

CHECKLIST OF STATE CRIMINAL LAWS PROHIBITING THE SEXUAL ABUSE OF PERSONS IN CUSTODY OF LAW ENFORCEMENT, LOCK-UP AND JAIL AUTHORITIES

NOTE: When the checklist indicates that a particular personnel or setting is covered under the law, either the words themselves (law enforcement, arrest, lock-up or jail) appear in the statute or a cross-referenced statute, or the law can reasonably be interpreted to cover those settings and/or personnel. Though staff sexual misconduct laws included in this chart may cover juveniles and private facilities, for the scope of this chart we have not analyzed the laws for their specific inclusion.

STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
Alabama Custodial Sexual Misconduct ALA. CODE § 14-11-31 (2005).	✓	✓	✓ ¹		Volunteers not covered	✓	✓
Alaska Sexual assault in the first degree. ALASKA STAT. § 11.41.410 (2006). Sexual assault in the second degree. ALASKA STAT. § 11.41.420 (2006). Sexual assault in the third degree. ALASKA STAT. § 11.41.425 (2006). Sexual assault in the fourth degree. ALASKA STAT. § 11.41.427 (2006).	✓	✓	✓	✓	Volunteers not covered	✓ ²	Consent is not addressed

¹ Alabama covers employees of government agencies that by court order have the responsibility for pretrial persons and thus the law appears to cover court holding facilities. ALA. CODE § 14-11-30(b)(2) (2006).

* Some state statutes use the word *police* or *sheriff*. For purposes of this checklist, if a statute uses the word *police* or *sheriff*, we assumed that all law enforcement is covered.

♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county* or *city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

+ All personnel are covered if the statute includes paid employees, volunteers, other state agency employees, and private/contract employees.

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STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
Arizona Unlawful sexual conduct; correctional employees; prisoners; classification ARIZ. REV. STAT. ANN. § 13-1419. (2006).	✓	✓	✓ ³	✓	Volunteers not covered	✓ ⁴	The defense of consent may be implied because the inmate is also penalized for the conduct
Arkansas Sexual assault in the first degree. ARK. CODE ANN. § 5-14-124 (2006). Sexual Assault in the second degree	✓	✓			Volunteers not covered	✓	✓

² Police are punished under First and Second Degree sexual assault and as felonies, where Department of Corrections Employees are punished under Third and Fourth Degree Sexual assault where third degree is a felony and fourth degree is a misdemeanor. ALASKA STAT. §§ 11.41.410(b), 11.41.420(b), 11.41.425(b) & 11.41.427(b) (2006).

³ In Arizona, custody is defined as actual or constructive restraint pursuant to a court order and thus would appear to cover court holding facilities. ARIZ. REV. STAT. ANN. § 13-2501 (2006).

⁴ In Arizona, the inmate is penalized for the misconduct. ARIZ. REV. STAT. ANN. § 13-1419B (2006).

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county or city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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Arkansas Continued ARK. CODE ANN. § 5-14-125 (2006). Sexual assault in the third degree ARK. CODE ANN. § 5-14-126 (2006).							
California Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in detention facility. CAL. PENAL CODE § 289.6 (2006).	✓	✓	✓ ⁵		✓ ⁶	✓	✓

⁵ California covers court holding facilities as well. CAL. PENAL CODE § 289.6(5) (2006).

⁶ In California, the statute covers persons over the age of consent housed in juvenile facilities. Thus, the statute covers sexual activity with a “consenting adult” in a juvenile facility, not juveniles in juvenile facilities. Presumably, sexual offenses involving juveniles under the age of consent can be prosecuted under statutory rape or other sexual assault laws. The legislative history of the statute also suggests that the California Assembly was concerned with sexual activity with “consenting adults.” No mention was made of juvenile victims, presumably because legislators knew that ANY sex between staff and juvenile inmates was already proscribed by law. Therefore, it was unnecessary to enact additional legislation criminalizing sexual activity between staff and juvenile inmates in their charge.

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♦ If a state law contained the word jail and the word local correctional facility, local correctional institution, county or city facility etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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<p>Colorado</p> <p>Unlawful Sexual Contact. COLO. REV. STAT. § 18-3-404 (2005).</p> <p>Sexual Conduct in Penal Institutions. COLO. REV. STAT. § 18-7-701 (2005).</p>	✓	✓	✓	✓	✓	✓	Consent is not addressed
<p>Connecticut</p> <p>Sexual assault in the second degree: Class C or B felony. CONN. GEN. STAT. § 53a-71 (2006).</p> <p>Sexual assault in the fourth degree: Class A misdemeanor or Class D felony. CONN. GEN. STAT. § 53a-73a (2006).</p>	✓	✓	✓	✓	Volunteers not covered	✓	Consent is not addressed

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county* or *city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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Delaware Sexual relations in detention facility; Class G felony DEL. CODE ANN. tit. 11, § 1259 (2006).	√ ⁷	√ ⁸	√ ⁹		Volunteers and contractors are not covered	√ ¹⁰	√ ¹¹
District of Columbia First degree sexual abuse of a ward. D.C. CODE § 22-3013 (2006). Second degree sexual abuse of a ward. D.C. CODE § 22-3014 (2006).	√	√	√ ¹²		Volunteers are not covered	√	√

⁷ In Delaware, the activity must occur “on the premises of a detention facility” for it to be criminal. DEL. CODE ANN. tit. 11, § 1259 (2006).

⁸ In Delaware, the activity must occur “on the premises of a detention facility” for it to be criminal. DEL. CODE ANN. tit. 11, § 1259 (2006).

⁹ Delaware covers confinement pursuant to a court order and thus would appear to cover court holding facilities. DEL. CODE ANN. TIT. 11, § 1258(2) (2006). In Delaware, the activity must occur “on the premises of a detention facility” for it to be criminal. DEL. CODE ANN. tit. 11, § 1259 (2006).

¹⁰ In Delaware, the inmate is penalized for the misconduct. DEL. CODE ANN. TIT. 11, § 1259 (2006).

¹¹ Although Delaware states that consent is not a defense to staff sexual misconduct, the law penalizes inmates for engaging in the conduct. DEL. CODE ANN. TIT. 11, § 1259 (2006).

* Some state statutes use the word *police* or *sheriff*. For purposes of this checklist, if a statute uses the word *police* or *sheriff*, we assumed that all law enforcement is covered.

♦ If a state law contained the word jail and the word local correctional facility, local correctional institution, county or city facility etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

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Florida Authorized use of Force; malicious battery & sexual misconduct prohibited; reporting required; penalties FLA. STAT. ANN. § 944.35 (2006). Sexual battery. FLA. STAT. ANN. § 794.011 (2006).	✓	✓	✓	✓	Volunteers not covered	✓	✓
Georgia Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against	✓	✓	✓	✓	Volunteers not covered	✓	✓

¹² D.C. defines official custody as transportation for court appearances and thus would appear to cover court holding facilities. D.C. CODE § 22-3001(6)(b) (2006).

¹² Hawaii defines custody as restraint pursuant to a court order and thus would appear to cover court holding facilities. HAW. REV. STAT. ANN. § 710-1000(3) (2006).

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∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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patient. GA. CODE ANN. § 16-6-5.1 (2006).							
Hawaii Sexual assault in the second degree. HAW. REV. STAT. ANN. § 707-731 (2006). Sexual assault in the third degree. HAW. REV. STAT. ANN. § 707-732 (2006).	✓	✓	✓ ¹²	✓	Volunteers not covered	✓	Consent is not addressed
Idaho Sexual contact with a prisoner. IDAHO CODE ANN. § 18-6110 (2006).	✓	✓	✓		Volunteers not covered	✓	Consent is not addressed

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Illinois Custodial Sexual Misconduct 720 ILL. COMP. STAT. ANN. 5/11-9.2 (2005).		✓	✓ ¹⁴		Volunteers not covered	✓	✓
Indiana Sexual misconduct by service provider with detainee IND. CODE ANN. § 35-44-1-5 (2006).	✓	✓	✓ ¹⁵	✓	✓	✓	✓
Iowa Sexual misconduct with offenders and juveniles IOWA CODE § 709.16 (2005).		✓			✓		Consent is not addressed

¹⁴ Illinois includes employees of any governmental agency that by court order has the responsibility for pretrial persons and thus would appear to cover court holding facilities. 720 ILL. COMP. STAT. ANN. 5/11-9.2(g)(3) (2005).

¹⁵ Indiana covers custody for purposes of court appearances and thus would appear to cover court holding facilities. IND. CODE ANN. § 35-41-1-18 (9) (2006).

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Kansas Unlawful sexual relations. KAN. STAT. ANN. § 21-3520 (2005).	✓	✓	✓		Volunteers not covered	✓	✓
Kentucky Sexual Abuse in the Second Degree. KY. REV. STAT. ANN. § 510.120 (2006).	✓	✓	✓ ¹⁶	✓	Community Corrections employees are not covered		Consent is not addressed
Louisiana Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions. LA. REV. STAT. ANN. § 14:134.1 (2006).	✓	✓	✓		Volunteers not covered Contract employees not covered Community Corrections	✓	Consent is not addressed

¹⁶ Kentucky defines custody as “restrain by a public servant pursuant to . . . an order of court for law enforcement purposes” and thus would appear to cover court holding facilities. KY. REV. STAT. ANN. § 510.010(2) (2006).

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∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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					employees not covered		
Maine Gross sexual assault. ME. REV. STAT. ANN. tit. 17-A, § 253 (2005). Unlawful sexual contact ME. REV. STAT. ANN. tit. 17-A, § 255-A 1.E (2005). Unlawful sexual touching ME. REV. STAT. ANN. tit. 17-A, § 260.1-E (2005).	✓	✓	✓ ¹⁷	✓	Volunteers not covered	✓	Consent is not addressed

¹⁷ Maine defines official custody as custody pursuant to a court order and thus would appear to cover court holding facilities. ME. REV. STAT. ANN. tit. 17-A, § 755(3) (2005).

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Maryland Sexual conduct between correctional or Department of Juvenile Services employee and inmate or confined child. MD. CODE ANN., CRIM. LAW § 3-314 (2006).	✓	✓	✓ ¹⁸	✓	Volunteers not covered Contractors not covered		Consent is not addressed
Massachusetts Punishments for sexual relations with inmate. MASS. ANN. LAWS ch. 268, § 21A (2006).		✓			Volunteers not covered	✓	✓
Michigan Criminal sexual conduct in the second degree; felony. MICH. COMP. LAWS SERV. §		✓	✓		✓	✓	Consent is not addressed

¹⁸ Maryland defines correctional unit as a unit of government that is responsible under a court order for inmates and thus would appear to cover court holding facilities. MD. CODE ANN., CRIM. LAW § 8-201(g)(1) (2006).

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750.520c (2006).							
Minnesota Criminal sexual conduct in the third degree. MINN. STAT. § 609.344 (2005). Criminal sexual conduct in the fourth degree. MINN. STAT. § 609.345 (2005).		✓	✓		✓	✓	✓
Mississippi Crime of sexual activity between law enforcement or correctional personnel and prisoners; sanctions. MISS. CODE ANN. § 97-3-104 (2006).	✓	✓	✓		✓	✓	✓
Missouri		✓	✓		✓	✓	✓

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∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
Missouri Continued Sexual contact with an inmate, penalty -- consent not a defense MO. REV. STAT. § 566.145 (amended 2006) (current version at 2006 Mo. HB 1698 (2006)).							
Montana Sexual assault MONT. CODE ANN. § 45-5-502 (2005).	√ ²⁰	√	√ ²¹	√ ²²	√	√	√

²⁰Montana defines a peace officer as a person who by virtue of the person's office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of the person's authority. MONT CODE ANN. §45-2-101 (55) (2007)

²¹ Montana defines official detention as confinement of a person charged with an offense or detention by an officer pursuant to an arrest. MONT CODE ANN. §45-2-101 (50)(a) (2007).

²² Montana defines official detention as confinement of a person charged with an offense or detention by an officer pursuant to an arrest. MONT CODE ANN. §45-2-101 (50)(a) (2007).

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♦ If a state law contained the word jail and the word local correctional facility, local correctional institution, county or city facility etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

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Sexual intercourse without consent MONT. CODE ANN. § 45-5-503 (2005).							
Nebraska Sexual abuse of an inmate or parolee. NEB. REV. STAT. ANN. § 28-322.01 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the first degree; penalty NEB. REV. STAT. 28-322.02 (LexisNexis 2005). Sexual abuse of an inmate or parolee in the second degree; penalty NEB. REV. STAT. § 28-322.03 (2005).		✓	✓		Volunteers not covered	✓	✓
Nevada Voluntary sexual conduct between	✓	✓	✓	✓	Community corrections is	✓ ²³	The defense of consent may be

²³ In Nevada, the inmate is penalized for the misconduct. NEV. REV. STAT. ANN. § 212.187(2) (2006).

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county or city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

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prisoner and another person; penalty. NEV. REV. STAT. ANN. § 212.187 (2006).					not covered		implied because the inmate is also penalized for the conduct
New Hampshire Aggravated Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A2: (LexisNexis 2006). Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A3: (2006).		✓			Volunteers not covered	✓	Consent is not addressed
New Jersey Sexual assault N.J. STAT. ANN. § 2C:14-2 (2006).		✓	✓		Volunteers not covered	✓	Consent is not addressed
New Mexico Criminal sexual penetration. N.M. STAT. ANN. § 30-9-11 (2006).		✓			Volunteers not covered	✓	Consent is not addressed

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county or city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

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STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
New York Sexual misconduct. NY PENAL LAW § 130.20 (Consol. 2006). Rape in the third degree. NY PENAL LAW § 130.25 (Consol. 2006).		✓	✓		Volunteers not covered Health care contractors are covered. Other contracted employees are not. ²⁴	✓	✓
North Carolina Intercourse and sexual offenses with certain victims; consent no defense N.C. GEN. STAT. § 14-27.7 (2006).	✓	✓	✓	✓	Volunteers not covered	✓	✓
North Dakota Sexual abuse of wards. N.D. CENT. CODE § 12.1-20-06 (2006).	✓	✓	✓	✓	Volunteers not covered	✓	Consent is not addressed

²⁴ In New York, employees who perform professional duties including providing custody, medical or mental health services, counseling services, educational programs or vocational training are covered under the statute. NY PENAL LAW § 130.05(3)(e)(i) (2006).

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county or city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “arrest” or covers law enforcement personnel and contains phrases such as “having custody over the victim”, “in the offenders care under authority of law”, or “under the supervision of a city or county” then we assumed that the law intended to cover arrest.

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STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
Sexual assault. North Dakota Continued N.D. CENT. CODE § 12.1-20-07 (2006).							
Ohio Sexual Battery, OHIO REV. CODE ANN. § 2907.03 (LexisNexis 2006).	✓	✓	✓	✓	Volunteers not covered	✓	Consent is not addressed
Oklahoma Rape Defined OKLA. STAT. tit. 21, § 1111 (2005). Rape in the first degree - second degree OKLA. STAT. tit.21, § 1114 (2005). Forcible sodomy OKLA. STAT. tit. 21, § 888 (2005).	✓	✓	✓	✓	Volunteers not covered	✓	Consent is not addressed
Oregon	✓	✓	✓	✓	Volunteers not	✓	✓

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♦ If a state law contained the word jail and the word local correctional facility, local correctional institution, county or city facility etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

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STATE AND STATUTE	Covers Law Enforcement*	Covers Jails	Covers Lock-ups [♦]	Covers Arrest [∇]	All Personnel Covered ⁺	Some Forms are Punishable as a Felony	Consent is Not a Defense
First Degree Custodial Sexual Misconduct OR. REV. STAT. § 163.452 (2006). Second Degree Custodial Sexual Misconduct OR. REV. STAT. § 163.454 (2006).					covered		
Pennsylvania Institutional sexual assault 18 PA. CONS. STAT. § 3124.2 (2005).		✓			Volunteers not covered	✓	Consent is not addressed
Rhode Island Correctional employees — sexual relations with inmates — felony R.I. GEN. LAWS § 11-25-24 (2006).		✓ ²⁵	✓ ²⁶		Volunteers not covered	✓	Consent is not addressed

²⁵ In Rhode Island, the law covers employees of the Department of Corrections. According to the structure of Rhode Island’s Department of Corrections, all jails are governed under the state DOC. R.I. GEN. LAWS § 11-25-24 (2006).

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♦ If a state law contained the word *jail* and the word *local correctional facility*, *local correctional institution*, *county* or *city facility* etc., then we assumed that the state law intended to cover other local facilities such as lock-ups.

∇ If a state law contained the word “*arrest*” or covers law enforcement personnel and contains phrases such as “*having custody over the victim*”, “*in the offenders care under authority of law*”, or “*under the supervision of a city or county*” then we assumed that the law intended to cover arrest.

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South Carolina Sexual misconduct with an inmate, patient or offender S.C. CODE ANN. § 44-23-1150 (2005).		✓			✓	✓	Consent is not addressed
South Dakota Sexual acts prohibited between prison employees and prisoners. S.D. CODIFIED LAWS § 24-1-26.1 (2006).		✓			Volunteers not covered	✓	Consent is not addressed
Tennessee Sexual contact with inmates	✓	✓	✓ ²⁷	✓	✓	✓	Consent is not

²⁶ In Rhode Island, the law covers employees of the Department of Corrections. According to the structure of Rhode Island’s Department of Corrections, all intake centers (lock-ups) are governed under the state DOC. R.I. GEN. LAWS § 11-25-24 (2006).

²⁷ Tennessee defines custody as “restraint by a public servant pursuant to an order of a court” and thus would appear to cover court holding facilities. TENN. CODE ANN. § 39-16-601(2) (2006).

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TENN. CODE ANN. § 39-16-408 (2006). Sexual battery by an authority figure TENN. CODE ANN. § 39-13-527 (2005).							addressed
Texas Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with person in custody. TEX. PENAL CODE ANN. § 39.04 (Vernon 2005).	✓	✓	✓	✓	✓	✓	Consent is not addressed
Utah Custodial sexual relations – custodial sexual misconduct – definitions – penalties – defenses UTAH CODE	✓	✓	✓	✓	✓	✓	✓

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ANN. § 76-5-412 (2006).							
Vermont Sexual exploitation of an inmate VT. STAT. ANN. tit. 13, § 3257 (2006).					✓		Consent is not addressed
Virginia Carnal knowledge of an inmate, parolee, probationer, or pretrial or post-trial offender; penalty. VA. CODE ANN. § 18.2-64.2 (2006).		✓	✓		✓	✓	Consent is not addressed
Washington Custodial sexual misconduct in the first degree WASH. REV. CODE ANN. § 9A.44.160 (LexisNexis 2006). Custodial sexual misconduct in the second degree	✓	✓	✓	✓	Volunteers not covered	✓	✓

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WASH. REV. CODE ANN. § 9A.44.170 (2006).							
West Virginia Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalty W. VA. CODE ANN. § 61-8B-10 (2006).		✓	✓		Volunteers not covered	✓	✓
Wisconsin Second Degree Sexual Assault WIS. STAT. ANN. § 940.225 (West 2006). Abuse of residents of penal facilities WIS. STAT. ANN. § 940.29 (West 2006).		✓	✓		✓	✓	Consent is not addressed
Wyoming	✓	✓	✓	✓	Volunteers not covered	✓	Consent is not addressed

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Sexual assault in the second degree WYO. STAT. ANN. § 6-2-303 (2006).							
United States (NOTE: This law also covers all federal United States territories including Guam, Northern Mariana Islands, Puerto Rico and the Virgin Islands) Aggravated sexual abuse 18 U.S.C.S. § 2241 (LexisNexis 2006). Sexual abuse 18 U.S.C.S. § 2242 (LexisNexis 2006). Sexual abuse of a minor or ward 18 U.S.C.S. § 2243 (LexisNexis 2006). Abusive sexual contact 18 U.S.C.S. § 2244 (LexisNexis 2006).	√ ²⁸	√	√	√	√	√	Consent is not addressed

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