Y. PENAL LAW § 130.55 (Consol. 2013). <u>Sexual abuse in the third degree.</u></p> <p>In any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old,</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New York Cont'	<p><u>degree.</u></p> <p>N.Y. PENAL LAW § 130.40 (Consol. 2013). <u>Criminal sexual act in the third degree.</u></p> <p>N.Y. PENAL LAW § 130.65-a (Consol. 2013). <u>Aggravated sexual abuse in the fourth degree.</u></p>	<p>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 squeezing, grabbing or pinching.</p> <p>N.Y. PENAL LAW § 130.55 (Consol. 2013). <u>Sexual abuse in the third degree.</u></p> <p>A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than 17 years old, and (b) such other person was more than 14 years old, and (c) the defendant was less than 5 years older than such other person.</p> <p>N.Y. PENAL LAW § 130.60 (Consol. 2013). <u>Sexual abuse in the second degree.</u></p> <p>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:</p> <ol style="list-style-type: none"> 1. incapable of consent by reason of some factor other than being less than 17 years old. 2. Less than 14 years old. <p>N.Y. PENAL LAW § 130.25 (Consol. 2013). <u>Rape in the third degree.</u></p> <p>A person is guilty of rape in the third degree when:</p> <ol style="list-style-type: none"> 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; 2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or 	<p>which the victim does not expressly or impliedly acquiesce in the actor's conduct; or (d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.</p> <p>3. <u>A person is deemed incapable of consent when he or she is:</u> (e) committed to the care and custody of the state department of correctional services or a hospital, and the actor is an employee, who knows or reasonably should know that such person is committed to the care and custody or supervision of such department or hospital. For purposes of this paragraph, "employee" means (i) an employee of the state department</p>	<p>N.Y. PENAL LAW § 130.52 (Consol. 2013). <u>Forcible touching.</u></p> <p>Forcible touching is a class A misdemeanor.</p> <p>N.Y. PENAL LAW § 70.15 (Consol. 2013). <u>Sentences of imprisonment for misdemeanors and violation.</u></p> <p>1. Class A misdemeanor. A sentence shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed 1 year;</p> <p>N.Y. PENAL LAW § 130.55 (Consol. 2013). <u>Sexual abuse in the third degree.</u></p> <p>Sexual abuse in the third degree is a class B misdemeanor.</p> <p>N.Y. PENAL LAW § 70.15 (Consol. 2013). <u>Sentences of imprisonment for misdemeanors and violation.</u></p> <p>2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed</p>	<p>and (c) the defendant was less than five years older than such other person.</p> <p>N.Y. PENAL LAW § 130.25 (Consol. 2013). <u>Rape in the third degree.</u></p> <p>3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent. (i.e. incapacity to consent is a defense to this section)</p> <p>N.Y. PENAL LAW § 130.65-a (Consol. 2013). <u>Aggravated sexual abuse in the fourth degree.</u></p> <p>2. Conduct performed for a valid medical purpose does not violate the provisions of this section.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New York Cont'		<p>3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.</p> <p>N.Y. PENAL LAW § 130.40 (Consol. 2013). <u>Criminal sexual act in the third degree.</u></p> <p>A person is guilty of criminal sexual act in the third degree when:</p> <p>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;</p> <p>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</p> <p>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.</p> <p>N.Y. PENAL LAW § 130.65-a (Consol. 2013). <u>Aggravated sexual abuse in the fourth degree.</u></p> <p>1. A person is guilty of aggravated sexual abuse in the fourth degree when:</p> <p>(a) He or she inserts a foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or</p> <p>(b) He or she inserts a finger in the vagina, urethra, penis or rectum of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other</p>	<p>of corrections and community supervision who, as part of his or her employment, performs duties: (A) in a state correctional facility in which the victim is confined at the time of the offense consisting of providing custody, medical or mental health services, counseling services, educational programs, vocational training, institutional parole services or direct supervision to inmates; or</p> <p>(B) of supervising persons released on community supervision and supervises the victim at the time of the offense or has supervised the victim and the victim is still under community supervision at the time of the offense; or</p> <p>(ii) an employee of the office of mental health who, as part of his or her employment, performs duties in a state correctional facility or hospital, as such term is defined in <u>subdivision two of section four hundred of the correction law</u> in which the inmate is confined at the time of the offense, consisting of providing custody, medical or mental health services, or direct supervision to such inmates; or</p> <p>(iii) a person, including a volunteer, providing direct services to</p>	<p>by the court, and shall not exceed 3 months.</p> <p>N.Y. PENAL LAW § 130.60 (Consol. 2013). <u>Sexual abuse in the second degree.</u></p> <p>Sexual abuse in the second degree is a class A misdemeanor.</p> <p>N.Y. PENAL LAW § 70.15 (Consol. 2013). <u>Sentences of imprisonment for misdemeanors and violation.</u></p> <p>1. Class A misdemeanor. A sentence shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed 1 year.</p> <p>N.Y. PENAL LAW § 130.25 (Consol. 2013). <u>Rape in the third degree.</u></p> <p>Rape in the third degree is a class E felony.</p> <p>N.Y. PENAL LAW § 70.02 (Consol. 2013). <u>Sentence of imprisonment for a violent felony offense.</u></p> <p>3.(d) For a class E felony, the term must be at least one and one-half years and</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New York Cont'		<p>than being less than seventeen years old.</p> <p>2. Conduct performed for a valid medical purpose does not violate the provisions of this section.</p>	<p>inmates in a state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of corrections and community supervision or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or</p> <p>(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" shall also mean a person, including a volunteer or a government employee of the state department of corrections and community supervision or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense</p>	<p>must not exceed four years.</p> <p>N.Y. PENAL LAW § 130.40 (Consol. 2013). <u>Criminal sexual act in the third degree.</u> Criminal sexual act in the third degree is a class E felony.</p> <p>N.Y. PENAL LAW § 70.02 (Consol. 2013). <u>Sentence of imprisonment for a violent felony offense.</u></p> <p>3.(d) For a class E felony, the term must be at least one and one-half years and must not exceed four years.</p> <p>N.Y. PENAL LAW § 130.65-a (Consol. 2013). <u>Aggravated sexual abuse in the fourth degree.</u></p> <p>Aggravated sexual abuse in the fourth degree is a class E felony.</p> <p>N.Y. PENAL LAW § 70.02 (Consol. 2013). <u>Sentence of imprisonment for a violent felony offense.</u></p> <p>3.(d) For a class E felony, the term must be at least one and one-half years and must not exceed four</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New York Cont'			<p>pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or</p> <p>(h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination.</p> <p>(i) a resident or inpatient of a residential facility operated, licensed or certified by (i) the office of mental health; (ii) the office for people with developmental disabilities; or (iii) the office of alcoholism and substance abuse services, and the actor is an employee of the facility not married to such resident or inpatient. For purposes</p>	years.	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
New York Cont'			<p>of this paragraph, "employee" means either: an employee of the agency operating the residential facility, who knows or reasonably should know that such person is a resident or inpatient of such facility and who provides direct care services, case management services, medical or other clinical services, habilitative services or direct supervision of the residents in the facility in which the resident resides; or an officer or other employee, consultant, contractor or volunteer of the residential facility, who knows or reasonably should know that the person is a resident of such facility and who is in direct contact with residents or inpatients; provided, however, that the provisions of this paragraph shall only apply to a consultant, contractor or volunteer providing services pursuant to a contractual arrangement with the agency operating the residential facility or, in the case of a volunteer, a written agreement with such facility, provided that the person received written notice concerning the provisions of this paragraph; provided further, however, "employee" shall not include a person with a developmental disability</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>who is or was receiving services and is also an employee of a service provider and who has sexual contact with another service recipient who is a consenting adult who has consented to such contact.</p> <p>N.Y. PENAL LAW § 130.00 (Consol. 2013). <u>Sex offenses; definition of terms.</u></p> <p>The following definitions are applicable to this article</p> <p>1. <u>Sexual intercourse</u> has its ordinary meaning and occurs upon any penetration, however slight.</p> <p>2.(a) <u>Oral sexual conduct</u> 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.</p> <p>(b) <u>Anal sexual conduct</u> means the conduct between persons consisting of contact between the penis and anus.</p> <p>3. <u>Sexual contact</u> 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</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>clothing as well as the emission of ejaculate by the actor upon any part of the victim, clothed or unclothed.</p> <p>4. For the purposes of this article <u>married</u> means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim.</p> <p>5. <u>Mentally disabled</u> means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.</p> <p>6. <u>Mentally incapacitated</u> means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.</p> <p>7. <u>Physically helpless</u> means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>8. <u>Forcible compulsion</u> means to compel by either:</p> <p>a. use of physical force; or</p> <p>b. a threat, express or implied, which places a</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>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.</p> <p>9. <u>Foreign object</u> means any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.</p> <p>10. <u>Sexual conduct</u> means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.</p> <p>11. <u>Aggravated sexual contact</u> means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or rectum of a child, thereby causing physical injury to such child.</p> <p>12. <u>Health care provider</u> means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>education law.</p> <p>13. <u>Mental health care provider</u> shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.</p> <p>N.Y. CORRECT § 40 (Consol. 2013). <u>Definitions.</u></p> <p>As used in this article the following terms have the following meanings:</p> <p>2. <u>Local correctional facility</u> 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.</p> <p>3. <u>Correctional facility</u> means any institution operated by the state department of correctional services and community supervision, 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 office of children and</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			family services.. 4. <u>Municipal official</u> means (a) the sheriff or, where a local correctional facility is under the jurisdiction of a county department, the head of such department, and clerk of the board of supervisors, in the case of a county jail; (b) the sheriff or other officer having custody or administrative jurisdiction and the clerk of the board of supervisors, in the case of a county penitentiary; (c) the clerk of the board of supervisors in the case of a county lockup; (d) the mayor and the city clerk, in the case of a city jail or police station jail; (e) the supervisor and town clerk, in the case of a town jail or lockup; (f) the mayor and village clerk, in the case of a village jail or lockup; (g) the clerk of the board of supervisors of the county wherein located and the officer having custody or control, in the case of a court detention pen or a hospital prison ward.		
North Carolina	N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u>	N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u> (a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of	N.C. GEN. STAT. § 14-27.1 (West 2013). <u>Definitions.</u> (1) <u>Mentally disabled</u> means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either	N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u> (a) A violation of this section is a Class E felony.	N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u> (a) Consent is not a defense to a charge under this section.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
North Carolina Cont'		<p>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.</p> <p>(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment.</p>	<p>of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.</p> <p>(2) <u>Mentally incapacitated</u> means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.</p> <p>(3) <u>Physically helpless</u> means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.</p> <p>(4) <u>Sexual act</u> means cunnilingus, fellatio, anallingus, 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</p>	<p>N.C. GEN. STAT. § 15A-1340.17 (West 2013). <u>Punishment limits for each class of offense and prior record level.</u></p> <p>(e) Maximum Sentences for Class B1 through Class E Felonies for Minimum Terms up to 339 Months.</p> <p>N.C. GEN. STAT. § 15A-1340.17 (West 2013). <u>Punishment limits for each class of offense and prior record level.</u></p> <p>(b) Fines.—Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only.</p> <p>N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u></p> <p>(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal</p>	<p>N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u></p> <p>(b) Consent is not a defense to a charge under this section.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
North Carolina Cont'			<p>affirmative defense that the penetration was for accepted medical purposes.</p> <p>(5) "<u>Sexual contact</u>" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.</p> <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. <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> <p>N.C. GEN. STAT. § 14-27.7 (West 2013).</p> <p>(b)The term <u>same school</u> means a school at which the student is</p>	<p>intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student.</p> <p>N.C. GEN. STAT. § 14-27.7 (West 2013). <u>Intercourse and sexual offenses with certain victims; consent no defense.</u></p> <p>(b)A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor.</p> <p>N.C. GEN. STAT. § 15A-1340.17 (West 2013). <u>Punishment limits for each class of offense and prior record level.</u></p> <p>(d) Maximum Sentences Specified</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
North Carolina Cont'			<p>enrolled and the defendant is employed, assigned, or volunteers.</p> <p>(b) For purposes of this subsection, the terms <u>school</u>, <u>school personnel</u>, and <u>student</u> shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term <u>school safety officer</u> shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.</p> <p>N.C. GEN. STAT. § 14-202.4. (West 2013) <u>Taking indecent liberties with a student.</u></p> <p>(d)(1)(a) Same school means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity. (2) <u>School</u> means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.</p>	for Class F through Class I Felonies. (Note: North Carolina uses a range system and new ranges go into effect Oct. 2013.	
North Dakota	N.D. CENT. CODE § 12.1-20-06 (West 2011). <u>Sexual abuse of</u>	N.D. CENT. CODE § 12.1-20-06 (West 2011). <u>Sexual abuse of wards.</u>	N.D. CENT. CODE § 12.1-20-02 (West 2011). <u>Definitions.</u>	N.D. CENT. CODE § 12.1-20-06 (West 2011). <u>Sexual abuse of</u>	(NOTE : N.D. CENT. CODE makes no reference to defenses from prosecution for

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
North Dakota Cont'	<p><u>wards.</u></p> <p>N.D. CENT. CODE § 12.1-20-07 (West 2011).</p> <p><u>Sexual assault.</u></p>	<p>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.</p> <p>N.D. CENT. CODE § 12.1-20-07 (West 2011).</p> <p><u>Sexual assault.</u></p> <p>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:</p> <p>a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;</p> <p>b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;</p> <p>c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;</p> <p>d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;</p> <p>e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or</p> <p>f. The other person is a minor, fifteen years of age or older, and the actor is an adult.</p>	<p>2. <u>Deviate sexual act</u> means any form of sexual contact with an animal, bird, or dead person.</p> <p>3. <u>Object</u> means anything used in commission of a sexual act other than the person of the actor.</p> <p>4. <u>Sexual act</u> means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.</p> <p>5. <u>Sexual contact</u> means any touching, whether or not through 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</p>	<p><u>wards.</u></p> <p>Sexual abuse of wards is a class C felony.</p> <p>N.D. CENT. CODE § 12.1-32-01 (West 2013).</p> <p><u>Classification of offenses – Penalties.</u></p> <p>Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:</p> <p>4. Class C felony, for which a maximum penalty of 5 years imprisonment, a fine of \$10,000, or both, may be imposed.</p> <p>5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of \$3,000 or both, may be imposed.</p> <p>6. Class B misdemeanor, for which a maximum of 30 day's imprisonment, a fine of \$1,500 or both, may be imposed.</p> <p>N.D. CENT. CODE § 12.1-20-07 (West 2011).</p> <p><u>Sexual assault.</u></p> <p>2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of</p>	<p>sexual abuse of wards or sexual assault however</p> <p><i>Grager v. Schudar</i>, held that consent is not a defense. 770 N.W.2d 692 (N.D. 2009)).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>the purpose of arousing or satisfying sexual or aggressive desires.</p> <p>CASE NOTE: <i>See 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 (Sentencing alternatives -Credit for time in custody. Diagnostic testing). and time on parole, too, is not “time spent in custody” within the meaning of §12.1-32-02(Sentencing alternatives. Credit for time in custody. Diagnostic testing).</p>	<p>subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.</p>	
Ohio	OHIO REV. CODE ANN. § 2907.03 (West 2013). <u>Sexual battery.</u>	<p>OHIO REV. CODE ANN. § 2907.03 (West 2013). <u>Sexual battery.</u></p> <p>(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution. (2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired. (3) The offender knows that the other person submits because the other person is unaware that the act is being committed. (4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse. (6) The other person is in custody of law or a patient in a hospital or other</p>	<p>OHIO REV. CODE ANN. § 2907.01 (West 2013). <u>Definitions.</u></p> <p>(A) <u>Sexual conduct</u> 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 sufficient to complete vaginal or anal intercourse.</p> <p>(I) <u>Juvenile</u> means an</p>	<p>OHIO REV. CODE ANN. § 2907.03 (West 2013). <u>Sexual battery.</u></p> <p>(B) Sexual battery is a felony of the third degree.</p> <p>OHIO REV. CODE ANN. § 2929.14 (West 2007). <u>Prison Terms.</u></p> <p>(A)(3)(a) For a felony of the third degree, the prison term shall be twelve, eighteen, twenty-four, thirty, thirty-six, forty-two, forty-eight, fifty-four, or sixty months.</p> <p>OHIO REV. CODE ANN. § 2907.03 (West 2013).</p>	<p>OHIO REV. CODE ANN. § 2907.03 (West 2013). <u>Sexual battery.</u></p> <p>(A) Marriage is a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Ohio Cont'		<p>institution, and the offender has supervisory or disciplinary authority over the other person.</p> <p>(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.</p> <p>(8) The other person is a minor, and the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.</p> <p>(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.</p> <p>(10) The offender is a mental health professional, the other person is a mental health client or a patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.</p> <p>(11) The person is confined in a detention facility, and the offender is an employee of that detention facility.</p> <p>(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.</p> <p>(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.</p>	<p>unmarried person under the age of 18.</p> <p>OHIO REV. CODE ANN. § 2921.01 (West 2013). <u>Definitions.</u></p> <p>(F) <u>Detention facility</u> means any public or private place used for the confinement of a person charged with or convicted of any crime in this state or another state or under the laws of the United States or alleged or found to be a delinquent child or unruly child in this state or another state or under the laws of the United States.</p> <p>CASE NOTE: <i>See State v. Thompson</i>, 33 Ohio St. 3d 1 (1987) (stating that both probationers and parolees have been held to possess U.S. Const. Fourth Amendment 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. There is no distinction between probationers and parolees).</p>	<p><u>Sexual battery.</u></p> <p>If the other person is less than 13 years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in § 2929.14 of the Revised Code for the felony of the second degree.</p> <p>OHIO REV. CODE ANN. § 2929.14 (West 2013). <u>Prison Terms.</u></p> <p>(A)(2) For a felony of the second degree, the prison term shall be 2, 3, 4, 5, 6, 7, or 8 years.</p>	
Oklahoma	OKLA. STAT. tit. 21, § 1111 (West 2013). <u>Rape defined.</u>	<p>OKLA. STAT. tit. 21, § 1111 (West 2013). <u>Rape defined.</u></p> <p>A. Rape is an act of sexual intercourse</p>	OKLA. STAT. tit. 22, § 40 (West 2013). <u>Definitions.</u>	OKLA. STAT. tit. 21, § 1115 (West 2013). <u>Punishment of rape in the first degree.</u>	OKLA. STAT. tit. 21, § 1111 (West 2013). <u>Rape Defined.</u>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Oklahoma Cont'	<p>OKLA. STAT. tit. 21, § 1114 (West 2013). <u>Rape in the first degree - Second degree.</u></p> <p>OKLA. STAT. tit. 21, § 888 (West 2013). <u>Forcible sodomy.</u></p> <p>OKLA. STAT. tit. 21, § 1123 (West 2013). <u>Lewd of indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery.</u></p>	<p>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:</p> <ol style="list-style-type: none"> 1. Where the victim is under sixteen (16) years of age; 2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent; 3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person; 4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; 5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; 6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape; 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; or 8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or 	<p>1. Rape means an act of sexual intercourse with a person pursuant to § 1111, 1111.1, and 1114 of Title 21 of the Oklahoma Statutes; and</p> <p>2. Forcible sodomy means the act of forcing another person to engage in the detestable and abominable crime against nature pursuant to § 886 and 887 of Title 21 of the Oklahoma Statutes that is punishable under § 888 of Title 21 of Oklahoma Statutes.</p> <p>OKLA. STAT. tit. 21, § 1123 (West 2013). <u>Lewd of indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery.</u></p> <p>B. No person shall commit sexual battery on any other person. Sexual battery shall mean the intentional touching, mauling or feeling of the body or private parts of any person 16 years of age or older, in a lewd and lascivious manner”</p> <ol style="list-style-type: none"> 1. without the consent of that person; 2. when committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, county, a municipality or political subdivision of this state upon a 	<p>Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, not less than 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.</p> <p>OKLA. STAT. tit. 21, § 1114 (West 2013). <u>Rape in first degree – Second degree.</u></p> <p>B. In all other cases, rape or rape by instrumentation is rape in the second degree.</p> <p>OKLA. STAT. tit. 21, § 1116 (West 2013). <u>Rape in the second degree a felony.</u></p> <p>Rape in the second degree is a felony, and punishable by imprisonment in the State Penitentiary for not less than 1 year nor more than 15 years.</p> <p>OKLA. STAT. tit. 21, § 888 (West 2013). <u>Forcible Sodomy.</u></p> <p>A. Forcible sodomy is a felony punishable by imprisonment in the State Penitentiary for a period of not more than 20 years, except as provided</p>	<p>A. Marriage is a defense.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Oklahoma Cont'		<p>secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system.</p> <p>B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.</p> <p>OKLA. STAT. tit. 21, § 1114 (West 2013). <u>Rape in the first degree - Second degree.</u></p> <p>A. Rape in the first degree shall include:</p> <ol style="list-style-type: none"> 1. rape committed by a person over 18 years of age upon a person under 14 years of age; or 2. rape 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. rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or 4. rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or 5. 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 6. 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; or 7. rape by instrumentation committed upon a person under fourteen (14) years of age. <p>B. In all other cases, rape or rape by instrumentation is rape in the second degree.</p>	<p>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.</p> <p>3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends.</p> <p>As used in this subsection, “<u>employee of the same school system</u>” means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.</p> <p>OKLA. STAT. tit. 21, § 1040.75 (West 2013). <u>Definitions.</u></p> <p>5. <u>Sexual conduct</u> means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person’s clothed or unclothed genitals, pubic area,</p>	<p>ion § 3 of this act.</p> <p>Any person convicted of a second violation of this section, where the victim of the second offense is a person under 16 years of age, shall not be eligible for probation, suspended or deferred sentence.</p> <p>OKLA. STAT. tit. 21, § 1123 (West 2013). <u>Lewd of indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery.</u></p> <p>OKLA. STAT. tit. 21, § 1123</p> <p>Any person convicted of any violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this subsection shall not</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Oklahoma Cont'		<p>OKLA. STAT. tit. 21, § 888 (West 2013). <u>Forcible sodomy.</u></p> <p>A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to § 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 20 years</p> <p>Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to <u>subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes</u> under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, 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. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of <u>subsection A of Section 1114</u> of this title, a violation of <u>Section 1123</u> of this title or sexual abuse of a child pursuant to <u>Section 843.5</u> of this title, or of any attempt to commit any of these offenses or any combination of</p>	<p>buttocks, or, if such person be a female, breast;</p>	<p>apply unless the accused is at least three (3) years older than the victim, except when accomplished by the use of force or fear. Except as provided in Section 51.1a of this title, any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Except as provided in Section 51.1a of this title, any person convicted of a third or subsequent violation of this subsection shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
		<p>said offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.</p> <p>B. The crime of forcible sodomy shall include:</p> <ol style="list-style-type: none"> 1. Sodomy committed by a person over 18 years of age upon a person under 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. 5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system. <p>OKLA. STAT. tit. 21, § 1123 (West 2013). <u>Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery.</u></p> <p>A. It is a felony for any person to and intentionally:</p> <ol style="list-style-type: none"> 1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under 16 years of age for the child to have unlawful sexual relations or sexual 		<p>this title, sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.D. Any person convicted of a violation of subsection B or C of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.</p> <p>F. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
		<p>intercourse with any person; or</p> <p>2. Look upon, touch, maul, or feel the body or private parts of any child under 16 years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or</p> <p>3. Ask, invite, entice, or persuade any child under 16 years of age to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or</p> <p>4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under 16 years of age in any indecent manner or in any manner or in any manner relating to sexual matters or sexual interest; or</p> <p>5. In a lewd and lascivious manner and for the purpose of sexual gratification:</p> <p>a. urinate or defecate upon a child under 16 years of age,</p> <p>b. ejaculate upon or in the presence of a child,</p> <p>c. Cause, expose, force, or require a child to look upon the body or private parts of another person,</p> <p>d. force or require a child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors are such terms are defined by § 1024.1 and 1040.75 of this title</p> <p>e. cause, expose, force, or require a child to look upon sexual acts performed in the presence of the child, or</p> <p>f. force or require a child to touch or feel the body or private parts of said child or another person.</p>		the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.	
Oregon	OR. REV. STAT. § 163.452 (2013). <u>Custodial sexual misconduct in the first degree.</u>	<p>OR. REV. STAT. § 163.452 (2013). <u>Custodial sexual misconduct in the first degree.</u></p> <p>(1) A person commits the crime of</p>	<p>OR. REV. STAT. § 163.305 (2013). <u>Definitions.</u></p> <p>As used in chapter 743,</p>	<p>OR. REV. STAT. § 163.452 (2013). <u>Custodial sexual misconduct in the first degree.</u></p>	<p>OR. REV. STAT. § 163.452 (2013). <u>Custodial sexual misconduct in the first degree.</u></p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Oregon Cont'	OR. REV. STAT. § 163.454 (2013). <u>Custodial sexual misconduct in the second degree.</u>	<p>custodial sexual misconduct in the first degree if the person:</p> <p>(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:</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, 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>OR. REV. STAT. § 163.454 (2013). <u>Custodial sexual misconduct in the second degree.</u></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>Oregon Laws 1971, unless the context requires otherwise:</p> <p>(1) <u>Deviate sexual intercourse</u> means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.</p> <p>(6) <u>Sexual contact</u> 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) <u>Sexual intercourse</u> has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.</p> <p>OR. REV. STAT. § 30.642 (2013). <u>Definitions.</u></p> <p>(2) <u>Correctional facility</u> means a Department of Corrections institution or a jail.</p> <p>(3) <u>Inmate</u> means any person incarcerated or detained in any correctional facility who is accused of, convicted of or sentenced for a violation of criminal law or for the violation of the terms and conditions of pretrial release, probation, parole, post-prison supervision or diversion program.</p>	<p>(4) Custodial sexual misconduct in the first degree is a Class C felony.</p> <p>OR. REV. STAT. § 161.605 (2013). <u>Maximum terms of imprisonment; felonies.</u></p> <p>The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:</p> <p>(3) For a Class C felony, 5 years.</p> <p>OR. REV. STAT. § 163.454 (2013). <u>Custodial sexual misconduct in the second degree.</u></p> <p>(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor.</p> <p>OR. REV. STAT. § 161.615 (2013). <u>Sentences for misdemeanors.</u></p> <p>Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:</p> <p>(1) For a Class A misdemeanor, 1 year.</p>	<p>(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.</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 (2013). <u>Custodial sexual misconduct in the second degree.</u></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>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Oregon Cont'		<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>			
Pennsylvania	18 PA. CONS. STAT. § 3124.2 (West 2013). <u>Institutional sexual assault.</u>	<p>18 PA. CONS. STAT. § 3124.2 (WEST 2013). <u>Institutional sexual assault.</u></p> <p>(a) General rule -- Except as provided in § 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 Aggravated Indecent Assault), a person who is an employee or agent of the Department of Corrections or a county corrections authority, state or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse, or indecent contact with an inmate, detainee, patient or resident.</p> <p>(a.1) Institutional sexual assault of a minor.--A person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility,</p>	<p>18 PA. CONS. STAT. § 3124.2 (West 2007). <u>Institutional sexual assault.</u></p> <p>(b) Definitions. -- As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise: “<u>Agent</u>” 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.</p>	<p>18 PA. CONS. STAT. § 3124.2 (WEST 2013). <u>Institutional sexual assault.</u></p> <p>(a) Institutional sexual assault is a felony of the third degree.</p> <p>18 PA. CONS. STAT. § 106 (West 2013). <u>Classes of Offenses.</u></p> <p>(b) Classification of crimes. --</p> <p>(4) A crime is a felony of the third degree if it is so designated in this title or if the person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than 7 years.</p>	(NOTE : 18 PA. CONS. STAT. makes no reference to defenses from prosecution for institutional sexual assault).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Pennsylvania Cont'		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 who is under 18 years of age.	<p>18 PA. CONS. STAT. § 3101 (West 2013). <u>Definitions.</u></p> <p>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:</p> <p><u>Deviate sexual intercourse.</u> 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.</p> <p><u>Forcible compulsion.</u> Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.</p> <p><u>Indecent contact.</u> Any touching of the sexual</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person. <u>Sexual intercourse</u> . In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.		
Rhode Island Rhode Island Cont'	R.I. GEN. LAWS § 11-25-24 (West 2013). <u>Correctional employees - - Sexual relations with inmates – Felony.</u>	R.I. GEN. LAWS § 11-25-24 (West 2013). <u>Correctional employees - - Sexual relations with inmates – Felony.</u> 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.	R.I. GEN. LAWS § 11-37-1 (West 2013). <u>Definitions.</u> (8) <u>Sexual penetration</u> 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 § 13-11-2 (West 2013). <u>New England interstate corrections compact.</u> (d) <u>Inmate</u> means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution. (e) <u>Institution</u> means any penal or correctional facility (including but not limited to a facility for persons who are	R.I. GEN. LAWS § 11-25-24 (West 2013). <u>Correctional employees – Sexual relations with inmates – Felony.</u> Sexual relations with inmates 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.	(NOTE : R.I. GEN. LAWS make no reference to defenses from prosecution for sexual relations with inmates).

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			mentally ill or developmentally disabled) in which inmates as defined in (d) above may lawfully be confined.		
South Carolina	S.C. CODE ANN. § 44-23-1150 (West 2012). <u>Sexual misconduct with an inmate, patient, or offender.</u>	S.C. CODE ANN. § 44-23-1150 (West 2012). <u>Sexual misconduct with an inmate, patient, or offender.</u> (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. (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 1 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 conviction, must be imprisoned for not more than 6 months, or both.	S.C. CODE ANN. § 44-23-1150 (West 2012). <u>Sexual misconduct with an inmate, patient, or offender.</u> (A) As used in this section: (1) <u>Actor</u> 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) <u>Victim</u> 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. (C)(2) The term sexual contact, as used in this subsection, refers to an intrusion of any part of a person's body or of any object into the "intimate	S.C. CODE ANN. § 44-23-1150 (West 2012). <u>Sexual misconduct with an inmate, patient, or offender.</u> (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 10 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 5 years.	S.C. CODE ANN. § 44-23-1150 (West 2012). <u>Sexual misconduct with an inmate, patient, or offender.</u> (A)(2) A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
South Carolina Cont'			<p>parts", as defined in § 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.</p> <p>S.C. CODE ANN. § 16-3-651 (West 2012). <u>Criminal sexual conduct: definitions.</u></p> <p>For the purposes of §§ 16-3-651 to 16-3-659.1: (d) <u>Intimate parts</u> 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. (e) <u>Mentally defective</u> means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct. (f) <u>Mentally incapacitated</u> means that a person is rendered temporarily incapable of appraising or controlling his or her conduct whether this condition is produced by illness, defect, the influence of a substance or from some other cause. (g) <u>Physically helpless</u></p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.		
South Dakota	S.D. CODIFIED LAWS § 24-1-26.1 (West 2013). <u>Sexual acts prohibited between prison employees and prisoners.</u>	S.D. CODIFIED LAWS § 24-1-26.1 (West 2013). <u>Sexual acts prohibited between prison employees and prisoners.</u> Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.	S.D. CODIFIED LAWS § 22-22-2 (West 2013). <u>Sexual penetration defined – Acts constituting sodomy – Medical practitioners excepted.</u>	S.D. CODIFIED LAWS § 24-1-26.1 (West 2013). <u>Sexual acts prohibited between prison employees and prisoners.</u>	(NOTE : S.D. CODIFIED LAWS make no reference to defenses from prosecution for sexual acts prohibited between prison employees and prisoners or sexual contact or penetration by correctional facility employee with inmate).
South Dakota Cont'	S.D. CODIFIED LAWS § 22-22-7.6 (West 2013). <u>Sexual acts between jail employees and detainees--Felony-- Juvenile correctional facility defined.</u>	S.D. CODIFIED LAWS § 22-22-7.6 (West 2013). <u>Sexual acts between jail employees and detainees--Felony-- Juvenile correctional facility defined.</u> Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony. A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1 (16) or a juvenile facility operated by the Department of Corrections under § 1-15-1.4.	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. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. S.D. CODIFIED LAWS § 22-22-7.1 (West 2013). <u>Sexual contact defined – Exception when within the scope of medical practice.</u> As used in this chapter, the term, <u>sexual contact</u> , means any touching, not amounting to rape, whether or not through clothing or other covering, of the breasts of a female or the genitalia or anus of any person with the intent to arouse or gratify the sexual desire of either	Sexual penetration with another person who is in detention, and under custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony. S.D. CODIFIED LAWS § 22-6-1 (West 2013). <u>Felonies classes and penalties – Restitution – Habitual criminal sentences.</u> Except as otherwise provided by law, felonies are divided into the following 9 classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction: (9) Class 6 felony: 2 years imprisonment in the state penitentiary or a fine of \$4,000, or both.	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
South Dakota Cont'			<p>party.</p> <p>S.D. CODIFIED LAWS § 1-15-1.4 (West 2013). Agencies and programs <u>under department control</u>.</p> <p>The <u>Department of Corrections</u>, 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.</p> <p>S.D. CODIFIED LAWS § 26-7A-1 (West 2007). <u>Definition of terms.</u></p> <p>(6) <u>Child</u>, a person less than 18 years of age and any person under 21 years of age who is under the continuing jurisdiction of the court or who is before the court for an alleged delinquent act committed before the person's 18th birthday.</p> <p>(15) <u>Detention</u>, the temporary custody of a child in secured physically restricting facilities for children, sight and sound</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
South Dakota Cont'			separated from adult prisoners; (16) <u>Detention facility</u> , 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	<p>TENN. CODE ANN. § 39-16-408 (West 2013). <u>Sexual contact or penetration with a prisoner or inmate by a law enforcement officer, correctional employee, vendor or volunteer; penalty.</u></p> <p>TENN. CODE ANN. § 39-13-527 (West 2013). <u>Authority figure; sexual battery; penalty.</u></p>	<p>TENN. CODE ANN. § 39-16-408 (West 2013). <u>Sexual contact or penetration with a prisoner or inmate by a law enforcement officer, correctional employee, vendor or volunteer; penalty.</u></p> <p>(b) 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.</p> <p>TENN. CODE ANN. § 39-13-527 (West 2013). <u>Authority figure; sexual battery; penalty.</u></p> <p>(a) Sexual battery by an authority figure is unlawful sexual contact with a victim</p>	<p>TENN. CODE ANN. § 39-16-408 (West 2013). <u>Sexual contact or penetration with a prisoner or inmate by a law enforcement officer, correctional employee, vendor or volunteer; penalty.</u></p> <p>(a) For purposes of this section, unless the context otherwise requires: (1) <u>Law enforcement officer</u> and <u>correctional employee</u> include a person working in such capacity as a private contractor or employee of a private contractor; and (2) <u>Volunteer</u> means</p>	<p>TENN. CODE ANN. § 39-16-408 (West 2013). <u>Sexual contract or penetration with a prisoner or inmate by a law enforcement officer, correctional employee, vendor or volunteer; penalty.</u></p> <p>(c) A violation of this section is a Class E felony.</p> <p>TENN. CODE ANN. § 40-35-111 (West 2013). <u>Authorized sentences; prison terms or fines.</u></p> <p>(a) A sentence for a felony is a</p>	<p>(NOTE : TENN. CODE ANN makes no reference to defenses from prosecution for sexual contact or penetration with a prisoner or inmate by a law enforcement officer, correction employee, vendor or volunteer or sexual battery by an authority figure).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Tennessee Cont'		<p>by the defendant or the defendant by a victim accompanied by the following circumstances:</p> <p>(1) The victim was, at the time of the offense, 13 years of age or older, but less than 18 years of age; or</p> <p>(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,</p> <p>(3)(A) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary 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</p> <p>(B) 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.</p>	<p>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.</p> <p>TENN. CODE ANN. § 39-13-501 (West 2013). <u>Definitions.</u></p> <p>(2) <u>Intimate parts</u> includes the semen, vaginal fluid, primary genital area, groin, inner thigh, buttock or breast of a human being;</p> <p>(3) <u>Mentally defective</u> means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct;</p> <p>(4) <u>Mentally incapacitated</u> means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent;</p> <p>(6) <u>Sexual contact</u> includes the intentional touching of the victim's,</p>	<p>determinate sentence.</p> <p>(b) The authorized terms of imprisonment and fines for felonies are:</p> <p>(5) Class E felony, not less than 1 year nor more than 6 years. In addition, the jury may assess a fine not to exceed \$3,000, unless otherwise provided by statute.</p> <p>TENN. CODE ANN. § 39-13-527 (West 2013). <u>Authority figure; sexual battery; penalty.</u></p> <p>(b) Sexual battery by an authority figure is a Class C felony.</p> <p>TENN. CODE ANN. § 40-35-111 (West 2013). <u>Authorized sentences; prison terms or fines.</u></p> <p>(a) A sentence for a felony is a determinate sentence.</p> <p>(b) The authorized terms of imprisonment and fines for felonies are:</p> <p>(3) Class C felony, not less than 3 years nor more than 15 years. In addition, the jury may assess a fine not to exceed \$10,000, unless otherwise provided by statute.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Tennessee Cont'			<p>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 construed as being for the purpose of sexual arousal or gratification;</p> <p>(7) <u>Sexual penetration</u> 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; and</p> <p>(8) <u>Victim</u> means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.</p> <p>TENN. CODE ANN. § 39-16-601 (West 2013). <u>Definitions.</u></p> <p>(2) <u>Custody</u> means under arrest by a law enforcement officer or under restraint by a public servant pursuant to an order of a court;</p> <p>(3) <u>Escape</u> means unauthorized departure from custody or failure to return to custody following temporary leave for a specific</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			purpose or limited period, but does not include a violation of conditions of probation or parole; and (4) <u>Penal institution</u> 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 in direct or indirect custody after a lawful arrest; or (D) When such institution or facility is a court-operated long-term residential substance abuse facility.		
Texas	TEX. PENAL CODE ANN. § 39.04 (Vernon 2013). <u>Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</u>	TEX. PENAL CODE ANN. § 39.04 (Vernon 2013). <u>Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</u> (a) An official of a correctional facility, an 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 the person intentionally: (2) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance. (f) An employee of the Texas Department of Criminal Justice, the Texas Youth Commission, or a local juvenile probation department commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an	TEX. PENAL CODE ANN. § 39.04 (West2013). <u>Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</u> (e) In this section: (1) <u>Correctional facility</u> means: (A) any place described by § 1.07(a)(14) (A) a municipal or county jail; (B) a confinement facility operated by the Texas Department of Criminal Justice; (C) a confinement facility operated under contract with any division of the Texas Department of Criminal Justice; and (D) a community	TEX. PENAL CODE ANN. § 39.04 (Vernon2013). <u>Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</u> (b) An offense under Subsection (a)(2) is a state jail felony, except that an offense under Subsection TEX. PENAL CODE ANN. § 12.35 (Vernon2013). <u>State jail felony punishment.</u> (a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by	TEX. PENAL CODE ANN. § 39.04 (Vernon 2013). <u>Rights of Person in Custody; Improper Sexual Activity with Person in Custody.</u> (f) Marriage is a defense. (f) Lack of knowledge of status as offender is a defense.

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Texas Cont'		individual who is not the employee's spouse and who the employee knows is under the supervision of the department, commission, or probation department but not in the custody of the department, commission, or probation department.	<p>corrections facility operated by a community supervision and corrections department.; or</p> <p>(B) a <u>secure correctional facility</u> or <u>secure detention facility</u> as defined by § 51.02, Family Code: (14)</p> <p>“Secure detention facility” means any public or private residential facility that:</p> <p>(A) includes construction fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility; and</p> <p>(B) is used for the temporary placement of any juvenile who is accused of having committed an offense, any nonoffender, or any other individual accused of having committed a criminal offense.</p> <p>(2) <u>Custody</u> 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 Texas Youth Commission or a facility operated by or under contract with a juvenile board.</p> <p>(5) <u>Sexual performance</u> means any performance or part thereof that includes sexual conduct by an individual.</p> <p>TEX. PENAL CODE</p>	<p>confinement in a state jail for any term of not more than 2 years or less than 180 days.</p> <p>(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.</p> <p>(c) An individual adjudges guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the defense that:</p> <p>(1) a deadly weapon was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited:</p> <p>or</p> <p>(2) the individual has previously been convicted of any felony:</p> <p>(A) Under § 21.02 or listed in § 3g(a)(1), Article 42.12, Code of Criminal Procedure; or</p> <p>(B) for which the judgment contains an affirmative finding under § 3g(a)(2), Article 42.12, Code of Criminal Procedure.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Texas Cont'			<p>ANN. § 43.25 (Vernon 2013). <u>Sexual Performance by a Child.</u></p> <p>(a) In this section: (1) <u>Sexual performance</u> means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age. (2) <u>Sexual conduct</u> means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.</p> <p>TEX. PENAL CODE ANN. § 21.01 (Vernon 2007/2013). <u>Definitions.</u></p> <p>In this chapter: (1) <u>Deviate sexual intercourse</u> 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) <u>Sexual contact</u> means, except as provided by § 21.11, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or</p>	<p>TEX. PENAL CODE ANN. § 39.04 (Vernon 2013). <u>Violations of the Civil Rights of Person in Custody: Improper Sexual Activity with Person in Custody.</u></p> <p>(a)(2) is a felony of the second degree if the individual is in the custody of the Texas Youth Commission.</p> <p>TEX. PENAL CODE ANN. § 12.33 (Vernon 2007 2013). <u>Second Degree Felony Punishment.</u></p> <p>(a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the institutional division for any term of not more than 20 years or less than 2 years. (b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN. § 39.04 (Vernon 2013). <u>Violations of the Civil Rights of Person in Custody: Improper Sexual Activity with Person in Custody.</u></p> <p>(g) An offense under</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Texas Cont'			<p>gratify the sexual desire of any person.</p> <p>(3) <u>Sexual intercourse</u> means any penetration of the female sex organ by the male sex organ.</p> <p>(4) <u>Spouse</u> 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> <p>TEX. PENAL CODE ANN. §51.02 (Vernon 2013).</p> <p><u>Definitions</u></p> <p>(2) <u>Child</u> means a person who is:</p> <p>(A) ten years of age or older and under 17 years of age; or</p> <p>(B) seventeen years of age or older and under 18 years of age who is alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision as a result of acts committed before becoming 17 years of age.</p>	<p>Subsection (f) is a state jail felony.</p> <p>TEX. PENAL CODE ANN. § 12.35 (Vernon 2013).</p> <p><u>State jail felony punishment.</u></p> <p>(a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than 2 years or less than 180 days.</p> <p>(b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000.</p> <p>(c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the defense that:</p> <p>(1) a deadly weapon was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited:</p> <p>or</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
				(2) the individual has previously been convicted of any felony: (A) Under § 21.02 or listed in § 3g(a)(1), Article 42.12, Code of Criminal Procedure; or (B) for which the judgment contains an affirmative finding under § 3g(a)(2), Article 42.12, Code of Criminal Procedure.	
Utah	UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u>	UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u> (2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3): (i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and (ii) (A) the actor knows that the individual is a person in custody; or (B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody. (3) Acts referred to in Subsection (2)(a) are: (a) having sexual intercourse with a person in custody; (b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or (c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional	UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u> (1) As used in this section: (a) <u>Actor</u> means: (i) a <u>correctional officer</u> , as defined in § 53-13-104; (1)(a) <u>Correctional officer</u> means a sworn and certified officer employed by the Department of Corrections, any political subdivision of the state, or any private entity which contracts with the state or its political subdivisions to incarcerate inmates who is charged with the primary duty of providing community protection. (b) <u>Correctional officer</u> includes an individual assigned to carry out any of the following	UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u> (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. UTAH CODE ANN. § 76-3-203 (West 2013). <u>Felony conviction - Indeterminate term of imprisonment.</u> A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows: (2) In the case of a	UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u> (2)(a)(ii)(A) Lack of knowledge of status as offender is a defense. (7)(a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor (i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or (ii) was unaware of the true age of the person in custody. (b) Consent of the person in custody is not a
Utah Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Utah Cont'		<p>or bodily pain to any person, regardless of the sex of any participant.</p> <p>(4)(a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):</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>(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:</p> <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 §§ (2)(a)(i) and (4)(a)(i) are:</p> <p>(a) § 76-5-401, unlawful sexual activity with a minor;</p> <p>(b) § 76-5-402, rape;</p> <p>(c) § 76-5-402.1, rape of a child;</p> <p>(d) § 76-5-402.2, object rape;</p> <p>(e) § 76-5-402.3, object rape of a child;</p> <p>(f) § 76-5-403, forcible sodomy;</p> <p>(g) § 76-5-403.1, sodomy on a child;</p> <p>(h) § 76-5-404, forcible sexual abuse;</p> <p>(i) § 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or</p> <p>(j) § 76-5-405, aggravated sexual assault.</p>	<p>types of functions:</p> <p>(i) controlling, transporting, supervising, and taking into custody of persons arrested or convicted of crimes;</p> <p>(ii) supervising and preventing the escape of persons in state and local incarceration facilities;</p> <p>(iii) guarding and managing inmates and providing security and enforcement services at a correctional facility; and</p> <p>(iv) employees of the Board of Pardons and Parole serving on or before September 1, 1993, whose primary responsibility is to prevent and detect crime, enforce criminal statutes, and provide security to the Board of Pardons and Parole, and who are designated by the Board of Pardons and Parole, approved by the commissioner of public safety, and certified by the Peace Officer Standards and Training Division.</p> <p>(ii) a law enforcement officer, as defined in § 53-13-103; (1)(a) <u>Law enforcement officer</u> means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist</p>	<p>felony of the second degree, unless the statute provides otherwise, for a term of not less than 1 year nor more than 15 years.</p> <p>(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed 5 years.</p> <p>UTAH CODE ANN. § 76-3-301 (West 2013). <u>Fines of persons.</u></p> <p>(1) A person convicted of an offense may be sentenced to pay a fine, not 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>UTAH CODE ANN. § 76-5-412 (West 2013). <u>Custodial sexual relations – Custodial sexual misconduct – Definitions – Penalties – Defenses.</u></p> <p>(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.</p>	<p>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>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Utah Cont'			<p>of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.or</p> <p>(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.</p> <p>(b) <u>Person in custody</u> 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>(i) a prisoner, as defined in § 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under § 64-13-2, but who is being housed at the Utah State Hospital established under § 62A-12-201 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) <u>Private provider or contractor</u> 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</p>	<p>UTAH CODE ANN. § 76-3-203 (West 2013).</p> <p><u>Felony conviction - Indeterminate term of imprisonment.</u></p> <p>A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:</p> <p>(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed 5 years.</p> <p>UTAH CODE ANN. § 76-3-204 (West 2013).</p> <p><u>Misdemeanor conviction – Term of imprisonment.</u></p> <p>A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:</p> <p>(1) In the case of a class A misdemeanor, for a term not exceeding 1 year.</p> <p>UTAH CODE ANN. § 76-3-301 (West 2013).</p> <p><u>Fines of persons.</u></p> <p>(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:</p> <p>(b) \$5,000 for a felony conviction of</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>Corrections or a county jail under state or local law.</p> <p>UTAH CODE ANN. § 76-5-101 (West 2013). <u>"Prisoner" defined.</u></p> <p>For purposes of this part <u>prisoner</u> 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>the third degree; (c) \$2,500 for a class A misdemeanor conviction.</p>	
Vermont	<p>VT. STAT. ANN. tit. 13, § 3257 (West 2013). <u>Sexual exploitation of an inmate.</u></p>	<p>VT. STAT. ANN. tit. 13, § 3257 (West 2013). <u>Sexual exploitation of an inmate.</u></p> <p>(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:</p> <p>(1) is confined to a correctional facility; or</p> <p>(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</p>	<p>VT. STAT. ANN. tit. 28, § 3 (West 2013). <u>General definitions.</u></p> <p>(3) <u>Correctional facility</u> or <u>facility</u> means any building, enclosure, space or structure of or supported by the department and used for the confinement of persons committed to the custody of the commissioner, or for any other matter related to such confinement.</p> <p>(10) <u>Correctional officer</u> means any person who is an employee of the department of corrections whose official duties or job classification includes the supervision or</p>	<p>VT. STAT. ANN. tit. 13, § 3257 (West 2013). <u>Sexual exploitation of an inmate.</u></p> <p>(b) A person who violates subsection (a) of this section shall be imprisoned for not more than 5 years or fined not more than \$10,000.00, or both.</p>	<p>(NOTE : VT. STAT. ANN. tit. makes no reference to defenses from prosecution for sexual exploitation of an inmate).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
		subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person.	monitoring of a person on parole, probation, or serving any sentence of incarceration whether inside or outside a correctional facility, and who has received training, as approved by the commissioner of corrections, as provided in section 551a of this title.		
Virginia	VA. CODE ANN. § 18.2-64.2 (West 2013). <u>Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty.</u>	VA. CODE ANN. § 18.2-64.2 (West 2013). <u>Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty.</u> An accused shall be guilty of carnal knowledge of an inmate, parolee, detainee, probationer, or pretrial or posttrial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, a state or local services unit, a local community-based probation services agency or a pretrial services agency; 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 state or local court services unit, a local community-based probation services agency, or a pretrial services agency; and carnally knows without the use of force, threat or intimidation: (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or	VA. CODE ANN. § 18.2-64.2 (West 2013). <u>Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty.</u> For the purposes of this section, <u>carnal knowledge</u> includes the acts of sexual intercourse, cunnilingus, fellatio, anallingsus, anal intercourse and animate or inanimate object sexual penetration. VA. CODE ANN. § 16.1-228 (West 2013). <u>Definitions.</u> <u>Secure facility or detention home</u> means a local, regional or state public or private locked residential facility that has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody. VA. CODE ANN. § 16.1-235 (West 2013). <u>How probation, parole and related court</u>	VA. CODE ANN. § 18.2-64.2 (West 2013). <u>Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty.</u> Such offense is a Class 6 felony. VA. CODE ANN. § 18.2-10 (West 2013). <u>Punishment for conviction of felony; penalty.</u> (f) For Class 6 felonies, a term of imprisonment of not less than 1 year nor more than 5 years, or in the discretion of the jury or the court trying the case without the jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.	VA. CODE ANN. § 18.2-64.2 (West 2013). Lack of knowledge of status as offender is a defense.
Virginia Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
		(ii) a probationer, parolee, detainee, or a pretrial defendant or a posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, a state or local court services unit, local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program or agency.	<u>services provided.</u> <u>A. State court services units.</u> – The Department shall develop and operate probation, parole and related court services in counties or cities therefore serviced by regional juvenile and domestic relations district courts and where specialized probation, parole and related court services were not provided as of July 1, 1973, and make such services available to juvenile and domestic relations district courts, as required by this chapter and by regulations established by the Board.		
Washington	<p>WASH. REV. CODE ANN. § 9A.44.160 (West 2013). <u>Custodial sexual misconduct in the first degree.</u></p> <p>WASH. REV. CODE ANN. § 9A.44.170 (West 2013). <u>Custodial sexual misconduct in the second degree.</u></p>	<p>WASH. REV. CODE ANN. § 9A.44.160 (West 2013). <u>Custodial sexual misconduct in the first degree.</u></p> <p>(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person;</p> <p>(a) When:</p> <p>(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</p> <p>(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or</p>	<p>WASH. REV. CODE ANN. § 9A.44.010 (West 2013). <u>Definitions.</u></p> <p>As used in this chapter:</p> <p>(1) <u>Sexual intercourse</u></p> <p>(a) has its ordinary meaning and occurs upon any penetration, however slight, and</p> <p>(b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized</p>	<p>WASH. REV. CODE ANN. § 9A.44.160 (West 2013). <u>Custodial sexual misconduct in the first degree.</u></p> <p>(3) Custodial sexual misconduct in the first degree is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.20.021 (West 2013). <u>Maximum sentences for crimes committed July 1, 1984, and after.</u></p> <p>(1) Felony. Unless a different maximum sentence for a</p>	<p>WASH. REV. CODE ANN. § 9A.44.160.(West 2013). <u>Custodial sexual misconduct in the first degree.</u></p> <p>(2) Consent of the victim is not a defense.</p> <p>WASH. REV. CODE ANN. § 9A.44.170.(West 2013). <u>Custodial sexual misconduct in the second degree.</u></p> <p>(2) Consent of the victim is not a defense.</p> <p>WASH. REV. CODE ANN. § 9A.44.180 (West 2013).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Washington Cont'		<p>(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.</p> <p>WASH. REV. CODE ANN. § 9A.44.170 (West 2013). <u>Custodial sexual misconduct in the second degree.</u></p> <p>(1) 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 victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.</p>	<p>treatment or diagnostic purposes, and (c) Also means any act of sexual contact between persons involving the sex organs or one person and the mouth or anus of another whether such persons are of the same or opposite sex. (2) <u>Sexual contact</u> means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party. 4) <u>Mental incapacity</u> is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause. (5) <u>Physically helpless</u> means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act. (6) <u>Forcible compulsion</u> means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be</p>	<p>classified felony is specifically established by a statute of this state, no person convicted of a classified felony shall be punished by confinement or fine exceeding the following: (c) For a class C felony, by confinement in a state correctional institution for 5 years, or by a fine in an amount fixed by the court of \$10,000, or by such confinement and fine.</p> <p>WASH. REV. CODE ANN. § 9A.44.170 (West 2013). <u>Custodial sexual misconduct in the second degree.</u> (3) Custodial sexual misconduct in the second degree is a gross misdemeanor.</p> <p>WASH. REV. CODE ANN. § 9A.20.021 (West 2013). <u>Maximum sentences for crimes committed July 1, 1984, and after.</u></p> <p>(2) Gross misdemeanor. Every person convicted of a gross misdemeanor defined in Title 9A RCW shall be punished by imprisonment in the county jail for a maximum term fixed</p>	<p><u>Custodial sexual misconduct - Defense.</u></p> <p>It is an affirmative defense to prosecution under RCW 9A.44.160 or RCW 9A.44.170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Washington Cont'			<p>kidnapped.</p> <p>(7) <u>Consent</u> means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.</p> <p>(8) <u>Significant relationship</u> means a situation in which the perpetrator is:</p> <p>(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;</p> <p>(b) A person who in the course of his or her employment supervises minors; or</p> <p>(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual</p>	by the court of up tp three hundred sixty-four days,, or by a fine in an amount fixed by the court of not more than \$5,000, or by both such imprisonment and fine.	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			partner.		
West Virginia	W. VA. CODE ANN. § 61-8B-10 (West 2013). <u>Imposition of sexual acts on persons incarcerated or under supervision; penalties.</u>	W. VA. CODE ANN. § 61-8B-10 (West 2013). <u>Imposition of sexual acts on persons incarcerated or under supervision; penalties.</u> (a) Any person, employed by the Division of Corrections, any person working at a correctional facility managed by the Commissioner of Corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the Division of Juvenile Services pursuant to contract or as an employee of a state agency, any person employed by a jail or by the Regional Jail and Correctional Facility Authority or a jail or any person employed by, or acting pursuant to, the authority of any sheriff, county commission or court to ensure compliance with the provisions of article eleven-b, chapter 62 of this code who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state is guilty of a felony. (b) Any person employed by the Division of Corrections as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony.	W. VA. CODE ANN. § 61-8B-10 (West 2013). <u>Imposition of sexual acts on persons incarcerated or under supervision; penalties.</u> (c) The term <u>incarcerated in this state</u> for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article eleven-b, chapter 62 of this code. W. VA. CODE ANN. § 61-8B-1 (West 2013). <u>Definition of terms.</u> (6) "Sexual contact" means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party. (7) Sexual intercourse means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth of anus of another person.	W. VA. CODE ANN. § 61-8B-10 (West 2013). <u>Imposition of sexual acts on persons incarcerated or under supervision; penalties.</u> (a) Any employee mentioned in this section who engages in sexual intercourse, sexual intrusion, or sexual contact with a person who is incarcerated in this state is guilty of a felony, and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than 1 nor more than 5 years or fined not more than \$5,000. (b) An employee mentioned in this section who engages in sexual intercourse, sexual intrusion, or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than 1 nor more than	W. VA. CODE ANN. § 61-8B-10 (West 2013). <u>Imposition of sexual acts on persons incarcerated or under supervision; penalties.</u> (d) Authorized pat-down, strip search or other security related tasks does not constitute sexual contact pursuant to this section. W. VA. CODE ANN. § 61-8B-2 (West 2007). <u>Lack of consent.</u> (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 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 16 years old; or (2) Mentally defective; or (3) Mentally
West Virginia Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>(8) Sexual intrusion means any act between persons involving penetration, however, slight, of the female sex organ of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.</p> <p>W. VA. CODE ANN. § 25-1A-1 (West 2007). <u>Definitions.</u></p> <p>(b) <u>Correctional facility</u> means any county jail, regional jail or any facility operated by the division of corrections, the West Virginia regional jail and correctional facility authority or division of juvenile services for the confinement of inmates.</p> <p>(c) <u>Inmate</u> means any person confined in a correctional 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 a diversionary program.</p>	5 years or fined not more than \$5,000, or both.	<p>incapacitated; or</p> <p>(4) Physically helpless; or</p> <p>(5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.</p>
Wisconsin	<p>WIS. STAT. ANN. § 940.225 (West 2013). <u>Sexual assault.</u></p> <p>WIS. STAT. ANN. § 940.29 (West 2013). <u>Abuse of residents of penal facilities.</u></p>	<p>WIS. STAT. ANN. § 940.225 (West 2013). <u>Sexual assault.</u></p> <p>(1) First degree sexual assault. Whoever does any of the following is guilty of a Class B felony: (a) Has sexual contact or sexual intercourse with another person without</p>	<p>WIS. STAT. ANN. § 302.30 (West 2013). <u>Definition of jail.</u></p> <p>In §§ 302.30 to 302.43, <u>jail</u> includes municipal prisons and rehabilitation facilities</p>	<p>WIS. STAT. ANN. § 940.225 (West 2013). <u>Sexual assault.</u></p> <p>(1) First degree sexual assault is guilty of a Class B felony:</p>	<p>WIS. STAT. ANN. § 940.225 (West 2013).</p> <p>(4) Consent is not an issue in alleged violations of sub. (2)(c), (cm), (d), (g), (h), and (i).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Wisconsin Cont'		<p>consent of that person and causes pregnancy or great bodily harm to that person.</p> <p>(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.</p> <p>(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.</p> <p>(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:</p> <p>(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.</p> <p>(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.</p> <p>(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.</p> <p>(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of giving consent if the defendant has actual knowledge that the person is incapable of giving consent and the defendant has the purpose to have sexual contact or sexual intercourse with the person while the person is incapable of giving consent.</p> <p>(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.</p> <p>(f) Is aided or abetted by one or more other persons and has sexual contact or</p>	<p>established under § 59.53 (8) by whatever name they are known. In § 302.37 (1) (a) and (3) (a), "jail" does not include lockup facilities. <u>Lockup facilities</u> 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 § 302.365, "jail" does not include rehabilitation facilities established under § 59.53 (8).</p> <p>WIS. STAT. ANN. § 59.53(West 2013) (8) <u>Rehabilitation facilities</u>. The board may establish and maintain rehabilitation facilities in any part of the county under the jurisdiction of the sheriff as an extension of the jail, or separate from the jail under jurisdiction of a superintendent, to provide any person sentenced to the county jail with a program of rehabilitation for such part of the person's sentence or commitment as the court determines will be of rehabilitative value to the prisoner.</p>	<p>(2) Second degree sexual assault is a Class C felony.</p> <p>(3) Third degree sexual assault. Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class G felony. Whoever has sexual contact in the manner described in sub. (5)(b)2. or 3. with a person without the consent of that person is guilty of a Class G felony.</p> <p>WIS. STAT. ANN. § 939.50 (West 2013). <u>Classification of felonies</u>.</p> <p>(3) Penalties for felonies are as follows:</p> <p>(b) For a Class B felony, imprisonment not to exceed 60 years.</p> <p>(c) For a Class C felony, a fine not to exceed \$100,000 or imprisonment not to exceed 40 years, or both.</p> <p>(g) For a Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both.</p> <p>WIS. STAT. ANN. § 940.29 (West 2013). <u>Abuse of residents of penal facilities</u>.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Wisconsin Cont'		<p>sexual intercourse with another person without the consent of that person.</p> <p>(g) Is an employee of a facility or program under s. 940.295(2)(b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.</p> <p>(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.</p> <p>(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 agent's 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.</p> <p>(j) Is a licensee, employee, or nonclient resident of an entity, as defined in s. 48.685(1)(b) or 50.065(1)(c), and has sexual contact or sexual intercourse with a client of the entity.</p> <p>WIS. STAT. ANN. § 940.29 (West 2013). <u>Abuse of residents of penal facilities.</u></p> <p>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</p>	<p>WIS. STAT. ANN. § 940.225 (West 2013). <u>Sexual assault.</u></p> <p>(5)(acm) <u>Correctional institution</u> means a jail or correctional facility, a secured correctional facility, , a juvenile correctional facility, or a juvenile detention facility</p> <p>(ad) <u>Correctional staff member</u> means an individual who works at a correctional institution, including a volunteer.</p> <p>(b) <u>Sexual contact</u> means any of the following:</p> <p>1. Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually 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):</p> <p>a. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.</p> <p>b. Intentional touching by the complainant, by the use of any body part or object, of the</p>	<p>Abuse of residents of penal facilities is a Class I felony.</p> <p>WIS. STAT. ANN. § 939.50 (West 2013). <u>Classification of felonies.</u></p> <p>(3) Penalties for felonies are as follows:</p> <p>(i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Wisconsin Cont'		place or who knowingly permits another person to do so is guilty of a Class I felony.	<p>defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.</p> <p>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.</p> <p>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.</p> <p>(5)(c) <u>Sexual intercourse</u> 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</p>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
			<p>not required.</p> <p>WIS. STAT. ANN. § 961.01(West 2013). <u>Definitions.</u></p> <p>(12m) <u>Jail or correctional facility</u> means any of the following: (a) A Type 1 prison, as defined in § 301.01 (5): <u>Type 1 prison</u> means a state prison under s. 302.01, but excludes any institution that meets the criteria under s. 302.01 solely because of its status under s. 301.048(4)(b). (b) A jail, as defined in §. 302.30: 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. (c) A house of correction. (d) A Huber facility under § 303.09.0 (e) A lockup facility, as defined in § 302.30. (f) A work camp under § 303.10.</p>		
Wyoming	WYO. STAT. ANN. § 6-2-303 (West 2013). <u>Sexual assault in the second degree.</u>	WYO. STAT. ANN. § 6-2-303 (West 2013). <u>Sexual assault in the second degree.</u>	WYO. STAT. ANN. § 6-2-301 (West 2013). <u>Definitions.</u>	WYO. STAT. ANN. § 6-2-306 (West 2013). <u>Penalties for sexual assault.</u>	WYO. STAT. ANN. § 6-2-307. (West 2013). <u>Evidence of marriage as defense.</u>
Wyoming Cont'	WYO. STAT. ANN. § 6-2-302 (West 2013) <u>Sexual assault in the first degree.</u>	(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: (i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or	(a) As used in this article: (i) <u>Actor</u> means the person accused of criminal assault; (ii) <u>Intimate parts</u> means the external genitalia, perineum, anus or pubes of any person or the	(a) An actor convicted of sexual assault under W.S. 6-2-302 through 6-2-304 who does not qualify under the criteria of subsection (b) or (d) of this	(a) The fact that the actor and the victim are married to each other is not by itself a defense to a violation of W.S. 6-2-302(a)(i), (ii) or (iii) or 6-2-303(a)(i), (ii) or (vi). (b) Consent of the victim

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Wyoming Cont'		<p>children, and the victim reasonably believes the actor will execute this threat. "To retaliate" includes threats of kidnapping, death, serious bodily injury or extreme physical pain;</p> <p>(ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;</p> <p>(iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;</p> <p>(iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;</p> <p>(vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit</p> <p>(vii) The actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but no limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities, secure treatment facilities or work release facilities, and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system; or</p> <p>(viii) The actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.</p> <p>(b) A person is guilty of sexual assault in the second degree if he subject another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S. 6-2-302(a)(i) through (iv) or paragraphs (a)(i) through (vii) of this section.</p> <p>WYO. STAT. ANN. § 6-2-302 (West 2013)</p>	<p>breast of a female person;</p> <p>(iii) <u>Physically helpless</u> means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;</p> <p>(iv) <u>Position of authority</u> 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;</p> <p>(v) <u>Sexual assault</u> means any act made criminal pursuant to W.S. 6-2-302 through 6-2-304;</p> <p>(vi) <u>Sexual contact</u> means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;</p> <p>(iv) <u>Position of authority</u> 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.</p> <p>(v) <u>Sexual assault</u></p>	<p>section shall be punished as follows:</p> <p>(i) Sexual assault in the first degree under <u>W.S. 6-2-302</u> is a felony punishable by imprisonment for not less than five (5) years nor more than fifty (50) years;</p> <p>(ii) Sexual assault in the second degree is a felony punishable by imprisonment for not less than 2 years nor more than 20 years.</p>	<p>is not a defense to a violation of W.S. 6-2-303(a)(vii).</p> <p>(WYO. STAT. ANN. § 6-2-302(a)(i), (ii) or (iii) sexual assault in the first degree and WYO. STAT. ANN. § 6-2-303(a)(i), (ii) or (vi) discusses second degree assault in the second degree).</p>

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
Wyoming Cont'		<p><u>Sexual assault in the first degree.</u></p> <p>(a) Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if:</p> <p>(i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;</p> <p>(ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;</p> <p>(iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or</p> <p>(iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.</p>	<p>means any act made pursuant to W.S. 6-2-302 through 6-2-304;</p> <p>(vi) <u>Sexual contact</u> means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;</p> <p>(vii) <u>Sexual intrusion</u> means:</p> <p>(A) 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 construed as being for the purposes of sexual arousal, gratification or abuse; or</p> <p>(B) Sexual intercourse, cunnilingus, 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>		

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
<p>United States</p> <p>(NOTE: This law also covers all federal territories including Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands)</p>	<p>18 U.S.C.S. § 2241 (West 2013). <u>Aggravated sexual abuse.</u></p> <p>18 U.S.C.S. § 2242 (West 2013). <u>Sexual abuse.</u></p> <p>18 U.S.C.S. § 2243 (West 2013). <u>Sexual abuse of a minor or ward.</u></p> <p>18 U.S.C.S. § 2244 (West 2013). <u>Abusive sexual contact.</u></p>	<p>18 U.S.C.S. § 2241 (West 2013). <u>Aggravated sexual abuse.</u></p> <p>(a) By force or threat. -- 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 head of any Federal department or agency, knowingly causes another person to engage in a sexual act - (1) by using force against that other person; or (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.</p> <p>(b) By other means. -- 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 head of any Federal department or agency, knowingly - (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; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.</p> <p>(c) With children - Whoever, crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the</p>	<p>18 U.S.C.S. § 2246 (West 2013). <u>Definitions for chapter.</u></p> <p>As used in this chapter - (1) the term <u>prison</u> means a correctional, detention, or penal facility; (2) the term <u>sexual act</u> 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, degrade, or arouse or gratify the sexual desire of any person; (3) the term "sexual contact" means the intentional touching, either directly or</p>	<p>18 U.S.C.S. § 2241(a)(2) (West 2013).</p> <p>Shall be fined under this title, imprisoned for any term of years or life, or both.</p> <p>18 U.S.C.S. § 2241(b)(2)(B) (West 2013).</p> <p>Shall be fined under this title, imprisonment for any term of years or life, or both.</p> <p>18 U.S.C.S. § 2241(c) (West 2013). Shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense that would have been an offense under with such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.</p> <p>18 U.S.C.S. § 2242(1)(B) (West 2013). Shall be fined under this title and imprisoned for any term of years or for life.</p>	<p>18 U.S.C.S. § 2243 (West 2013). <u>Sexual abuse of a minor or ward.</u></p> <p>(c) Defenses. - (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>
United States Cont'					

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'		<p>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 head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12, or 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 has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense that would have been an offense under with such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.</p> <p>(d) State of mind proof requirement. In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.</p> <p>18 U.S.C.S. § 2242 (West 2013). <u>Sexual abuse.</u></p> <p>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 head of any Federal department or agency, knowingly -</p> <p>(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</p> <p>(2) engages in a sexual act with another</p>	<p>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;</p> <p>(4) the term <u>serious bodily injury</u> 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;</p> <p>(5) the term <u>official detention</u> means--</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</p> <p>(B) custody by a</p>	<p>18 U.S.C.S. § 2243(a)(2) (West 2013). Shall be fined under this title, imprisoned not more than 15 years, or both.</p> <p>18 U.S.C.S. § 2243(b)(2) (West 2013). Shall be fined under this title, imprisoned not more than 15 years, or both.</p> <p>18 U.S.C.S. § 2244(a)(1) (West 2013). Shall be fined under this title, imprisoned not more than 10 years, or both.</p> <p>18 U.S.C.S. § 2244(a)(2) (West 2013). Shall be fined under this title, imprisoned not more than 3 years, or both.</p> <p>18 U.S.C.S. § 2244(a)(3) (West 2013). Shall be fined under this title, imprisoned not more than 2 years, or both.</p> <p>18 U.S.C.S. § 2244(a)(4) (West 2013). Shall be fined under this title, imprisoned not more than 2 years, or both.</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'		<p>person if that other person is –</p> <p>(A) incapable of appraising the nature of the conduct; or</p> <p>(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;</p> <p>or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.</p> <p>18 U.S.C.S. § 2243 (West 2013). <u>Sexual abuse of a minor or ward.</u></p> <p>(a) Of a minor. – 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 head of any Federal department or agency, knowingly engages in a sexual act with another person who –</p> <p>(1) has attained the age of 12 years but has not attained the age of 16 years; and</p> <p>(2) is at least four years younger than the person so engaging;</p> <p>or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.</p> <p>(b) Of a ward - 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 engages in a sexual act with another person who is –</p> <p>(1) in official detention; and</p> <p>(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 15 years, or both.</p> <p>(d) State of mind proof requirement. – In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew –</p> <p>(1) the age of the other person engaging</p>	<p>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>(6) the term <u>State</u> means a State of the United States, the District of Columbia, and any commonwealth, possession, or territory of the United States.</p>	<p>18 U.S.C.S. § 2244(a)(5) (West 2007). Shall be fined under this title and imprisoned for any term of years or for life.</p> <p>18 U.S.C.S. § 2244(b) (West 2013). Shall be fined under this title, imprisoned not more than 2 years, or both.</p> <p>18 U.S.C.S. § 2244(c) (West 2013).</p> <p>The maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.</p> <p>USSG § 2A3.1. (West 2013) <u>Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse</u></p> <p>(a) Base Offense Level:</p> <p>(1) 38, if the defendant was convicted under 18 U.S.C. 2241(c); or</p> <p>(2) 30, otherwise.</p> <p>(b) Specific Offense Characteristics</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'		<p>in the sexual act; or</p> <p>(2) that the requisite age difference existed between the persons so engaging.</p> <p>18 U.S.C.S. § 2244 (West 2013). <u>Abusive sexual contact.</u></p> <p>(a) Sexual conduct in circumstances where sexual acts are punished by this chapter. – 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 head of any Federal department or agency, knowingly engages in or causes sexual contact with or by another person, if so to do would violate –</p> <p>(1) subsection (a) and (b) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than 10 years, or both;</p> <p>(2) § 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than 3 years, or both;</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 2 years, or both;</p> <p>(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 2 years, or both; or</p> <p>(5) subsection (c) of section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title and imprisoned for any term of years or for life.</p> <p>(b) In other circumstances. – 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</p>		<p>(1) If the offense involved conduct described in 18 U.S.C. § 2241(a) or (b), increase by 4 levels.</p> <p>(2) If subsection (a)(2) applies and (A) the victim had not attained the age of twelve years, increase by 4 levels; or (B) the victim had attained the age of twelve years but had not attained the age of sixteen years, increase by 2 levels.</p> <p>(3) If the victim was (A) in the custody, care, or supervisory control of the defendant; or (B) a person held in the custody of a correctional facility, increase by 2 levels.</p> <p>(4) (A) If the victim sustained permanent or life-threatening bodily injury, increase by 4 levels; (B) if the victim sustained serious bodily injury, increase by 2 levels; or (C) if the degree of injury is between that specified in subdivisions (A) and (B), increase by 3 levels.</p> <p>(5) If the victim was abducted, increase by 4 levels.</p> <p>(6) If, to persuade, induce, entice, or</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'		<p>the head of any Federal deaprtmeny or agency, knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than 2 years, or both.</p> <p>(c) Offenses involving young children. – If the sexual contact that violates this section (other than subsection (a)(5)) is with an individual who has not attained 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.</p>		<p>coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an interactive computer service, increase by 2 levels.</p> <p>USSG § 2A3.2. (West 2013) <u>Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts</u></p> <p>(a) Base Offense Level: 18</p> <p>(b) Specific Offense Characteristics:</p> <p>(1) If the minor was in the custody, care, or supervisory control of the defendant, increase by 4 levels.</p> <p>(2) If (A) subsection (b)(1) does not apply; and (B)(i) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce,</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'				<p>entice, or coerce the minor to engage in prohibited sexual conduct; or (ii) a participant otherwise unduly influenced the minor to engage in prohibited sexual conduct, increase by 4 levels.</p> <p>(3) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce the minor to engage in prohibited sexual conduct, increase by 2 levels.</p> <p>USSG § 2A3.3. (West 2013) <u>Criminal Sexual Abuse of a Ward or Attempt to Commit Such Acts</u></p> <p>(a) Base Offense Level: 14</p> <p>(b) Specific Offense Characteristics</p> <p>(1) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.</p> <p>(2) If a computer or an interactive computer service was used to persuade,</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'				<p>induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.</p> <p>USSG § 2A3.4. (West 2013) <u>Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact</u></p> <p>(a) Base Offense Level:</p> <p>(1) 20, if the offense involved conduct described in 18 U.S.C. § 2241(a) or (b);</p> <p>(2) 16, if the offense involved conduct described in 18 U.S.C. § 2242; or</p> <p>(3) 12, otherwise.</p> <p>(b) Specific Offense Characteristics</p> <p>(1) If the victim had not attained the age of twelve years, increase by 4 levels; but if the resulting offense level is less than 22, increase to level 22.</p> <p>(2) If the base offense level is determined under subsection (a)(1) or (2), and the victim had attained the age of twelve years but had not attained the age of sixteen years,</p>	

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

State	Statute	Coverage	Definitions/Notes	Penalties	Defenses
United States Cont'				<p>increase by 2 levels.</p> <p>(3) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.</p> <p>(4) If the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.</p> <p>(5) If a computer or an interactive computer service was used to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, increase by 2 levels.</p> <p>NOTE: For more specific imprisonment term information, refer to the 2007 Federal Sentencing Guideline Manual as a guide but not as mandatory sentences.</p>	