

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Alabama	No Legislation ¹					
Alaska	Alaska Stat. §11.41.410 (West 1998 and 2000 Supp.) Alaska Stat. §11.41.420 (West 1998 and 2000 Supp.)	§11.41.410. Sexual assault in the first degree. §11.41.410. Sexual assault in the second degree. §11.41.425 Sexual assault in the third degree §11.41.427 Sexual assault in the fourth degree §12.55.125: Sentences of imprisonment for felonies §11.41.432: Defenses	§11.41.410(a): An offender commits the crime of sexual assault in the first degree if, (3) the offender engages in sexual penetration with another person (B) who is in the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the state. §11.41.420(a): An offender commits the crime of sexual assault in the second degree if, (2) the offender engages in sexual contact with a person (B) who is in the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the state. §11.41.425 (a): An offender commits the crime of sexual assault in the third degree if the offender (2) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment §11.41.427 (a): An offender commits the crime of sexual assault in the fourth degree if (1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment.		§11.41.410(b): Sexual assault in the first degree is an unclassified felony. §12.55.125(i) The penalty for an unclassified felony shall be imprisonment for a term of 8 years for first time, unarmed offense. §11.41.420(b): Sexual assault in the second degree is a class B felony. §12.55.125(d) The penalty for a class B felony shall be imprisonment for a term not to exceed 10 years. §11.41.425(b): Sexual assault in the third degree is a class C felony. §12.55.125(e): A defendant convicted of a class C felony may be sentenced to a definite term of not more than 5 years. §11.41.427 (b): Sexual assault in the fourth degree is a class A misdemeanor.	§11.41.432. Defenses: (a) It is a defense to a crime charged under AS 11.41.410(a)(3) or AS 11.41.420(a)(2) 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.

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Arizona	Ariz. Rev. Stat. Ann. §13-1419. (West 1989 and Supp. 1999)	§13-1419. Unlawful sexual conduct; correctional employees; prisoners; classification	<p>§13-1419(A): A person who is employed by the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail, or who contracts to provide services with the state department of corrections, the department of juvenile corrections a private prison facility or a city or county jail commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who is in the custody of the department or with an offender who is under the supervision of the department or a city or county.</p> <p>(B): A prisoner who is in the custody of the state department of corrections or an offender who is on release status and who is under the supervision of the state department of corrections commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who is employed by the state department of corrections or a private prison facility or who contracts to provide services with the state department of corrections or a private prison facility.</p>	NOTE: The statute makes it illegal for the prisoner to engage in any sexual contact with a custodian.	<p>§13-1419.D: Unlawful sexual conduct is a class 5 felony.</p> <p>§13-701(C)(4): The penalty for a class 5 felony shall be imprisonment for two years and/or</p> <p>§13-802(A): a fine not to exceed \$150,000.</p>	<p>§13-1419.C.1: Marriage is a defense for employee or contractor if the marriage occurred before the prisoner was sentenced to the state department of corrections.</p> <p>§13-1419.C.2: Marriage is a defense for an offender who is on release status if the marriage occurred before the prisoner was sentenced to the state department of corrections.</p>
Arkansas	Ark. Code Ann. §5-14-108 (West 2001) § 5-4-401 (Michie 1987 and Supp. 1999) § 5-4-201 (Michie 1987)	§5-14-108. Sexual abuse in the first degree.	§5-14-108: Sexual abuse in the first degree: (a) A person commits sexual abuse in the first degree if: (6) being employed directly or through contract with the Department of Corrections, Department of Community Punishment, or with any city or county jail, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment or within any city or county jail, the consent of the person in custody notwithstanding.		<p>5-14-109(b): Sexual abuse in the first degree is a Class C felony.</p> <p>5-4-401(a)(4): The penalty for a Class C felony shall be no less than 3 years nor more than 10 years imprisonment; and/or</p> <p>5-4-201(a)(2): a fine not to exceed \$10,000.</p>	§5-14-109: Consent is not a defense.

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California	Cal. Penal Code §289.6 (West 1999 and Supp. 2001)	§289.6. Public entity employees, officers, or agents; sexual activity with confined consenting adult; defense; application; violation; penalty.	<p>§289.6(a)(2): An employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, or person or agent of a public or private entity under contract with a detention facility, or a volunteer of a private or public entity detention facility, who engages in sexual activity with a consenting adult who is confined in a detention facility, is guilty of a public offense. (3) An employee with a dept, board or authority under the Youth & Adult Correctional Agency or a facility under contract with a dept, board or authority under the Youth & Adult Correctional Agency, who during the course of employment directly provides treatment, care, control, or supervision of inmates, wards or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward or parolee, is guilty of a public offense.</p> <p>§289.6(i): Any person previously convicted of a violation of this section shall, upon a subsequent violation be guilty of a felony.</p> <p>§289.6(h): Any violation of this section shall be punished by imprisonment not exceeding one year and/or by fine not exceeding \$10,000.</p>		<p>§289.6(g): Any violation of this section is a misdemeanor.</p> <p>§19: The penalty for a misdemeanor where not otherwise prescribed shall be imprisonment in the county jail for a term not to exceed 6 months, and/or a fine not to exceed \$1,000.</p> <p>§289.6(i): Any person previously convicted of a violation of this section shall, upon a subsequent violation, be guilty of a felony.</p> <p>§18: The penalty for a felony where not otherwise prescribed shall be imprisonment for a term of 16 months, 2 years, or 3 years.</p>	<p>§289.6 (e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.</p> <p>§289.6(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.</p>
Colorado	Colo. Rev. Stat. §18-3-404 (West 2000) §18-7-701	§18-3-404. Unlawful Sexual Contact.	<p>§18-3-404: Unlawful Sexual Contact. (1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if: (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.</p> <p>§18-7-701 Sexual conduct in penal</p>		§18-3-404(2): Unlawful Sexual Contact is a class 1 misdemeanor, but it is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation or threat.	

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Colorado			institutions. (1) An employee of a correctional facility or jail who engages in sexual conduct with a person who is in lawful custody and confinement in a correctional facility operated by or under contract with the department of corrections or in a county or municipal jail commits: (a) A class 6 felony if the sexual conduct consists solely of sexual contact; (b) A class 5 felony if the sexual conduct includes sexual intrusion or sexual penetration. (2) For purposes of this section, "sexual conduct" means sexual contact as defined in section 18-3-401(4), sexual intrusion as defined in section 18-3-401 (5), or sexual penetration as defined in section 18-3-401(6). "Sexual conduct" does not include acts of an employee of a correctional facility or jail or a person who has custody of another person that are performed to carry out the necessary duties of the employee or the person with custody.		<p>§18-1-105(V)(A): The penalty for a class 4 felony shall be imprisonment for a term ranging from 2-6 years with a 3 year mandatory period of parole and/or</p> <p>§18-1-105(III)(A): a fine ranging from \$2,000 to \$500,000.</p>	
Connecticut	<p>Conn. Gen. Stat. Ann. §53a-71 (West 1994 and Supp. 2001) (Repealed and Replaced by 2000 Conn. Legis. Serv. P.A. 00-61, H.B. 5882, West)</p> <p>Conn. Gen. Stat Ann. §53a-73a (West 1994 and Supp. 2001)</p>	<p>§53a-71. Sexual assault in the second degree: Class C felony: Nine months not suspendable</p> <p>§53a-73a. Sexual assault in the fourth degree: Class A misdemeanor.</p>	<p>§53a-71: Sexual assault in the second degree: (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person.</p> <p>§53a-73a: Sexual assault in the fourth degree: (a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person.</p>		<p>§53a-71(b): Sexual assault in the second degree is a class C felony for which 9 months of the sentence imposed may not be suspended or reduced by the court.</p> <p>§53a-35a(6): The penalty for a class C felony shall be imprisonment for a term not less than 1 year nor more than 10 years.</p> <p>§53a-73a(b): Sexual assault in the fourth degree is a class A misdemeanor.</p> <p>§53a-36: The penalty for a class A</p>	
Connecticut						

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					misdemeanor shall be imprisonment for a term not to exceed 1 year.	
Delaware	De. Code Ann. tit. 11, § 1259 (Michie 1995 and Supp. 2000) § 4205 (Michie 1995 and Supp. 2000)	§ 1259. Sexual relations in detention facility; Class G felony	§ 1259: Sexual Relations in detention facility; Class G felony: A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility.	NOTE: The statute also makes it illegal for a prisoner to engage in sexual relations with an employee at the detention facility.	§ 1259: Violation of this section shall be a class G felony. 4205(b)(7): The penalty for a class G felony shall be imprisonment at Level V for a term not to exceed 2 years, and 4205(k): The penalty may include fines and penalties as the court deems appropriate.	§ 1259: It shall be no defense that such conduct was consensual.
District of Columbia	D.C. Code Ann. § 22-4101 (1981 and Supp. 1999) D.C. Code Ann. § 22-4113 (1981 and Supp. 1999) D.C. Code Ann. § 22-4114 (1981) D.C. Code Ann. § 22-4117 (Supp. 1999)	§ 22-4101. Definitions § 22-4113. First degree sexual abuse of a ward. § 22-4114. Second degree sexual abuse of a ward. § 22-4117. Defenses to sexual abuse of a ward, patient, or client.	§ 22-4113: Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor. § 22-4114: Whoever engages in sexual contact with another person or causes another person to engage in or submit to sexual contact when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor.	§ 22-4101: Definitions: For the purposes of this chapter: (6) "Official custody" means: (A) Detention following arrest for an offense; following surrender in lieu of an arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion.	§ 22-4113: The penalty for first degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 10 years, and may include a fine not to exceed \$100,000. § 22-4114: The penalty for second degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 5 years and may include a fine not to exceed \$50,000.	§ 22-4117(a): Consent is not a defense, to either first or second degree sexual abuse of a ward; (b) Marriage between the defendant and the victim at the time of the offense is a defense to both first and second degree sexual abuse of a ward, which the defendant must prove by a preponderance of the evidence.
Florida	Fla. Stat. Ann. §944.35	Authorized use of Force; malicious	§944.35(3)(b)(2): Any employee of the department who engages in sexual	§944.35(3)(b)(1): Sexual Misconduct	§775.082(3)(d): Sexual misconduct is	§944.35(3)(b) (3): Consent is not a defense.

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	<p>(Harrison's 1998)</p> <p>§775.082 (Harrison's 1991 and Supp. 2000)</p> <p>§775.083 (Harrison's 1991 and Supp. 2000)</p> <p>§944.35(3)(b)(1) (Harrison's 1991 and Supp. 2000)</p>	battery & sexual misconduct prohibited; reporting required; penalties § 944.35(3)(b)2	<p>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>§944.35(4)(a): Any employee required to report pursuant to this section who knowingly or willfully fails to do so, or who knowingly or willfully prevents another person from doing so, commits a misdemeanor of the first degree.</p> <p>§944.35(4)(b): Any person who knowingly or willfully submits inaccurate, incomplete, or untruthful information with regard to reports required in their section commits a misdemeanor of the first degree.</p> <p>§944.35(4)(c): Any person who knowingly or willfully coerces or threatens any other person with the intent to alter either testimony or a written report regarding the incident of sexual misconduct commits a felony in the third degree. As part of the correctional-officer training program, the Criminal Justice Standards and Training Commission shall develop course materials for inclusion in the appropriate required course specifically designed to explain the parameters of this subsection and to teach sexual assault identification and prevention methods and techniques.</p>	<p>means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Does not include an act done for a bona fide medical exam or an internal search lawfully conducted.</p> <p>§944.35(4)(c): to take effect October 1, 2001 in addition to §951.221 sexual activity between detention facility employees and inmates; penalties: (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>a felony in the third degree. The penalty for a felony in the third degree shall be: imprisonment for a term not to exceed 5 years and/or payment of a fine; dismissal from employment; and prohibition from employment in any capacity in connection with the correctional system.</p> <p>§775.082(4)(a): Failure to report is a misdemeanor of the first degree. The penalty for a misdemeanor of the first degree shall be imprisonment for a term not to exceed 1 year and/or payment of a fine.</p> <p>§775.082(7): The penalty may also include dismissal from employment or any other civil penalty.</p> <p>§ 775.083(1)(c): The fine for a felony in the third degree is \$5,000.</p> <p>§ 775.083(1)(d): The fine for a misdemeanor in the first degree is \$1,000.</p>	<p>§944.35(3)(b) (4): Ignorance that inmate is an inmate or under the supervision by the Department of Corrections is a defense.</p> <p>§944.35(3)(b) (4): Marriage is a defense.</p>
Georgia	Ga. Code Ann. §16-6-5.1 (Lexis 1999)	§16-6-5.1. Sexual assault against persons in custody;	§16-6-5.1(b): A probation or parole officer or other custodian or supervisor of another person referred to in this	§16-6-5.1(a): As used in this Code section, the term: (4) "Sexual	§16-6-5.1(b): The penalty for sexual assault shall be	§16-6-5.1(c)(3): Consent of the victim is not a defense.

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		sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient.	Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. (c) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is: (A) In the custody of law; or (B) Detained in or is a patient in a hospital or other institution.	Contact” means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.	imprisonment for a term not less than 1 year nor more than 3 years.	The definition of “sexual contact” in §16-6-5.1(a)(4) excludes contact between married persons.
Hawaii	Haw. Rev. Stat. Ann. §707-731 (Michie 1999) Haw. Rev. Stat. Ann. §707-732 (Michie 1999)	§707-731. Sexual assault in the second degree. §707-732. Sexual assault in the third degree.	§707-731: Sexual assault in the second degree: (1) A person commits the offense of sexual assault in the second degree if: (c) the person, while employed in a state correctional facility, or while employed as a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, or a person in custody. §707-732: Sexual assault in the third degree: (1) A person commits the offense of sexual assault in the third degree if: (d) the person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor.		§707-731(2): Sexual assault in the second degree is a class B felony. §707-732(2): Sexual assault in the third degree is a class C felony. §706-660: (1) The penalty for a class B felony shall be imprisonment for a term of 10 years. The penalty for a class C felony shall be imprisonment for a term of 5 years. (2) The minimum length of imprisonment shall be determined by the paroling authority.	
Idaho	Idaho Code §18-6110 (Michie 1997 &	§18-6110. Sexual contact with a prisoner.	§18-6110: Sexual contact with a prisoner. It is a felony for any officer, employee or agent of a state, local or	§18-6110: For the purposes of this section “sexual	§18-6110: The penalty for sexual contact with an	

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	2000 Supp.)	prisoner.	private correctional facility to have sexual contact with a prisoner, whether an in-state or out-of-state prisoner, housed in such facility.	contact” means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.	inmate shall be imprisonment in the state prison for a term not to exceed life.	
Illinois	720 I.L.C.S. 5/11-9.2 (West 1993 and 2000 Supp.)	§11-9.2. Custodial Sexual Misconduct.	§11-9.2 (a) A person commits the offense of custodial sexual misconduct when he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system.	§11-9.2(g)(1): “Custody” means: (i) pretrial incarceration or detention; (ii) incarceration or detention under a sentence or commitment to a State or local penal institution; (3) “Employee” means: (i) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system; (4) “Sexual conduct” or “sexual penetration” means any act of sexual conduct or sexual penetration as defined in Section 12-12 of this Code.	§11-9.2(c): Custodial sexual misconduct is a Class 3 felony. A Class 3 felony carries a penalty of 2-5 years.	§11-9.2. (e) Consent is not a defense to a criminal charge under this section. §11-9.2. (f)(1) Marriage is a defense if the marriage occurred prior to the date of custody. §11-9.2. (f)(2) Lack of knowledge that the individual with whom the employee was engaged in custodial sexual misconduct was a prisoner is a defense.
Indiana	Ind. Stat. Ann. §35-44-1-5 (Lexis 1998 and Supp. 2000)	§35-44-1-5. Sexual misconduct by a service provider with detainee	§35-44-1-5: Sec. 5(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to	§35-44-1-5: Sec. 5(a) As used in this section, “service provider” means a	§35-44-1-5(b): Sexual misconduct is a class D felony.	§35-44-1-5(c): It is not a defense that an act described in subsection (b) was consensual.

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			offender is a law enforcement officer, employee of a juvenile detention facility, or employee of a contractor; or (5) the offender is an employee of the juvenile justice authority or the employee of a contractor; or (6) the offender is an employee of the juvenile justice authority or employee of a contractor, and the person is 16 or older and (A) on conditional release from a juvenile correctional facility under direct supervision and control of the offender or (B) placed in custody of juvenile justice authority under direct supervision and control of the offender.			
Kentucky	K.R.S. §510.120 (Lexis 2000) §532.090	§510.120 Sexual abuse in the second degree	§510.120 Sexual abuse in the second degree: (1) A person is guilty of sexual abuse in the second degree when: (c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he engaged in the conduct constituting the offense, he and the offender were married to each other. (2) Sexual abuse in the second degree is a Class A misdemeanor.		§510.120(2) Sexual abuse in the second degree is a Class A misdemeanor. §532.090 Sentence of Imprisonment for misdemeanor: (1) For a Class A misdemeanor, the term shall not exceed 12 months.	§510.120 Marriage is a defense.
Louisiana	La. Rev. Stat. Ann. §134.1 (West 1986 and Supp. 2000)	§134.1. Malfeasance in office; sexual conduct prohibited with persons	§134.1: Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions. (A) It shall be unlawful and constitute		§134.1.B: Penalty for a violation of a provision of this section shall be	

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		confined in correctional institutions.	malfeasance in office for any person who is a law enforcement officer, officer of the Department of Corrections, or employee of a prison, jail, or correctional institution, to engage in sexual intercourse or any other sexual conduct with a person confined in a prison, jail or correctional institution.		imprisonment for a term not to exceed 10 years and/or a fine not to exceed \$10,000.	
Maine	Me. Rev. Stat. Ann. tit. 17-A, §253 (West 1983 and Supp. 1999)	§253. Gross sexual assault.	§253(2): A person is guilty of gross sexual assault if that person engages in a sexual act with another person and: (E) The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person; (F) The other person, not the actor's spouse, is not yet 18 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; (G) The other person, not the actor's spouse, is not yet 18 and is a resident in or attending a children's home, day care facility, residential child 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 person; (H) The other person is not yet 18 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; (I) The actor is a psychiatrist, psychologist or licensed social worker or purports to be 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; or (J) The actor owns, operates or is an employee of an organization, program or residence that is operated,	"Mental health therapy" means psychotherapy or other treatment intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse.	§253(5): Violation of subsection 2, paragraph E or H is a Class B crime. §253(5): Violation of subsection 2, paragraphs F, G, I or J is a Class C crime. § 1252(2)(B): The penalty for a Class B crime shall be imprisonment for a term not to exceed 10 years. (C) The penalty for a Class C crime shall be imprisonment for a term not to exceed 5 years.	§253(2)(E): Marriage is a defense.
Maine						

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			administered, licensed or funded by the Dept. of Mental Health, Mental Retardation and Substance Abuse Services or the Dept. of Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that person as a person with mental retardation.			
Maryland	Md. Code Ast. 27 §464G (Michie 1996 and Supp. 2000)	§464G: Sexual acts with inmates prohibited	§464G: Sexual acts with inmates prohibited. (b) Prohibition of sexual acts by correctional employee or employee of Department of Juvenile Justice (1)A correctional employee may not engage in vaginal intercourse or a sexual act with an inmate. (2) An employee of the Dept. of Juvenile Justice or of a licensee may not engage in vaginal intercourse or a sexual act with an individual confined in a child care institution licensed by the Dept. of Juvenile Justice, a detention center for juveniles, or a facility for juveniles listed in Article 83C, §2-117(a)(2) of the Code.	§464G(a)(2)(i): A correctional employee is defined as a correctional officer, (ii) a head or deputy head of a correctional facility or any person having an equivalent title who is appointed or employed to supervise a correctional facility. (3) an inmate is a person incarcerated in a state or local correctional facility or a community adult rehabilitation center.	§464G(c): A person who violates this section is guilty of a misdemeanor and is subject to a fine of not more than \$3,000 and or imprisonment for not more than 3 years.	
Massachusetts	M.G.L.A. 268 § 21A (West 2000)	§ 21A: Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment	§ 21A: 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.	"sexual relations" includes intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 or 24 of chapter 265 or section 2, 3, 35 or 53A of chapter 272.	§ 21A: A person who violates this section shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both.	Consent is not a defense.
Michigan	Michigan Statutes Ann. §750.520(c) (West 2001)	§750.520(c): Second degree criminal sexual conduct.	§750.520(c)(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		§750.520(c)(2): Criminal sexual conduct in the second degree is felony	

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	2000 Mi. ALS 227.		the following circumstances exist: (g) The actor knows or has reason to know that the person is mentally incapable, mentally incapacitated, or physically helpless. (i) That the other person is under jurisdiction of the dept of corrections and the actor is an employee or a contractual employee of, or volunteer with, the dept of corrections who knows that the other person is under the jurisdiction of the dept of corrections. (j)that other person is under the jurisdiction of the department of corrections and the actors is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility, who knows that the other person is under the jurisdiction of the department of corrections. (k)That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county who knows that the other person is under the county's jurisdiction.		degree is felony punishable by imprisonment for not more than 15 years.	
Minnesota	MN ST §609.345 MN LEGIS 210 §22 (2001) (West)	§609.344: Sex Crimes	§609.344 (1): A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exist: (m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system.		§609.344(2): Penalty. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine not more than \$20,000 or both.	§609.344 (1)(m): Consent by the complainant is not a defense.
Mississippi	Miss. Code Ann. §97-3-104 (Lexis Supp. August, 1999)	§97-3-104. Sex between law enforcement official and jailed inmate	§97-3-104. It shall be unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal or other officer to engage in any sexual penetration as	§97-3-97. Sexual battery, definitions: (a) Sexual penetration includes cunnilingus, fellatio, buggery, or	§97-3-104. Section 1. Any person who violates this section shall be guilty of a felony and upon	§97-3-104. Consent is not a defense.

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			defined in Section 97-3-97, Mississippi code of 1972, with any offender, with or without the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility.	pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body.	conviction shall be fined not more than \$5,000 and/or imprisoned for a term not to exceed 5 years.	
Missouri	Mo. Ann. Stat. §217.405 (West 1996& Supp. 2000) Mo. Ann. Stat. §217.410 (West 1996 & Supp. 2000)	§217.405. Offender abuse; penalty; employees not to use physical force, exceptions. §217.410. Abuse of offender, duty to report; penalty; confidentiality of report, immunity from liability, harassment prohibited.	§217.405: Offender abuse, penalty employees not to use physical force, exceptions: (1) Except as provided in subsection 3 of this section, a person commits the crime of "offender abuse" if he knowingly injures the physical well-being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person. (3) No employee of the department shall use any physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender. §217.410: Abuse of offender, duty to report, penalty - confidentiality of report, immunity from liability. (1) When any employee of the department has reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused, he shall immediately report it in writing to the director.. (5) The department shall begin its investigation within 24 hours of receiving a report. (10) No offender or employee shall be retaliated against for reporting or providing information.	§217.410: Employees of the department are required to report reasonable belief of abuse.	§217.405.2: Offender abuse is a class C felony. §217.410.3: Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor. §558.011.1(3): The penalty for a class C felony shall be imprisonment for a term not to exceed 7 years. §558.011.1(5): The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.	
Montana	Mont. Co. Ann. § 45-5-502 (West 1999)	§ 45-5-502: Sexual assault	§ 45-5-502(5)(a): Any employee or volunteer at a correctional facility with supervisory or disciplinary authority over inmates who has sexual contact with an adult or juvenile inmate commits		§45-5-502(2): A person convicted of sexual assault shall be fined up to \$500 and/or imprisoned for	Consent is not a defense. The act is part of a lawful search.

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			the offense of sexual assault.		up to 6 months.	
Nebraska	R.R.S. Neb. § 28-322.02 (West 1995 & Supp. 1999)	§ 28-322.02: Sexual abuse of an inmate or parolee in the first degree	§ 28-322.02: Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree. Sexual abuse of an inmate or parolee in the first degree is a Class III felony.		§ 28-322.02: Sexual abuse of an inmate or parolee in the first degree is a Class III felony. § 28-105: The sentence for a Class III felony is a term of 1 to 20 years imprisonment and/or a \$25,000 fine.	
Nevada	Nev. Rev. Stat. §212.187 (NRS 1997) (Effective until July, 2001)	§212.187. Voluntary sexual conduct between prisoner and another person.	§212.187(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 motor vehicles and 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 residential confinement, is guilty of a category D felony.	§212.187(2): As used in this section, sexual conduct includes acts of masturbation, homosexuality, sexual intercourse or physical contact with another person's clothed or unclothed genitals or pubic area to arouse, appeal to or gratify the sexual desires of a person.	Violation of §212.187(2) is a category D felony. §193.130: (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 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.	§212.187(1) NOTE: Unlike many laws in other states, this law addresses sexual conduct between prisoners and gives a "duty defense" to correctional officers: A person who voluntarily engages in sexual conduct with a prisoner...is guilty of a Class D felony. §212.187(3)(b): This law excludes acts performed to carry out the necessary duties of such a person.
New Hampshire	N.H. Rev. Stat. Ann. §§632-A: (2), (3) (Michie 1996 and Lexis Supp. 1999)	§632-A: 2. Aggravated Felonious Sexual Assault; §632-A:3.	§632-A:2 A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances: (n) When the action is in a position of authority over the victim and use this		§632-A:(3): Violation of §632-A:2 is a class B felony. §625:9: The penalty for a class B felony is	Consent is not a defense.

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		Felonious Sexual Assault.	authority over the victim and use this authority to coerce the victim to submit under any of the following circumstances: (1) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; (2) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation. Consent of the victim ... (n) shall not be considered a defense.		imprisonment of 1-7 years and fines.	
New Jersey	N.J. Stat. Ann. §2C: 14-2 (West 1995 and Supp. 2000)	§2C: 14-2. Sexual assault	§2C: 14-2.a: An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances: 2- the person is at least 13 but less than 16 and (b) the actor has supervisory or disciplinary power over the person by virtue of the actor's legal, professional or occupational status. 14-2.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: (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.		§2C: 14-2b: Aggravated sexual assault is a crime of the first degree. §2C: 14-2c: Sexual assault is a crime of the second degree. §2C: 43-6a(1): The penalty for a crime of the first degree shall be imprisonment for a term of between 10 and 20 years. §2C: 43-6a(2): The penalty for a crime of the second degree shall be imprisonment for a term of between 5 and 10 years.	
New Mexico	N.M. Stat. Ann. §30-9-11 (Michie 1978 and Supp. 1999)	§30-9-11. Criminal sexual penetration.	§30-9-11: Criminal sexual penetration. D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated: (1) on a child thirteen to eighteen years of age		§30-9-11.D. Criminal sexual penetration in the second degree is a second degree felony.	

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			when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit; (2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;		§31-18-15.A.(3): The penalty for a second degree felony shall be imprisonment for a term of 9 years and E.(3): may include a fine of up to \$10,000.	
New York	N.Y. Penal Law §130.05 (West 1998 and Supp. 2000)	§130.05. Sex offenses.	§130.05: 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: (3) A person is deemed incapable of consent when he or she is: (e) committed to the care and custody of the state department of correctional services or a hospital; or (f) committed to the care and custody of a local correctional facility.	§130.05(3)(e)(i): Covers employees of the state department of correctional services who perform professional duties in a state correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs or vocational training for inmates. §130.05(3)(ii),(iii): Also covers employees of the division of parole and office of mental health who perform professional duties and provide professional services in a state correctional facility. 2001 NY S.B. 5313: pending legislation adding a new section 130.54 re: gang sexual assault.	Violation of this section is either a class E felony or a class A misdemeanor, depending on the nature and severity of the assault. §70.02(3)(d): For a class E felony, the term shall be fixed by the court, and shall range from 1 ½ to 4 years. §70.15(1): A sentence of imprisonment for a class A misdemeanor shall ... be fixed by the court, and shall not exceed one year.	§130.05(3)(e) Consent is not a defense. Marriage is a defense.
North Carolina	N.C. Gen. Stat. §14-27.7 (Lexis 1999)	§14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.	§14-27.7(a): Intercourse and sexual offenses with certain victims; consent no defense: ... in a person having custody of a victim of any age or a person who is an agent or employee of any person, or	CASE NOTE: Custodial sexual offense does not require act by force against the will of	§14-27.7 A violation of this section is a class E felony. §15A-1340.17: The	§14-27.7: Consent is not a defense to a charge under this section.

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		consent no defense.	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.	another person. It requires that the perpetrator's principal or employer, have custody of the victim. <u>State v. Raines</u> , 319 N.C. 358, 354 S.E. 2d 486 (1987).	penalty for a class E felony shall be a fine at the discretion of the court and imprisonment for a term between 20 and 59 years depending on the amount and kind of prior offenses.	
North Dakota	N.D. Cent. Code §12.1-20-06 (Michie 1997) N.D. Cent. Code §12.1-20-07 (Michie 1997 and Supp. 1999)	§12.1-20-06. Sexual abuse of wards §12.1-20-07. Sexual assault	§12.1-20-06: 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. §12.1-20-07(1): A person who knowingly has sexual contact with another, or who causes another person to have sexual contact with that person is guilty of an offense if: (d) The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person.		§12.1-20-06: Sexual abuse of wards is a class C felony. §12.1-20-07(2): Sexual assault is a class C felony. §12.1-32-01(5): The penalty for a class C felony shall be imprisonment for a maximum of 5 years and/or a fine of \$5,000.	
Ohio	Ohio Rev. Code Ann. §2907.03 (Page's 1998 and Supp. 1999)	§2907.03. Sexual battery	§2907.03: Sexual battery: (A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.		§2907.03(B): Sexual battery is a felony of the third degree. §2929.14(A)(3): The penalty for a felony of the third degree shall be imprisonment for a term of between 1 and 5 years.	§2907.03(A): Marriage is not a defense.
Oklahoma	Okla. Stat. Ann. tit. 21, §1111 (West 1983 and Supp. 2000)	§1111. Rape Defined §1111. Rape in the	§1111: Rape defined: A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of		§1114.B: Violation of this section is rape in the second degree.	§1111(A): Marriage is a defense.

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		first degree - second degree.	the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: 7. Where the victim is under the legal custody of a state agency and engages in sexual intercourse with a state employee or employee of a contractor of the state that exercises authority over the victim.		§1116: Rape in the second degree is a felony. And punishable with imprisonment for a term of 1-15 years.	
Oregon	No Legislation ¹					
Pennsylvania	PA Title 18 § 3124.2 (Supp. 2000)	§ 3124.2: Institutional sexual assault	§ 3124.2: (A) Except as provided in Sections 3121 (Relating to Rape), 3122.1 (Relating to Statutory Sexual Assault), 3123 (Relating to Involuntary Deviate Sexual intercourse), 3124.1 (relating to Sexual Assault) and 3125 (Relating to 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.	§ 3124.2: (b) As used in this section, the term “agent” means a person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution who is employed by any state or county agency or any person employed by an entity providing contract services to the agency.	§ 106(B)(4) The penalty for a felony of the third degree shall be imprisonment for a term up to 7 years.	
Rhode Island	R.I. Gen. Laws §11-25-24 (Lexis and Supp. 1999)	§11-25-24. Correctional employees — sexual relations with	§11-25-24: Correctional employees — sexual relations with inmates — felony. Every employee of the department of corrections or the employee of a	§11-37-1(8): “Sexual penetration” includes: sexual intercourse, cunnilingus, fellatio,	§11-25-24: Violation of this section is a felony, the penalty for which shall be	

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	§11-37-1 (Lexis 1994)	inmates — felony	contractor who is under contract to provide services in a correctional institution who engages in sexual penetration as defined in §11-37-1 in chapter 37 of this title entitled “Sexual Assault” with an inmate confined therein or who is otherwise under the direct custodial supervision and control of said employee shall be guilty of a felony.	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.	imprisonment for not more than 5 years and/or a fine of not more than \$10,000.	
South Carolina	S.C. Code Ann. §44-23-1150 (1985 and Supp. 1999)	§44-23-1150. Illegal sexual intercourse: Sexual intercourse with a patient or trainee.	§44-23-1150: (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. §44-23-1150: (D): A person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year. (E) A person who has knowledge of sexual misconduct who has received information in the person’s professional capacity and fails to report it to the appropriate law enforcement authority, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and upon conviction, must be imprisoned for not more than six months, or both.	§44-23-1150: (A)(1) ‘Actor’ means an employee, volunteer, agent, or contractor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. (2) ‘Victim’ means an inmate or patient who is confined in or lawfully or unlawfully absent from a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs. A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.	§44-23-1150: (c)(1) When the sexual misconduct involves an act of sexual intercourse, whether vaginal, oral or anal, the actor is guilty of the felony of sexual misconduct first degree and, upon conviction, must be imprisoned for not more than ten years. (2) When the sexual misconduct does not involve sexual intercourse but involves other sexual contact which is engaged in for sexual gratification, the actor is guilty of the felony of sexual misconduct second degree and, upon conviction, must be imprisoned for not more than five years.	§44-23-1150: (A)(2) A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.
South Carolina				§44-23-1150 ©(2) The		

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				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 parts', as defined in Section 16-3-651(d), of another person's body, or to the fondling of the intimate parts of another person's body, which is done in a manner not required by professional duties, but instead is done to demonstrate affection, sexually stimulate that person or another person, or harass that person.		
South Dakota	S.D. Codified Laws Ann. §24-1-26.1 (Lexis 1998 and Supp. 2000)	§24-1-26.1. Sexual acts prohibited between prison employees and prisoners.	§24-1-26.1: Sexual acts prohibited between prison employees and prisoners. Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.		§24-1-26.1: The violation of this section is a Class 6 felony. §22-6-1: The penalty for a Class 6 felony shall be imprisonment in the state penitentiary for a term of 2 years and/or a fine of \$2,000.	
Tennessee	§41-21-241 (Lexis 1998 and Supp. 2000)	§41-21-241 Sexual contact with inmates.	§41-21-241(a): It is an offense for a law enforcement officer or a correctional officer to voluntarily engage in sexual contact or sexual penetration ... with an	§39-16-601(2), (4): "Custody" means under arrest by a law enforcement officer or	§41-21-241(b): A violation of this section is a Class A misdemeanor. The	

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			inmate who is in custody at a penal institution.	under restraint by a public servant pursuant to an order of a court; "Penal institution" ... includes any institution or facility used to house or detain a person.	authorized term of imprisonment and fine for a Class A misdemeanor are not greater than 11 months 29 days imprisonment or a fine not to exceed \$2,500 or both.	
Texas	Tex. Penal Code Ann. §39.04 (West 1994 and Supp. 2000)	§39.04 Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with person in custody.	§39.04(a): An official or employee of a correctional facility or a peace officer commits an offense if he intentionally: (2) engages in sexual contact, sexual intercourse or deviate sexual intercourse with an individual in custody.	§39.04(e): In this section: (1) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment to a facility operated by or under contract with the TX Youth Commission of a juvenile offender. (2) "Sexual Intercourse" and "deviate intercourse" have the meanings assigned by Section 21.01.	§39.04(b) An offense under Sections (a)(2) is a state jail felony. §12.35: The penalty for a state jail felony is 180 days to 2 years in the state jail and/or a fine not to exceed \$10,000. §12.42: Additional penalties may apply depending on prior offense history.	
Utah	UT ST §76-5-412 2001 UT S.B. 4 (SN) (West 2001) This act takes effect on July 1, 2001.	§76-5-412: Custodial sexual relations: Custodial sexual misconduct: Definitions Penalties Defenses.	§76-5-412 (2) (a) An actor commits custodial sexual relations 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 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.	76-5-412 (1) As used in this section: (b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is: (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital	§76-5-412(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 (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	§76-5-412 (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

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			substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.	State Hospital established under Section 62A-12-201 or other medical facility; (ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or (iii) under lawful or unlawful arrest, either with or without a warrant. (c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.	second degree felony. §76-6-106 Fines of persons(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding: (a) \$10,000 for a felony conviction of the first degree or second degree; (b) \$5,000 for a felony conviction of the third degree; (c) \$2,500 for a class A misdemeanor conviction;	alleged offense; or (ii) was unaware of the true age of the person in custody. (b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4). (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302 (1).
Vermont	Bill introduced in Vermont. *pending legislation*	§3256: Sexual Exploitation of an inmate	§3256: Sexual Exploitation of an Inmate (a) No correctional officer 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 probation, supervised community sentence or furlough shall knowingly engage in a sexual act with a person who is in the custody of or confinement by the department of corrections or who is being supervised by the department of corrections while on parole, probation, supervised community sentence or furlough.		(b) A person who violates subsection (a) of this section shall be imprisoned for not more than two years or fined not more than \$10,000.00, or both.	
Virginia	Code of VA §18.2-64.2 (Code of VA 1950)	§18.2-64.2. Carnal knowledge of an inmate, parolee,	An accused shall be guilty of carnal knowledge of an inmate, parolee, detainee, probationer, or pretrial or post-		Such offense is a Class 6 felony.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
	(Michre 2000)	probationer, or pretrial or post-trial offender; penalty.	trial offender if he or she is an employee or contractual employee of, or a volunteer with a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, a local community correction program or a pretrial program; is in a position of authority over the inmate, probationer, parolee, detainee or a pretrial or posttrial offender; knows that the inmate, probationer, parolee, detainee or pretrial or posttrial offender is under the jurisdiction of the state or local correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, a local community corrections program, or a pretrial program; and carnally knows without the use of force, threat or intimidations (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee or a pretrial or post-trial offender under the jurisdiction of the department of corrections, the Department of Juvenile Justice, a secure facility or detention home, a local community corrections program, a pretrial program, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial program.		§18.2-10(f): The penalty for a Class 6 felony is imprisonment for 1-5 years if tried by a jury or up to 12 months if tried by the court and/or a fine not to exceed \$2,500.	
Washington	Rev. Code of WA Ann. §9A.44.160, 170 (West 2000 Supp.)		§9A.44.160: A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person; (a)(i)		§9A.44(3): Custodial sexual misconduct in the first degree is a class C felony.	§9A.44(2): Consent of the victim is not a defense.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>Who 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 (ii) who is under correctional supervision; and the perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the resident reasonably believes the perpetrator has, the ability to influence the terms, conditions, length or fact of incarceration or correctional supervision; or (b) who is being detained, under arrest or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.</p> <p>§9A.44.170: A person is guilty of custodial misconduct in the second degree when the person has sexual contact with another person [when in same circumstances as above].</p>		<p>§9A.20.020(1)(c): The penalty for a class C felony is imprisonment for no more than 5 years and/or a fine of no more than \$20,000.</p> <p>§9A.44(3): Custodial sexual misconduct in the second degree is a gross misdemeanor.</p> <p>§9A.20.020(2): The penalty for a gross misdemeanor is imprisonment for up to 1 year and/or a fine of up to \$5,000.</p>	
West Virginia	WV Stat. Ann. §61-8B-10 (Lexis 2000 Supp.)	§61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties	<p>§61-8B-10(a): Any person, employed by the division of corrections, working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, working at a correctional facility managed by the division of juvenile services pursuant to contract or as an employee of a state agency, employed by a county jail or by the regional jail and correctional facility authority or a county jail who engages in sexual intercourse or sexual intrusion with a person who is incarcerated is guilty of a felony.</p> <p>§61-8B-10(a): Any person employed by the division of corrections as a parole officer or as a probation officer who engages in sexual intercourse or sexual intrusion with someone he/she is charged with supervising is guilty of a felony.</p>		<p>§61-8B-10(a): Upon conviction thereof, the employee shall be sentenced to one to five years or fined up to \$5,000.</p> <p>§61-8B-10(b): Upon conviction thereof, the employee shall be sentenced to one to five years or fined up to \$5,000.</p>	
Wisconsin	Wis. Stat. Ann. §940.29	§940.29. Abuse of residents of penal facilities.	§940.29: Any person in charge of or employed in a penal or correctional institution or other place of confinement		§940.29: The abuse of residents of penal facilities is a Class E	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
	(1999)	facilities.	who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class E felony.		felony. §939.50(3)(e): The penalty for a Class E felony shall be imprisonment for a term not to exceed 5 years and/or a fine not to exceed \$10,000.	
Wyoming	Wyo. Stat. §6-2-303 (Supp. 1999) Wyo. Stat. §6-2-306 (1988 and Supp. 2000)	§6-2-303: Sexual assault in the second degree.	§6-2-303: Sexual Assault in the second degree. (a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting assault in the first degree: (vi) the actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit.	§6-2-301(a)(vi): Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person. <u>Scadden v. Wyoming</u> , 732 P.2d 1036, 1039 (Wyo. 1987). In <u>Scadden</u> , 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.” Id at 1042.	§6-2-306(a)(ii): Sexual assault in the 2 nd degree is a felony punishable by imprisonment for not more than 20 years.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
United States	<p>18 U.S.C. § 2241 (West, Westlaw through P.L. 105-220, approved 8/7/98)</p> <p>18 U.S.C. § 2242 (West, Westlaw through P.L. 105-220, approved 8/7/98)</p> <p>18 U.S.C. § 2243 (West, Westlaw through P.L. 105-220, approved 8/7/98)</p> <p>18 U.S.C. § 2244 (West, Westlaw through P.L. 105-220, approved 8/7/98)</p> <p>18 U.S.C. § 2246 (West, Westlaw through P.L. 105-220, approved 8/7/98)</p>	<p>§ 2241. Aggravated sexual abuse.</p> <p>§ 2242. Sexual abuse.</p> <p>§ 2243. Sexual abuse of a minor or ward.</p> <p>§ 2244. Abusive sexual contact.</p> <p>§ 2246. Definitions for chapter.</p>	<p>Specifically covers conduct in federal prisons.</p> <p>§ 2241: (a) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly causes another person to engage in a sexual act (1) by using force, (2) threats, (b)(1) rendering the other unconscious, or (2) administering drugs. (c) With children. Whoever, in the special maritime and territorial jurisdiction of the U.S. or in a Federal prison, knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 but not 16 (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title, imprisoned for any term of years or life or both.</p> <p>§ 2242 covers engaging in a sexual act in federal prison with someone who is incapable of appraising the nature of the conduct or is physically incapable of declining participation.</p> <p>§ 2243: Sexual abuse of a minor or ward. (b) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is (1) In official detention; and (2) under the custodial, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.</p> <p>§ 2244: Abusive sexual conduct is sexual conduct in circumstances where sexual acts are punished under this chapter, if the sexual contact, had it been a sexual act, would have violated § 2241, § 2242, or § 2243.</p>		<p>For offenders with 0 to 1 prior offenses:</p> <p>U.S.S.G. § 2A3.1(b)(1): The base penalty for aggravated sexual abuse shall be imprisonment for a term of 108-135 months.</p> <p>U.S.S.G. § 2A3.1(a): The base penalty for sexual abuse shall be imprisonment for a term of 70-87 months.</p> <p>U.S.S.G. § 2A3.2(a): The base penalty for sexual abuse of a minor shall be imprisonment for a term of 18-24 months.</p> <p>U.S.S.G. § 2A3.3(a): The base penalty for sexual abuse of a ward shall be imprisonment for a term of 4-10 months.</p> <p>U.S.S.G. § 2A3.4(a)(3): The base penalty for abusive sexual contact shall be imprisonment for a term of 6-27 months depending on the circumstances.</p>	<p>§ 2243: Sexual abuse of a minor or ward. (c)(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>

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¹ In states that have no specific legislation criminalizing the sexual abuse of prisoners, correctional officers may be prosecuted under the state's existing sexual assault and rape statutes. Under these laws, consent is a defense to criminal liability. However, many experts believe and courts have decided that the inherent disparity in power between prisoners and correctional employees renders valid consent impossible in the prison context. Also experts believe that from a management and public policy perspective, sanctioning consensual sex between correctional employees and prisoners severely compromises legitimate correctional goals such as prison security, inmate management and rehabilitation.