

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

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Alabama	NO LEGISLATION ¹					

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

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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. § 11.41.420. 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 § 11.41.470: Definitions	§ 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.	§ 11.41.470(5): for the purposes of § 11.41.410, "position of authority" means: an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, babysitter, or a substantially similar position, and a police officer or probation officer, other than when the officer is exercising custodial control over a minor.	§ 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 and 2003)	§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, a private prison facility or a city or county jail or an offender who is on release status and who is under the supervision of the state department of corrections or a city or county commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail.</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 one and one half years and/or</p> <p>§13-801(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>

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Arkansas	<p>Ark. Code Ann. § 5-14-126 (West 2002)</p> <p>§ 5-4-401 (Michie 1987 and Supp. 1999)</p> <p>§ 5-4-201 (Michie 1987)</p>	<p>§5-14-126. Sexual assault in the third degree.</p>	<p>§ 5-14-126 (a): A person commits sexual assault in the third degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, and the person:</p> <p>(1) Is employed with the Department of Correction, Department of Community Punishment, 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 Punishment, Department of Human Services, or any city or county jail.</p>	<p>§ 5-14-101 (1): “deviate sexual activity” means any act of sexual gratification involving:</p> <p>(A) the penetration, however slight, of te anus or mouth of one person by the penis of another person; or</p> <p>(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.</p>	<p>5-14-126(c): Sexual assault in the third 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>	<p>§5-14-126(b): Consent is not a defense. Marriage is a defense.</p>

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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><u>§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.</u></p> <p><u>§289.6(i): Any person previously convicted of a violation of this section shall, upon a subsequent violation be guilty of a felony.</u></p>	<p>§ 289.6(d): As used in this section, "sexual activity" means (1) Sexual intercourse. (2) Sodomy, as defined in subdivision (a) of Section 286. (3) Oral copulation, as defined in subdivision (a) of Section 288a. (4) Sexual penetration, as defined in subdivision (k) of Section 289. (5) The rubbing or touching of the breasts or sexual organs of another, or of oneself in the presence of and with knowledge of another, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of oneself or another.</p>	<p>§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>

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Colorado	<p>Colo. Rev. Stat. §18-3-404 (West 2000)</p> <p>§18-7-701</p>	<p>§18-3-404. Unlawful Sexual Contact.</p>	<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 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.</p> <p>***</p> <p>“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>	<p>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).</p> <p>“Sexual contact” means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing 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>“Sexual intrusion” means any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue, or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual</p>	<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.</p> <p>§18-1.3-401 (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>§18-1.3-401(III)(A): a fine ranging from \$2,000 to \$500,000.</p>	

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				<p>arousal, gratification, or abuse.</p> <p>“Sexual penetration” means sexual intercourse, cunnilingus, fellatio, analingus, or anal intercourse. Emission need not be proved as an element of any sexual penetration. Any penetration, however slight, is sufficient to complete the crime.</p>		

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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>Conn. Gen Stat Ann. §53a-73a (West 2003)</p>	<p>§53a-71. Sexual assault in the second degree: Class C or B 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-65(2): “Sexual intercourse” means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is 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>§ 53a-65(3); “Sexual contact” means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person</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 misdemeanor shall be imprisonment for a term not to exceed 1 year.</p>	

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				not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.		
Delaware	<p>De. Code Ann. tit. 11, § 1259 (Michie 1995 and Supp. 2000)</p> <p>§ 4205 (Michie 1995 and Supp. 2000)</p> <p>De. Code. Ann. § 510.010 (2002)</p>	<p>§ 1259. Sexual relations in detention facility; Class G felony</p> <p>§ 510.120 Sexual Abuse in the Second Degree is a class A misdemeanor</p>	<p>§ 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.</p> <p>§ 510.120 Sexual Abuse in the Second Degree; A person is guilty of sexual relations in the second degree when; 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.</p>	<p>NOTE: The statute also makes it illegal for a prisoner to engage in sexual relations with an employee at the detention facility.</p> <p>§ 510.010 Sexual contact means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.</p> <p>§ 510.010 Sexual intercourse means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by a foreign object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight, emission is not required.</p>	<p>§ 1259: Violation of this section shall be a class G felony.</p> <p>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</p> <p>4205(k): The penalty may include fines and penalties as the court deems appropriate.</p>	<p>§ 1259: It shall be no defense that such conduct was consensual.</p> <p>§ 510.120 defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense, he and the offender were married</p>

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District of Columbia	<p>D.C. Code Ann. § 22-4101 (1981 and Supp. 1999)</p> <p>D.C. Code Ann. § 22-4113 (1981 and Supp. 1999)</p> <p>D.C. Code Ann. § 22-4114 (1981)</p> <p>D.C. Code Ann. § 22-4117 (Supp. 1999)</p>	<p>§ 22-3001. Definitions</p> <p>§ 22-3013. First degree sexual abuse of a ward.</p> <p>§ 22-3014. Second degree sexual abuse of a ward.</p> <p>§ 22-4117. Defenses to sexual abuse of a ward, patient, or client.</p>	<p>§ 22-3013: Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor.</p> <p>§ 22-3014: 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.</p>	<p>§ 22-3001: Definitions: For the purposes of this chapter:</p> <p>(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.</p>	<p>§ 22-3013: 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.</p> <p>§ 22-3014: 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.</p>	<p>§ 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.</p>

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Florida	<p>Fl. Stat. Ann. §944.35 (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> <p>§794.011 (2001)</p>	<p>Authorized use of Force; malicious battery & sexual misconduct prohibited; reporting required; penalties § 944.35(3)(b)2</p>	<p>§944.35(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>§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</p>	<p>§944.35(3)(b)(1): Sexual Misconduct means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Does not include an act done for a bona fide medical exam or an internal search lawfully conducted.</p> <p>§944.35(b)(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</p>	<p>§775.082(3)(d): Sexual misconduct is 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</p>	<p>§944.35(3)(b) (3): Consent is not a defense.</p> <p>§944.35(3)(b) (4): Ignorance that inmate is an inmate or under the supervision by the.</p> <p>§944.35(3)(b) (4): Marriage is a defense.</p>

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			<p>and prevention methods and techniques.</p> <p>§ 794.011 (4): Sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the 1st degree, punishable as provided in §§775.082, 775.083, 775.084 & 794.0115) :</p> <p>(g): when the offender is a law enforcement officer, correctional officer, or correctional probation officer, or is an elected official exempt from such certification by virtue of § 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.</p>	<p>system.</p> <p>Law enforcement officer, correctional officer and probation officer as defined by § 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of § 943.1395.</p> <p>§ 794.011(1)(h): "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however sexual battery does not include an act done for a bona fide medical purpose.</p>	<p>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>	

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Georgia	Ga. Code Ann. §16-6-5.1 (Lexis 1999)	§16-6-5.1. Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient.	<p>§16-6-5.1(b): A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person.</p> <p>(c) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is: (A) In the custody of law; or (B) Detained in or is a patient in a hospital or other institution.</p>	§16-6-5.1(a): As used in this Code section, the term: (4) "Sexual Contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.	§16-6-5.1(b): The penalty for sexual assault shall be imprisonment for a term not less than 1 year nor more than 3 years.	<p>§16-6-5.1(c)(3): Consent of the victim is not a defense.</p> <p>The definition of "sexual contact" in §16-6-5.1(a)(4) excludes contact between married persons.</p>

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Hawaii	<p>Haw. Rev. Stat. Ann. §707-731 (Michie 1999)</p> <p>Haw. Rev. Stat. Ann. §707-732 (Michie 1999)</p>	<p>§707-731. Sexual assault in the second degree.</p> <p>§707-732. Sexual assault in the third degree.</p>	<p>§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.</p> <p>§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.</p>	<p>§ 707-700</p> <p>"Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.</p> <p>"Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or</p>	<p>§707-731(2): Sexual assault in the second degree is a class B felony.</p> <p>§707-732(2): Sexual assault in the third degree is a class C felony.</p> <p>§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.</p>	

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Idaho	Idaho Code §18-6110 (Michie 1997 & 2000 Supp.)	§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 private correctional facility to have sexual contact with a prisoner, whether an in-state or out-of-state prisoner, housed in such facility.	§18-6110: For the purposes of this section "sexual contact" means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex. § 18-101A(5): "Prisoner" means a person who has been convicted of a crime in the state of Idaho and is either incarcerated or on parole for that crime or in custody for trial and sentencing, or who is convicted of and sentenced for a crime in a state other than the state of Idaho, or under the laws of the United States or other foreign jurisdiction, and who is being housed in any state, local or private correctional facility, or who is being transported in any manner within or	§18-6110: The penalty for sexual contact with an inmate shall be imprisonment in the state prison for a term not to exceed life.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				through the state of Idaho.		
Illinois	720 I.L.C.S. 5/11-9.2 (West 1993 and 2000 Supp.)	§11-9.2. Custodial Sexual Misconduct.	<p>§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.</p> <p>(b) A probation or supervising officer or surveillance agent commits the offense of custodial sexual misconduct when the probation or supervising officer or surveillance agent engages in sexual conduct or sexual penetration with a probationer, parolee, or releasee or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent so engaging in the sexual conduct or sexual penetration.</p>	<p>§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, (iii) parole or mandatory supervised release; (iv) electronic home detention; (v) probation; (vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act;</p> <p>(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</p>	<p>§11-9.2(c): Custodial sexual misconduct is a Class 3 felony.</p> <p>A Class 3 felony carries a penalty of 2-5 years.</p> <p>§ 11-9.2(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.</p>	<p>§11-9.2. (e) Consent is not a defense to a prosecution under this section.</p> <p>§11-9.2. (f)(1) Marriage is a defense if the marriage occurred prior to the date of custody.</p> <p>§11-9.2. (f)(2) Lack of knowledge or lack of reason to believe that the individual with whom the employee was engaged in custodial sexual misconduct was a prisoner is a defense.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				<p>or sentenced persons in a penal system.</p> <p>§ 12-12(e) "Sexual conduct" means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused.</p> <p>(f) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex 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</p>		

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				penetration.		
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 lawful detention commits sexual misconduct, a Class D felony.	§35-44-1-5: Sec. 5(a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.	§35-44-1-5(b): Sexual misconduct is a class D felony. §35-50-2-7(a): The penalty for a Class D felony is imprisonment for 1 ½ years, with not more than one and one-half (1 1/2) years added for aggravating circumstances or not more than one (1) year subtracted for mitigating circumstances, and may also include a fine not to exceed \$10,000.	§35-44-1-5(c): It is not a defense that an act described in subsection (b) was consensual. (d) Marriage is a defense

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Iowa	I.C.A. §709.16 (West 1993 and 2001 Supp.)	§709.16. Sexual misconduct with offenders and juveniles.	<p>§709.16: Sexual misconduct with offenders and juveniles: (1) An officer, employee, contractor, vendor, volunteer or agent of the department of corrections 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>§709.16(2)For purposes of this subsection, a “juvenile placement facility” means (c) juvenile detention and juvenile shelter care homes.</p> <p>§ 702.17: The term “sex act” or “sexual activity” means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed to do</p>	<p>§709.16: Sexual misconduct with offenders is an aggravated misdemeanor.</p> <p>§903.1(2): The penalty for an aggravated misdemeanor shall be imprisonment for a term not to exceed 2 years and a fine ranging between \$500 and \$5,000.</p>	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				so; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.		
Kansas	K.S.A. §21-3520 (West 2001 and 2002)	§21-3520. Unlawful sexual relations.	<p>§21-3520: Unlawful sexual relations: (a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:</p> <p>(1) The offender is an employee of the department of corrections or the employee of a contractor providing 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 and the inmate has been released on parole or conditional release or post-release supervision under direct supervision and control of the offender; or</p> <p>(3) the offender is a law enforcement officer, jail employee, or employee of a contractor and the person is 16 or older under lawful confinement; or</p> <p>(4); the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is</p>		<p>§21-3520(c): “Unlawful sexual relations” is a severity level 10 person felony.</p> <p>§21-4704(a): The penalty for a severity level 10 person felony shall be imprisonment for a term between 8 and 13 months, depending on offender’s criminal history.</p>	<p>§21-3520(a): Marriage is a defense.</p> <p>§21-3520(a): Consent is not a defense.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility or sanctions house or</p> <p>(5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined by lawful custody to such facility; or</p> <p>(6) the offender is an employee of the juvenile justice authority or employee of a contractor, and the person is 16 or older and (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.</p>			
Kentucky	<p>K.R.S. §510.120 (Lexis 2000)</p> <p>§532.090</p>	§510.120 Sexual abuse in the second degree	<p>§510.120 Sexual abuse in the second degree:</p> <p>(1) A person is guilty of sexual abuse in the second degree when:</p> <p>(c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact.</p>	<p>§ 510.010: "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying the sexual desire of either party.</p> <p>§ 520.010 "Detention facility" means any building and its premises used for the confinement of a person:</p> <p>(a) charged with or convicted of an</p>	<p>§510.120(2) Sexual abuse in the second degree is a Class A misdemeanor.</p> <p>§532.090 Sentence of Imprisonment for misdemeanor: (1) For a Class A misdemeanor, the term shall not exceed 12 months.</p>	§510.120 Marriage at the time of sexual contact is a defense.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			(2) Sexual abuse in the second degree is a Class A misdemeanor.	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.		
Louisiana	La. Rev. Stat. Ann. §134.1 (West 1986 and Supp. 2000)	§134.1. Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions.	§134.1: Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions. (A) It shall be unlawful and constitute malfeasance in office for any person who is a law enforcement officer, officer of the Department of Corrections, or employee of a prison, jail, or correctional institution, to engage in sexual intercourse or any other sexual conduct with a person confined in a prison, jail or correctional institution.		§134.1.B: Penalty for a violation of a provision of this section shall be imprisonment for a term not to exceed 10 years and/or a fine not to exceed \$10,000.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Maine	Me. Rev. Stat. Ann. tit. 17-A, §§ 253 & 1252 (B) (West 1983 & Supp. 1999)	§ 253. Gross sexual assault. § 1252. Imprisonment for crimes other than murder.	THE FOLLOWING PARAGRAPHS ARE EFFECTIVE UNTIL JANUARY 31, 2003: §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	§ 251(1)(C): "Sexual act" means (1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and genitals of the other; (2) Any act between a persona and an animal being used by another person which act	*** § 253(5) IS TO BE REPEALED, EFFECTIVE JANUARY 31, 2003. § 253(5): Violation of subsection 2, paragraph E or H is a Class B crime. Violation of subsection 2, paragraphs F, G, I or J is a Class C crime. § 1252(2)(B): In the case of a Class B	§ 253(2)(E), (F) & (G): Marriage is a defense.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>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, 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;</p> <p>(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;</p> <p>(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</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 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.</p> <p>EFFECTIVE JANUARY 31, 2003, ALL PARAGRAPH LANGUAGE IS UNCHANGED, EXCEPT FOR THE NOTATIONS THAT PARAGRAPHS E & H ARE CLASSIFIED AS "CLASS B CRIMES," WHILE PARAGRAPHS F, G, I & J ARE CLASSIFIED AS "CLASS C CRIMES."</p>	<p>involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or</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 purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration.</p> <p>"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.</p>	<p>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>	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
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.	§ 461(e): "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however, slight, by any object into the genital or anal opening of another person's body if the penetration can be reasonably construed as being for the	§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.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				<p>purposes of sexual arousal or gratification or for abuse of either party and if the penetration is not for accepted medical purposes.</p> <p>§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.</p> <p>(3) an inmate is a person incarcerated in a state or local correctional facility or a community adult rehabilitation center.</p>		
Massachusetts	<p>M.G.L.A. 268 § 21A (West 2000)</p>	<p>§ 21A: Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment</p>	<p>§ 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.</p>	<p>§ 21A: For purposes of this section, "sexual relations" includes intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 (sexual intercourse or unnatural sexual intercourse) or 24 (assault with the intent to commit rape) of</p>	<p>§ 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.</p>	<p>Consent is not a defense.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				chapter 265 or section 2 (prostitution or unlawful sexual intercourse), 3 (drugging a person for the purposes of engaging in sexual intercourse), 35 (unnatural and lascivious acts) or 53A (engaging in sexual conduct for a fee) of chapter 272.		
Michigan	Michigan Statutes Ann. Ch, 750 § 520(c) (West 2001) 2000 Mi. ALS 227 (effective through 3/30/2003)	§ 520(c): Second degree criminal sexual conduct.	§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 the following circumstances exist: (f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in § 520b(1)(f)(i) to (v). (See definitions) (g) The actor knows or has reason to know that the person is mentally	§ 520b(1)(f)(i): When the actor overcomes the victim through the actual application of physical force or violence. (ii): When the actor coerces the victim to submit by threatening to use force of violence on the victim, and the victim believes the actor has	§520(c)(2): Criminal sexual conduct in the second degree is felony punishable by imprisonment for not more than 15 years.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>incapable, mentally incapacitated, or physically helpless.</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	<p>the present ability to execute these threats</p> <p>(iii): when the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes the actor has the present ability to execute these threats</p> <p>(iv): when the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable</p> <p>(v): when the actor, through concealment or by the element of surprise, is able to overcome the victim.</p>		
Minnesota	MN ST ch. 609 §§ 344 & 345 MN LEGIS 210 §22 (2001) (West)	<p>§ 344: Criminal sexual conduct in the third degree.</p> <p>§ 345: Criminal sexual conduct in the fourth degree.</p>	<p>§ 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:</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, including but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under</p>	<p>§ 341 (11)(a): "Sexual contact" includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:</p> <p>(i) the intentional touching by the actor</p>	<p>§ 344 (2): A person convicted under subdivision 1 may be sentenced to imprisonment for not more than fifteen years or to a payment of a fine not more than \$30,000 or both.</p> <p>§ 345 (2): A person convicted under subdivision 1 may be</p>	<p>§ 344 (1)(m): Consent by the complainant is not a defense.</p> <p>§ 345 (1)(m): Consent by the complainant is not a defense.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>supervision of the correctional system.</p> <p>§ 345 (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>(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.</p>	<p>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 mentally impaired or under 13, or</p> <p>(iii) the touching by another of the complainant's intimate party effected by coercion or by a person in a position of authority, or</p> <p>(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.</p>	<p>sentenced to imprisonment for not more than ten years or to a payment of a fine not more than \$20,000 or both.</p>	
Mississippi	Miss. Code Ann. §97-3-104 (Lexis Supp. August, 1999)	§97-3-104. Sexual penetration of incarcerated offenders by law enforcement officers or employees; offense; punishment.	§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 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.	§97-3-97. Sexual battery, definitions: (a) Sexual penetration includes cunnilingus, fellatio, buggery, or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of	§97-3-104. Section 1. 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.	§97-3-104. Consent is not a defense.

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				any object into the genital or anal openings of another person's body.		
Missouri	Mo. Ann. Stat. Ch. 217 § 405 (West 1996& Supp. 2000) Mo. Ann. Stat. Ch. 217 § 410 (West 1996 & Supp. 2000)	§ 405. Offender abuse; penalty; employees not to use physical force, exceptions. § 410. Abuse of offender, duty to report; penalty; confidentiality of report, immunity from liability, harassment	§ 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	§ 410: Employees of the department are required to report reasonable belief of abuse.	§ 405(2): Offender abuse is a class C felony. § 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	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
		prohibited.	<p>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>§ 410: Abuse of offender, duty to report, penalty – confidentiality of report, immunity from liability – harassment prohibited.</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>neglect is guilty of a class A misdemeanor.</p> <p>§558.011.1(3): The penalty for a class C felony shall be imprisonment for a term not to exceed 7 years.</p> <p>§558.011.1(5): The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.</p>	
Montana	Mont. Co. Ann. § 45-5-502 (West 2001)	<p>§ 45-5-502: Sexual assault</p> <p>§ 45-5-503: Sexual intercourse without consent</p>	<p>§ 45-5-502(5)(a): Consent is ineffective under this section if the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.</p> <p>§ 45-5-503</p>		<p>§45-5-502(2): A person convicted of sexual assault shall be fined up to \$500 or imprisoned for up to 6 months or both.</p> <p>§ 45-5-503(3)(d): The</p>	<p>Consent is not a defense.</p> <p>The act is part of a lawful search.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>(1) a person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.</p> <p>(3)(d): includes victims who are incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender has supervisory or disciplinary authority over the victim.</p>		offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined no more than \$50,000 or both.	
Nebraska	R.R.S. Neb. § 28-322.02 (West 1995 & Supp. 1999)	<p>§ 28-322.01: Sexual abuse of an inmate or parolee.</p> <p>§ 28-322.02: Sexual abuse of an inmate or parolee in the first degree; penalty</p> <p>§ 28-322.03: Sexual abuse of an inmate or parolee in the second degree; penalty</p>	<p>§ 28-322.01: A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an individual who is confined in a correctional institution or a city or county correctional or jail facility or under parole supervision to sexual penetration or sexual contact as those terms are defined in § 28-318.</p> <p>§ 28-322.02: Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of</p>	<p>§ 28-318</p> <p>(5): Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual</p>	<p>§ 28-322.02: Sexual abuse of an inmate or parolee in the first degree is a Class III felony.</p> <p>§ 28-322.03: Sexual abuse of an inmate or parolee in the second degree is a Class IV felony.</p> <p>§ 28-105(1): The penalty for a Class III</p>	<p>§ 28-322.01: 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>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>an inmate or parolee in the first degree</p> <p>§ 28-322.03: 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>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): Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.</p>	<p>felony is a term of 1 to 20 years imprisonment or a \$25,000 fine, or both.</p> <p>§ 28-105 (1): The penalty for a Class IV felony is five years imprisonment, or ten thousand dollars fine, or both</p>	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Nevada	Nev. Rev. Stat. §212.187 (NRS 2001) Effective through June 30, 2003.	§212.187. Voluntary sexual conduct between prisoner and another person; penalty.	<p>§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 public safety or residential confinement, and who voluntarily engages in sexual conduct with another person is guilty of a category D felony.</p> <p>(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.</p>	<p>§ 212.187(3): As used in this section, “sexual conduct”</p> <p>(a) includes acts of masturbation, homosexuality, sexual intercourse or physical contact with another person’s clothed or unclothed genitals or pubic area to arouse, appeal to or gratify the sexual desires of a person.</p> <p>(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.</p>	<p>§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 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.</p>	<p>§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.</p> <p>§212.187(3)(b): This law excludes acts performed to carry out the necessary duties of such a person.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
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. Felonious Sexual Assault.	§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 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.		§632-A:(3): Violation of §632-A:2 is a class B felony. §625:9: The penalty for a class B felony is imprisonment of 1-7 years and fines.	Consent is not a defense.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
New Jersey	N.J. Stat. Ann. §2C: 14-2 (West 1995 and Supp. 2000	§2C: 14-2. Sexual assault § 2C: 30-2. Official Misconduct	§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: 30-2.a.: A public servant is guilty of official misconduct when, with the purpose to obtain a benefit for himself or another or to injure or deprive another of a benefit: He commits an act relating to	§ 2A-61B-1a. (3) "Sexual penetration" means vaginal intercourse, cunnilingus, fellatio or anal intercourse between persons or insertion of the hand, finger or object into the anus or vagina either by the adult or upon the adult's instruction.	§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: 30-2.b: Official misconduct is a crime of the second degree. If the benefit obtained or sought to be obtained, or of which another is deprived or sought to be deprived, is of a value of \$200.00 or less, the offense of official misconduct is a crime of the third degree. §2C: 43-6a(1): The penalty for a crime of	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
		§ 2C: 51-2. Forfeiture of Public Office	<p>his office but constituting an unauthorized exercise of his official functions, knowing that such act is unauthorized, or he is committing such act in an unauthorized manner.</p> <p>§ 2C: 51-2.a. A person holding any public office, position or employment, elective or appointive, under the government of this State or any agency or political subdivision thereof, who is convicted of an offense shall forfeit such office or position if:</p> <p>1. He is convicted under the laws of this State of an offense involving dishonesty or of a crime of the third degree or above or under the laws of another state or of the United States of an offense or a crime which, if committed in this State, would be such an offense or crime;</p> <p>He is convicted of an offense involving or touching such office, position or employment</p>		<p>the first degree shall be imprisonment for a term of between 10 and 20 years.</p> <p>§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.</p>	
New Mexico	N.M. Stat. Ann. §30-9-11 (Michie 1978 and Supp. 1999)	§30-9-11. Criminal sexual penetration.	<p>§30-9-11D: Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:</p> <p>(1) on a child thirteen to eighteen years of age when the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;</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>	§ 30-9-11A: Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.	<p>§30-9-11.D. Criminal sexual penetration in the second degree is a second-degree felony.</p> <p>§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.</p>	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
New York	N.Y. Penal Law §130.05 (West 1998 and Supp. 2000)	§130.05. Sex offenses.	<p>§130.05:</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>(2) Lack of consent results from:</p> <p>(a) Forcible compulsion; or</p> <p>(b) Incapacity to consent; or</p> <p>(d) where the offense charged is rape in the third degree... in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse or deviate sexual intercourse, 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) A person is deemed incapable of consent when he or she is:</p>	<p>§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.</p> <p>§130.05(3)(ii),(iii): Also covers employees of the division of parole and office of mental health who perform professional duties and provide</p>	<p>Violation of this section is either a class E felony or a class A misdemeanor, depending on the nature and severity of the assault. Class E: § 130.25 Class A: §§ 130.20, 130.52, 130.60</p> <p>§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.</p> <p>§70.15(1): A sentence of imprisonment for a class A misdemeanor shall ... be fixed by the court, and shall</p>	<p>§130.05(3)(e) Consent is not a defense.</p> <p>Marriage is a defense.</p>

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			<p>(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, 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.</p> <p>§ 130.20 Sexual misconduct: 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 2. He or she engages in deviate sexual intercourse with another person without such person's consent. <p>§ 130.25 Rape in the third degree: 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. <p>§ 130.52 Forcible touching: 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:</p> <ol style="list-style-type: none"> 1. for the purpose of degrading or abusing such person; or 2. for the purposes of gratifying the actor's sexual desire. <p>For the purposes of this section, forcible touching includes the squeezing, grabbing or pinching of such other person's sexual or other intimate parts.</p> <p>§ 130.60 Sexual abuse in the second degree. 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>	<p>professional services in a state correctional facility.</p> <p>§ 130.00: Definitions</p> <ol style="list-style-type: none"> 1. "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight. 2. "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and penis, or the mouth and the vulva. 3. "Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor for the purpose of gratifying sexual desire of either party. It includes the touching of the actor by the victim, as well as the touching of the victim by the actor, whether directly or through clothing. 8. "Forcible compulsion" means to compel by either: a. use of physical force; or b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in 	<p>not exceed one year.</p>	

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			1. incapable of consent by reason of some factor other than being less than seventeen years old.	fear that he, she or another person will immediately be kidnapped. ***2001 NY S.B. 5313: pending legislation adding a new section 130.54 re: gang sexual assault.		
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: ... if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental; having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.	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. <u>State v. Raines</u> , 319 N.C. 358, 354 S.E. 2d 486 (1987).	§14-27.7 A violation of this section is a class E felony. §15A-1340.17: The 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.	§14-27.7: Consent is not a defense to a charge under this section.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
North Dakota	<p>N.D. Cent. Code §12.1-20-06 (Michie 1997)</p> <p>N.D. Cent. Code §12.1-20-07 (Michie 1997 and Supp. 1999)</p>	<p>§ 12.1-20-06. Sexual abuse of wards</p> <p>§12.1-20-07. Sexual assault</p>	<p>§ 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 A misdemeanor 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>§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.</p>		<p>§ 12.1-20-06: Sexual abuse of wards is a class A misdemeanor.</p> <p>§12.1-20-07(2): Violation of subsection (d) is a class A misdemeanor.</p> <p>§12.1-32-01(5): The penalty for a class A misdemeanor shall be imprisonment for a maximum of 1 year and/or a fine of \$2,000.</p>	

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Ohio	Ohio Rev. Code Ann. §2907.03 (Page's 1998 and Supp. 1999) Amended by § 2002 Ohio Laws File 210 (H.B. 510) .	§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.	§ 2907.1 (A): "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse; fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is insufficient to complete vaginal or	§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.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				anal intercourse.		
Oklahoma	Okla. Stat. Ann. tit. 21, §1111 (West 1983 and Supp. 2000)	<p>§1111. Rape Defined</p> <p>§1114. Rape in the first degree - second degree.</p>	<p>§ 1114 A. Rape in the first degree shall include:</p> <p>3. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or</p> <p>4. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime</p> <p>B. In all other cases, rape or rape by instrumentation is rape in the second degree.</p>	<p>§1111: Rape defined:</p> <p>A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: 7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality</p>	<p>§ 1115: Rape in the first degree is a felony punishable by death or imprisonment in the State Penitentiary, not less than five (5) years, in the discretion of the jury, or in case the jury fails or refuses to fix the punishment then the same shall be pronounced by the court.</p> <p>§1116: Rape in the second degree is a felony. And punishable with</p>	<p>§1111(A): Marriage is a defense.</p>

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				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.	imprisonment for a term of 1-15 years.	
Oregon	No Legislation ¹					

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
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	§ 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	§ 106(b)(4) The penalty for a felony of the third degree shall be imprisonment for a term up to 7 years.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			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.	facility or institution who is employed by any state or county agency or any person employed by an entity providing contract services to the agency.		
Rhode Island	R.I. Gen. Laws §11-25-24 (Lexis and Supp. 1999)	§11-25-24. Correctional employees — sexual relations with inmates — felony §11-37-1	§11-25-24: Every employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution who engages in sexual penetration as defined in §11-37-1 with an inmate confined therein or who is otherwise under the direct custodial supervision and control of said employee shall be guilty of a felony.	§11-37-1(8): “Sexual penetration” includes: 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	§11-25-24: Violation of this section is a felony, the penalty for which shall be imprisonment for not more than 5 years and/or a fine of not more than \$10,000.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				accused's instruction, but emission of semen is not required.		
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	§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	§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	§44-23-1150: (A)(2) A victim is not capable of providing consent for sexual intercourse or sexual contact with an actor.

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			<p>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.</p>	<p>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.</p> <p>§44-23-1150 ©(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 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.</p>	<p>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.</p>	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
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.	§ 22-22-2§ “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	§24-1-26.1: The violation of this section is a Class 6 felony. §22-6-1(8): The penalty for a Class 6 felony shall be imprisonment in the state penitentiary for	

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				or anal openings of another person's body.	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 inmate who is in custody at a penal institution.	§ 39-13-501 (6): "Sexual contact" includes the intentional touching of the victim's, the defendant's, or any other person's intimate parts, or the intentional touching of the clothing covering	§41-21-241(b): A violation of this section is a Class A misdemeanor. The authorized term of imprisonment and fine for a Class A misdemeanor are not greater than 11 months 29 days	

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				<p>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) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, defendant's, or any other person's body, but emission of semen is not required.</p> <p>§39-16-601(2), (4): "Custody" means under arrest by a law enforcement officer or 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.</p>	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	<p>§39.04(b) An offense under Sections (a)(2) is a state jail felony.</p> <p>§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.</p>	

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				<p>Commission of a juvenile offender.</p> <p>§ 21.01 (1): "Deviate sexual intercourse" means:</p> <p>(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or</p> <p>(B) the penetration of the genitals or the anus of another person with an object.</p> <p>(2) "Sexual contact" means...any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.</p> <p>(3) "Sexual intercourse" means any penetration of the female sex organ by the male sex organ.</p>	§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 if the actor commits any of the acts under subsection (3) 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.	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	§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	§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

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
			<p>(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, 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.</p> <p>4(a): same language as above, but refers to custodial sexual misconduct.</p>	<p>defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-12-201 or other medical facility; (ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or (iii) under lawful or unlawful arrest, either with or without a warrant.</p> <p>(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.</p>	<p>third degree felony</p> <p>(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.</p> <p>§76-6-106 Fines of persons(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>(c) \$2,500 for a class A misdemeanor conviction;</p>	<p>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.</p> <p>(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).</p> <p>(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302 (1).</p>
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,		(b) A person who violates subsection (a) of this section shall be imprisoned for not more than two years or fined not more	

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			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.		than \$10,000.00, or both.	
Virginia	Code of VA § 18.2-64.2 (Code of VA 1950) (Michie 2000)	§ 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, or pretrial or post-trial	An accused shall be guilty of carnal knowledge of an inmate, parolee, detainee, probationer, or pretrial or post-trial offender if he or she is an employee or contractual employee of, or a volunteer with a state or local	§ 18.2-64.2: For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse,	§ 18.2-64.2: Such offense is a Class 6 felony. § 18.2-10(f): The	

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		offender; penalty.	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.	cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.	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. Current through 2003)		§ 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) Who is a resident of a state, county, or city adult or juvenile correctional		§ 9A.44.160(3): Custodial sexual misconduct in the first degree is a class C felony.	§§ 9A.44.160(2), 9A.44.170(2): Consent of the victim is not a defense. § 9A.44.180: It is an

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			<p>facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and (ii) the perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the resident reasonably believes the perpetrator has, the ability to influence the terms, conditions, length or fact of incarceration or correctional supervision; or (b) when the victim is being detained, under arrest or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.</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.20.021(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 \$10,000.</p> <p>§ 9A.44.170(3): Custodial sexual misconduct in the second degree is a gross misdemeanor.</p> <p>§ 9A.20.021(2)(c): The penalty for a gross misdemeanor is imprisonment for up to 1 year and/or a fine of up to \$5,000.</p>	<p>affirmative defense to prosecution under §§ 10 and 170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person</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;	§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		§61-8B-10(a): Upon conviction thereof, the employee shall be sentenced to one to five years or fined up	

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		penalties	<p>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>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 (1999)	§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 who abuses, neglects or ill-treats any		§940.29: The abuse of residents of penal facilities is a Class E felony.	

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			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.		§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	§6-2-303: Sexual assault in the second	§6-2-303: Sexual Assault in the second degree. (a) Any actor who inflicts	§6-2-301(a)(vi): Position of authority	§6-2-306(a)(ii): Sexual assault in the	

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	(Supp. 1999) Wyo. Stat. §6-2-306 (1988 and Supp. 2000)	degree.	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.	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. CASE NOTE: <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.	2 nd degree is a felony punishable by imprisonment for not more than 20 years.	

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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.