

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

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Alabama	HB4: Amendment 621 of the Constitution of Alabama	Custodial Sexual Misconduct	<p>§ 2(a): It shall be unlawful for any employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.</p> <p>§2(b): It shall be unlawful for any probation or parole officer to engage in sexual conduct with a person who is under the supervisory, disciplinary, or custodial authority of the officer engaging in the sexual conduct with the person</p>	<p>§1(1): Custody. Custody is defined as any of the following: (a) pretrial incarceration or detention; (b) incarceration or detention under the sentence or commitment to a state or local penal institution, any detention facility for children or youthful offenders; (c) parole or mandatory supervised release; (d) electronic home detention; (e) parole or probation.</p> <p>§ 1(2): Employee. An employee or contractual employee of any governmental agency of the state, county, or municipality that has by statute, ordinance, or court order the responsibility for care, control, or supervision of pretrial or sentenced persons in a penal system or detention facility.</p> <p>§1(3): Sexual Conduct. Any of the following acts: (a) sexual intercourse.- this shall have its ordinary meaning; (b) sexual contact- any known touching for the purpose of sexual arousal, gratification, or abuse of the following: (1) the sexual or other</p>	<p>§2(c): Any person violation subsection (a) or (b) shall upon conviction, be guilty of custodial sexual misconduct</p> <p>§2(d): Custodial Sexual Misconduct is a Class C Felony</p> <p>Penalties for a Class C Felony ARE as follows: (1) a sentence of imprisonment for not more than 10 years or less than 1 year and 1 day; (2) A sentence to pay a fine of not more than \$5,000.00</p>	<p>§2(e): Consent of the person in custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality, or a person who is on probation or on parole shall not be a defense to a prosecution under this act.</p>

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Alabama cont'				intimate parts of the victim by the actor, (2) the sexual or other intimate parts of the actor by the victim, (3) the clothing covering the immediate area of the sexual or other intimate parts of the victim or actor; (c) Sexual Intrusion- any intrusion, however slight by any object or any part of the body of a person into the genital, anal, or oral opening of the body of another person if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.		

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Alaska	Alaska Stat. § 11.41.410 (West 1998 and 2002 Supp). Alaska Stat. § 11.41.420 (West 1998 and 2002 Supp)	§ 11.41.410. Sexual assault in the first degree. § 11.41.410. Sexual assault in the second degree. § 11.41.425 Sexual assault in the third degree. § 11.41.427 Sexual assault in the fourth degree. § 12.55.125: Sentences of imprisonment for felonies. § 11.41.432: Defenses. § 11.41.470: 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, (1) the offender engages in sexual contact with another person without consent of that person; (2) the offender engages in sexual contact with a person (A) who the offender knows is mentally incapable; and (B) who is in the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the state. § 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	§ 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 provided it is a first time, unarmed offense, and during the commission of said offense, the victim did not sustain serious physical injury. § 11.41.420(b): Sexual assault in the second degree is a class B felony. § 12.55.125(d) A defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 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.	§ 11.41.432. Defenses: (a) It is a defense to a crime charged under AS 11.41.410(a)(3), AS 11.41.420(a)(2), AS 11.41.420(a)(3) or AS 11.41.425 that the offender is: (1) mentally incapable; or (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.

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Alaska cont'			term of imprisonment or period of temporary commitment.		<p>§ 11.41.427 (b): Sexual assault in the fourth degree is a class A misdemeanor.</p> <p>§ 12.55.135(a): A defendant convicted of a class A misdemeanor may be sentenced to a definite term of imprisonment of not more than one year.</p>	

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Arizona	Ariz Rev. Stat. Ann. § 13-1419. (West 1989 and Supp. 2004).	§13-1419. Unlawful sexual conduct; correctional employees; prisoners; classification	<p>§13-1419(A): A person who is employed by the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail, or who contracts to provide services with the state department of corrections, the department of juvenile corrections a private prison facility or a city or county jail commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who is in the custody of the department or with an offender who is under the supervision of the department or a city or county.</p> <p>(B): A prisoner who is in the custody of the state department of corrections or an offender who is on release status and who is under the supervision of the state department of corrections commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who is employed by the state department of corrections or a private prison facility or who contracts to provide services with the state department of corrections or a private prison facility.</p>	NOTE: The statute makes it illegal for the prisoner to engage in any sexual contact with a custodian.	<p>§ 13-1419(D): Unlawful sexual conduct is a class 5 felony.</p> <p>§13-701(C)(4): The penalty for a class 5 felony shall be imprisonment for one and one half years, provided it is the first offense 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 or was incarcerated in a city or county jail.</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 or was incarcerated in a city or county jail.</p>

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Arkansas	<p>Ark. Code Ann. § 5-14-124 (West 2003).</p> <p>§ 5-4-401 (Michie 1987 and Supp. 2003).</p> <p>§ 5-4-201 (Michie 1987 and Supp. 2003).</p>	<p>§ 5-14-124. Sexual assault in the first degree.</p>	<p>§ 5-14-126 (a): A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, who is less than eighteen (18) years of age and (1)(A) the actor is employed with:</p> <p>(i) the Department of Correction; (ii) Department of Community Correction; (iii) the Department of Human Services; (iv) any city or county jail; or (v) any juvenile detention facility; and</p> <p>(B) the victim is in the custody of: (i)(a) the Department of Correction; (b) the Department of Community Correction; (c) the Department of Human Services; (d) any city or county jail; or (e) any juvenile detention facility; or (ii) their contractors or agents.</p>	<p>§ 5-14-101 (1): "deviate sexual activity" means any act of sexual gratification involving:</p> <p>(A) the penetration, however slight, of the 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>§ 5-14-124(c): Sexual assault in the first degree is a Class A felony.</p> <p>§ 5-4-401(a)(2): The penalty for a Class A felony shall be not less than 6 years nor more than 30 years imprisonment; and/or</p> <p>§ 5-4-201(a)(1): a fine not to exceed \$15,000.</p>	<p>§ 5-14-124(b): It is no defense to prosecution under this section that the victim consented to the conduct.</p> <p>Marriage is a defense.</p>

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California	Cal. Penal Code §289.6 (West 1999 and Supp. 2003).	§289.6. Employee or officer of detention facility; Engaging in sexual activity with consenting adult confined in detention facility.	<p>§289.6(a)(2): An employee or officer of a public entity detention facility, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility, or person or agent of a public or private entity under contract with a detention facility, or a volunteer of a private or public entity detention facility, who engages in sexual activity with a consenting adult who is confined in a detention facility, is guilty of a public offense. (3) An employee with a dept, board or authority under the Youth & Adult Correctional Agency or a facility under contract with a dept, board or authority under the Youth & Adult Correctional Agency, who during the course of employment directly provides treatment, care, control, or supervision of inmates, wards or parolees, and who engages in sexual activity with a consenting adult who is an inmate, ward or parolee, is guilty of a public offense.</p> <p>§289.6(h): Any violation of paragraph (2) or (3) of subdivision (a) shall be punished by imprisonment in a county jail not exceeding one year or by a fine not exceeding \$10,000, or by both fine and imprisonment</p> <p>§289.6(i): Any person previously convicted of a violation of this section shall, upon a subsequent violation be guilty of a felony.</p>	<p>§ 289.6(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 or to physical contact or penetration made pursuant to a lawful search or bona fide medical examinations or treatments, including clinical treatments.</p>

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Colorado	<p>Colo. Rev. Stat. §§ 18-3-404 & 18-7-701. (West 2003).</p>	<p>§18-3-404. Unlawful Sexual Contact.</p> <p>§ 18-7-701. Sexual Conduct in Penal Institutions.</p>	<p>§18-3-404 (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(1): An employee, contract employee or volunteer of a criminal justice facility or an individual who performs work or volunteer functions in a criminal justice facility or for the department of corrections who engages in sexual conduct with a person who is in lawful custody in a criminal justice facility commits the offense of sexual conduct in a penal institution.</p>	<p>§ 18-7-701 (2)(a): “Criminal justice facility” means a correctional facility, as defined in § 17-1-102, operated by or under contract with the department of corrections or a jail.</p> <p>§ 18-7-701(2)(b): “Sexual conduct” means sexual contact as defined in section 18-3-401(4), sexual intrusion as defined in section 18-3-401 (5), or sexual penetration as defined in section 18-3-401(6). It does not include acts of an employee of a criminal justice facility or a person who has custody of another person that are performed to carry out the necessary duties of the employee or the person with custody.</p> <p>“Sexual contact” means the knowing touching of the victim’s intimate parts by the actor, or of the actor’s intimate parts by the victim, or the knowing touching of the clothing 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,</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>§ 18-7-701(3): Sexual conduct in a penal institution is a class 5 felony if the sexual conduct includes sexual intrusion or sexual penetration and is committed by an employee or contract employee of a criminal justice facility or by an employee, contract employee, or individual who performs work functions in a criminal justice facility or for the department of corrections.</p> <p>§ 18-7-701(4): Sexual conduct in a penal institution is a class 6 felony if: (a) the sexual conduct consists solely of sexual contact and is committed by an employee or contract employee of a</p>	

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Colorado cont'				<p>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 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>	<p>criminal justice facility or by an employee, contract employee, or individual who performs work functions in a criminal justice facility or for the department of corrections; or (b) the sexual conduct includes sexual intrusion or sexual penetration and is committed by a volunteer.</p> <p>§ 18-7-701(5): Sexual conduct in a penal institution is a class 1 misdemeanor if the sexual conduct consists solely of sexual contact and is committed by a volunteer.</p> <p>§ 18-1-105(V)(A): The penalty for a class 4 felony shall be imprisonment for a term ranging from 2-6 years with a 3 year mandatory period of parole and/or</p> <p>§ 18-1-105(III)(A): a fine ranging from \$2,000 to \$500,000.</p>	

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Connecticut	<p>Conn. Gen. Stat. Ann. § 53a-71 (West 1994 and Supp. 2003).</p> <p>Conn. Gen. Stat Ann. § 53a-73a (West 1994 and Supp. 2003).</p>	<p>§ 53a-71. Sexual assault in the second degree: Class C or B felony.</p> <p>§ 53a-73a. Sexual assault in the fourth degree: Class A misdemeanor or Class D felony.</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</p> <p>§ 53a-65(3): "Sexual contact" means</p>	<p>§ 53a-71(b): Sexual assault in the second degree is a class C felony or, if the victim of the offense is under 16 years of age, a Class B felony and any person found guilty under this section shall be sentenced to a term of imprisonment of which 9 months of the sentence imposed may not be suspended or reduced by the court.</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, or if the victim of the offense is under 16 years of age, a Class D felony.</p> <p>§ 53a-36(1): The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.</p> <p>§ 53a-35(7): The</p>	

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					penalty for a Class D felony shall be imprisonment for not less than one, but no more than 5 years.	
Delaware	De. Code Ann. tit. 11, ch. 5, § 1259; ch. 42, § 4205 (Michie 1995 and Supp. 2003).	§ 1259. Sexual relations in detention facility; Class G felony § 4205. Penalties	§ 1259: A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility.	NOTE: The statute also makes it illegal for a prisoner to engage in sexual relations with an employee at the detention facility.	§ 1259: Violation of this section shall be a class G felony. § 4205(b)(7): The penalty for a class G felony shall be imprisonment at Level V for a term of up to 2 years, and § 4205(k): The penalty may include fines and penalties as the court deems appropriate.	§ 1259: It shall be no defense that such conduct was consensual.

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District of Columbia	D.C. Code Ann. §§ 22-3001, 22-3013, 22-3014, & 22-3017 (2001 and Supp.2003).	<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>§ 22-3017. 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 (6): “Official custody” means: (A) Detention following arrest for an offense; following surrender in lieu of an arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion; (b) custody for purposes incident to any detention described in subparagraph (a) of this paragraph, including transportation, medical diagnosis or treatment, court appearances, work and recreation; or (c) probation or parole.</p>	<p>§ 22-3013(2): The penalty for first degree sexual abuse of a ward shall be imprisonment for a term not to exceed 10 years, and may include a fine not to exceed \$100,000.</p> <p>§ 22-3014 (2): The penalty for second degree sexual abuse of a ward shall be imprisonment for a term not to exceed 5 years and may include a fine not to exceed \$50,000.</p>	<p>§ 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	Fl. Stat. Ann. §§ 944.35, 775.082, 775.083, 794.011 (Harrison's 1991 and Supp. 2003).	<p>§ 944.35. Authorized use of Force; malicious battery & sexual misconduct prohibited; reporting required; penalties § 775.082. Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.</p> <p>§ 775.083. Violent offenses committed against law enforcement officers, correctional officers, state attorneys, assistant state attorneys, justices, or judges.</p> <p>§ 794.011. Sexual battery.</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 and prevention methods and techniques.</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(3)(b)(4): Notwithstanding prosecution, any violation of this section, as determined by the administrator of the facility, shall constitute sufficient cause for dismissal from employment with the department, and such person may not again be employed in any capacity in connection with the correctional 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 §</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 fine for a felony in the third degree is</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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Florida cont'			<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>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>\$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 2002).	§ 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	Haw. Rev. Stat. Ann. §§ 707-731, 707-732, 707-660, & 707-700 (Michie 2003).	<p>§ 707-700. Definitions of terms in this chapter.</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 (i) in a state correctional facility, (ii) by a private company providing services at a correctional facility, (iii) by a private company providing community based residential services to persons committed to the director of public safety and having received notice of this statute, (iv) by a private correctional facility operating in the state of Hawaii, or (v) as a law enforcement officer, knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody.</p> <p>§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, (ii) by a private company providing services at a correctional facility, (iii) by a private company providing community based residential services to persons committed to the director of public safety and having received notice of this statute, or (iv) by a private correctional facility operating in the state of Hawaii knowingly subjects to sexual contact an imprisoned person, a person committed to the director of public safety, or a</p>	<p>§ 707-700 "Sexual penetration" means vaginal intercourse, anal intercourse, fellatio, cunnilingus, anilingus, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required. For purposes of this chapter, each act of sexual penetration shall constitute a separate offense.</p> <p>"Sexual contact" means any touching of the sexual or other intimate parts of a person not married to the actor, or of the sexual or other intimate parts of the actor by the person, whether directly or through the clothing or other material</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 not to exceed a term of 10 years. The penalty for a class C felony shall be imprisonment for a term not to exceed 5 years. (2) The minimum length of imprisonment shall be determined by the paroling authority.</p>	

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			person residing in a private correctional facility operating in the state of Hawaii, or causes such person to have sexual contact with the actor.	intended to cover the sexual or other intimate parts.		
Idaho	Idaho Code § 18-6110 (Michie 1997 & Supp. 2003).	§18-6110. Sexual contact with a prisoner.	§18-6110: 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: "Sexual contact" means sexual intercourse, genital-genital, manual-anal, manual-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex. § 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 through the state of	§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
				Idaho.		
Illinois	720 I.L.C.S. ch. 5 §§ 11-9.2 & 12-12. (West 1993 and Supp. 2004).	§ 11-9.2. Custodial Sexual Misconduct. § 12-12. Definitions.	<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</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 person in custody is a defense.</p>

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Illinois cont'				<p>supervision of pretrial or sentenced persons in a penal system, (ii) a contractual employee of a penal system, or (iii) a contractual employee of a treatment and detention facility.</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,</p>		

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				fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.		
Indiana	Ind. Stat. Ann. §§ 35-44-1-5, & 35-20-2-7. (Lexis 1998 and Supp. 2004.	§ 35-44-1-5. Sexual relations between a service provider and a detainee. § 35-50-2-7. Definitions.	§ 35-44-1-5 (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 (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. § 35-50-2-1(c): The minimum penalty for a Class D felony is imprisonment for 2 years.	§ 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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Iowa	I.C.A. §§ 709.16, 702.17, & 903.1. (West 1993 and Supp. 2003.).	§ 709.16. Sexual misconduct with offenders and juveniles. § 702.17. Sex act. § 903.1. Maximum sentence for misdemeanants.	§ 709.16 (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. (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. (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.	§ 709.16(2): a “juvenile placement facility” means juvenile detention and juvenile shelter care homes. § 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	§ 709.16: Sexual misconduct with offenders is an aggravated misdemeanor. § 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.	

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				person licensed to do 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 2002)	§ 21-3520. Unlawful sexual relations.	<p>§ 21-3520 (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 who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate; or</p> <p>(2) the offender is a parole officer, or the employee of a contractor who is under contract to provide supervision services for persons on parole, conditional release or post-release supervision, and the inmate has been released on parole, conditional release or post-release supervision under direct supervision and control of the offender; or</p> <p>(3) the offender is a law enforcement officer, jail employee, or employee of a contractor and the person is 16 or older</p>		§ 21-3520(c): "Unlawful sexual relations" is a severity level 10 person felony.	<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 lawful confinement; or</p> <p>(4) the offender is a law enforcement officer, employee of a juvenile detention facility or sanctions house, or employee of a contractor and the person is 16 years of age or older under lawful confinement; or</p> <p>(5) the offender is an employee of the juvenile justice authority or the employee of a contractor under contract to provide services to such juvenile correctional facility and the person is 16 years of age or older under lawful confinement; or</p> <p>(6) the offender is an employee of the juvenile justice authority or employee of a contractor, and the person is 16 or older and (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	K.R.S.A. §§ 510.120, 520.010, 532.090 (Lexis 2003).	<p>§ 510.120. Sexual abuse in the second degree.</p> <p>§ 520.010. Definitions.</p> <p>§ 532.010. Sentence of imprisonment for a misdemeanor.</p>	<p>§ 510.120(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 offense;</p> <p>(b) alleged or found to be delinquent;</p> <p>(c) held for extradition or as a material witness; or</p> <p>(d) otherwise confined pursuant to an order of court for law</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>	<p>§ 510.120(1): Marriage at the time of sexual contact is a defense.</p>

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				enforcement purposes.		
Louisiana	La. Rev. Stat. Ann. § 14: 134.1 (West 1986 and Supp. 2003).	§ 14: 134.1. Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions.	§ 134.1 (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): Whoever violates a provision of this section shall be fined not more than \$10,000 or imprisoned for a term not to exceed 10 years, or both. .	

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Maine	Me. Rev. Stat. Ann. tit. 17-A, §§ 253 & 1252 (B) (West 1983 & Supp. 2003).	§ 253. Gross sexual assault. § 1252. Imprisonment for crimes other than murder.	<p>§ 253(2): A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>(E) The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person; violation of this paragraph is a Class B crime.</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</p>	<p>§ 251(1)(C): "Sexual act" means</p> <p>(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and genitals of the other;</p> <p>(2) Any act between a persona and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or</p>	<p>.</p> <p>§ 253(6): In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the second step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor. A: When the prior conviction is a Class A crime, enhance the basic period of incarceration by at least 4 years of</p>	<p>§ 253(2)(E), (F) & (G): Marriage is a defense.</p> <p>§ 253(3): It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when the other person is a patient of the actor and has a reasonable belief that he actor is administering the substance for medical or dental examination or treatment.</p>

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			or residence recognizes that person as a person with mental retardation.	(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.	imprisonment; B: when the prior conviction is a Class B crime, enhance the basic period of incarceration by at least 2 years of imprisonment; C: when the prior conviction is a Class C crime, enhance the basic period of incarceration by at least one year of imprisonment. § 1252(2)(B): In the case of a Class B crime, the court shall set a definite period not to exceed 10 years.	
Maryland	Md. Code Ann. § 3-314.(Michie 1996 and Supp. 2003).	§ 3-314: Sexual conduct between correctional or Department of Juvenile Services employee and inmate or confined child.	§ 3-314(b): A correctional employee may not engage in vaginal intercourse or a sexual act with an inmate. (c): An employee or licensee of the Department of Juvenile Services may not engage in vaginal intercourse or a sexual act with an individual confined in a child care institution licensed by the Department, a detention center for juveniles, or a facility for juveniles, or a facility for juveniles....	§ 3-314(a)(2)(i): "Correctional employee" means a 1. a correctional officer, as defined in § 8-201 of the Correctional Services Article; or (2) managing official or deputy managing official of a correctional facility. (ii) "Correctional employee" includes a sheriff, warden, or other official who is appointed or employed to supervise a correctional facility. (3)(i) "Inmate has the meaning stated in § 1-101 of this article. (ii) "Inmate" includes an individual confined in a community adult rehabilitation center.	§ 3-314(d): A person who violates this section is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$3,000, or imprisonment for not more than 3 years, or both.	

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Massachusetts	M.G.L.A. 268 § 21A (West 2004).	§ 21A: Punishments for sexual relations with inmate.	§ 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.	§ 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 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	§ 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.	§ 21A: An inmate shall be deemed incapable of consent.

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
				chapter 272.		
Michigan	Michigan Statutes Ann. Ch. 750 § 520c (West 2003).	§ 520c: Second degree criminal sexual conduct in the second degree; felony.	<p>§520c (1) : A person is guilty of criminal sexual conduct in the second degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:</p> <p>(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in § 520b(1)(f)(i) to (v). (See definitions)</p> <p>(g) The actor knows or has reason to know that the person is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(i) That the other person is under jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or volunteer with, the dept of corrections who knows that the other person is under the jurisdiction of the dept of corrections.</p> <p>(j) that other person is under the</p>	<p>§ 520b(1)(f)(i): When the actor overcomes the victim through the actual application of physical force or violence.</p> <p>(ii): When the actor coerces the victim to submit by threatening to use force of violence on the victim, and the victim believes the actor has the present ability to execute these threats</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>	§520c (2): Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.	

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			<p>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>(l) The actor knows or has reason to know that a court has detained the victim in a facility as a result of the victim having been found responsible for an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or volunteer with, the facility in which the victim is detained or to which the victim was committed.</p>	<p>(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. Ann. Stat. §§ 609.344 & 609.345, & 609.341 ((West 2003).	<p>§ 609.344. Criminal sexual conduct in the third degree.</p> <p>§ 609.345. Criminal sexual conduct in the fourth degree.</p> <p>§ 609.341. Definitions.</p>	<p>§ 609.34 (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 supervision of the correctional system.</p> <p>§ 609.345 (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,</p>	<p>§ 609.341 (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 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</p>	<p>§ 609.344 (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>§ 609.345 (2): A person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine not more than \$20,000 or both.</p>	<p>§ 609.344 (1)(m): Consent by the complainant is not a defense.</p> <p>§ 609.345 (1)(m): Consent by the complainant is not a defense.</p>

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			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>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>		
Mississippi	Miss. Code Ann. §§ 97-3-104 & 97-3-97. (Lexis Supp. 2004).	<p>§ 97-3-104. Sexual penetration of incarcerated offenders by law enforcement officers or employees; offense; punishment.</p> <p>§ 97-3-97. Sexual battery; definitions.</p>	§ 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, 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(a):Sexual penetration includes cunnilingus, fellatio, buggery, or pederasty, any penetration of the genital or anal openings of another person's body by any part of a person's body, and insertion of any object into the genital or anal openings of another person's body.	§ 97-3-104: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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Missouri	Mo. Rev. Stat. §§ 217.405, 217.410, 558.011.1 (West 1996 & Supp. 2003).	<p>§ 217.405. Offender abuse; penalty; employees not to use physical force, exceptions.</p> <p>§ 217.410. Abuse of offender, duty to report; penalty – confidentiality of report, immunity from liability – harassment prohibited.</p> <p>§ 558.011.1. Sentence of imprisonment terms – conditional release.</p>	<p>§ 217.405 (1): Except as provided in subsection 3 of this section, a person commits the crime of “offender abuse” if he knowingly injures the physical well-being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person.</p> <p>(3) No employee of the department shall use any physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender.</p> <p>§ 217.410 (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</p>	<p>§ 217.410: Employees of the department are required to report reasonable belief of abuse.</p>	<p>§ 217.405(2): Offender abuse is a class C felony.</p> <p>§ 217.410(3): Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.</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>	

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			<p>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>§ 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 2003).	<p>§ 45-5-502: Sexual assault</p> <p>§ 45-5-503: Sexual intercourse without consent</p>	<p>§ 45-5-502(1): A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault..</p> <p>(5) Consent is ineffective under this section if:</p> <p>(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search.</p> <p>§ 45-5-503(1): A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent.</p>		<p>§45-5-502(2): A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.</p> <p>§ 45-5-503(3)(d): If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the</p>	Consent is not a defense.

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					offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.	
Nebraska	R.R.S. Neb. §§ 28-322.01, 28-322.02, 28-218, & 28-322.03. (West 1995 & Supp. 2003).	<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>§ 28-218. Terms, defined.</p> <p>§ 28-105. Penalties.</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 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>§ 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 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</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 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</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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Nebraska cont'				intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party; (6): Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen.	thousand dollars fine, or both	

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Nevada	Nev. Rev. Stat. Ann. §§ 212.187 & 193.130. (NRS 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>NOTE: Unlike many laws in other states, this law addresses sexual conduct between prisoners and gives a "duty defense" to correctional officers.</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.	

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New Hampshire	N.H. Rev. Stat. Ann. §§ 632-A(2) 632-A(3) (Michie 1996 and Lexis Supp. 2003).	<p>§ 632-A:2. Aggravated Felonious Sexual Assault.</p> <p>§632-A:3. Felonious Sexual Assault.</p> <p>§ 625:9. Classification of crimes.</p>	<p>§632-A:2(I): A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:</p> <p>(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:</p> <p>(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or</p> <p>(2) When the actor is a probation or parole officer or juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.</p> <p>§632-A:3: A person is guilty of a class B felony if such person:</p>		<p>§ 632-A:3: A person is guilty of a class B felony if such person:</p> <p>(I): Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA § 632-A:2.</p> <p>§ 625:9: The penalty for a class B felony is imprisonment of 1-7 years and fines.</p>	Consent is not a defense.

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			<p>(I): Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA § 632-A:2; or</p> <p>(IV) Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:</p> <p>(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or the juvenile detention facility where the actor is employed; or</p> <p>(b) when the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.</p>			
New Jersey	N.J. Stat. Ann. §§ 2C: 14-2, 2C: 30-2, & 2A-61B-1. (West 1995 and Supp. 2003).	<p>§ 2C: 14-2. Sexual assault</p> <p>§ 2C: 30-2. Official Misconduct.</p> <p>§ 2C: 51-2. Forfeiture of Public Office</p> <p>§ 2A-61B-1. Definitions.</p>	<p>§ 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:</p> <p>(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.</p> <p>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:</p> <p>(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status.</p> <p>§ 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</p>	<p>§ 2A-61B-1(a)(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.</p>	<p>§ 2C: 14-2(b): Aggravated sexual assault is a crime of the first degree.</p> <p>§ 2C: 14-2(c): Sexual assault is a crime of the second degree.</p> <p>§ 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.</p> <p>§ 2C: 43-6(a)(1): The</p>	

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			<p>a benefit: He commits an act relating to 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>penalty for a crime of the first degree shall be imprisonment for a term of between 10 and 20 years.</p> <p>§ 2C: 43-6(a)(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 & § 31-18-15.A.(3). (Michie 1978 and Supp. 2003).	<p>§ 30-9-11. Criminal sexual penetration.</p> <p>§ 31-A-15.A.(3). Sentencing authority; noncapital felonies; basic sentences & fines; parole authority; meritorious deductions.</p>	<p>§ 30-9-11.D: 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>	§ 30-9-11.A: Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.	<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 §§ 130.00, 130.05, 130.20, 130.25, 130.52, & 130.60; §§ 70.02 & 70.15. (West 1998 and Supp. 2004).	<p>§ 130.00. Definitions.</p> <p>§ 130.05. Sex offenses; lack of consent.</p> <p>§ 130.20. Sexual misconduct.</p> <p>§ 130.25. Rape in the third degree.</p> <p>§ 130.52. Forcible touching.</p> <p>§ 130.60. Sexual abuse in the second degree.</p> <p>§ 70.02. Sentences of imprisonment for a violent felony offense.</p> <p>§ 70.15. Sentences of imprisonment for misdemeanors and</p>	<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 anal or oral sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances.</p> <p>(3) A person is deemed incapable of</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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New York cont'		violation.	<p>consent when he or she is:</p> <p>(e) committed to the care and custody of the state department of correctional services or a hospital 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 state department of correctional services or a hospital; or</p> <p>(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 oral sexual conduct or anal sexual conduct with another person without such person's consent. <p>§ 130.25: 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: 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: A person is guilty of sexual</p>	<p>professional services in a state correctional facility.</p> <p>§ 130.00</p> <p>1.: "Sexual intercourse" has its ordinary meaning and occurs upon any penetration, however slight.</p> <p>2: "Oral Sexual Conduct or Anal Sexual Conduct" 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.</p> <p>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.</p> <p>8.: "Forcible compulsion" means to compel by either: a. use of physical force; or b. a threat, express or implied, which places a person in fear of immediate death or physical injury to himself, herself or another person, or in fear that he, she or</p>	not exceed one year.	

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			abuse in the second degree when he or she subjects another person to sexual contact and when such other person is: 1. incapable of consent by reason of some factor other than being less than seventeen years old.	another person will immediately be kidnapped.		
North Carolina	N.C. Gen. Stat. §§ 14-27.7. (Lexis 2004).	§ 14-27.7. Intercourse and sexual offenses with certain victims; consent no defense.	§ 14-27.7(a):: ... 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): A violation of this section is a class E felony.	§ 14-27.7(a): Consent is not a defense to a charge under this section.

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North Dakota	N.D. Cent. Code §§ 12.1-20-06 & 12.1-20-07; § 12.1-32-01. (Michie 2003).	<p>§ 12.1-20-06. Sexual abuse of wards.</p> <p>§ 12.1-20-07. Sexual assault.</p> <p>§ 12.1-32-01. Classification of offenses; penalties.</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 person, or who causes another person to have sexual contact with that person is guilty of an offense if:</p> <p>(d) The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority</p>		<p>§ 12.1-20-06: Sexual abuse of wards is a class C felony.</p> <p>§12.1-20-07(2): Sexual assault is a class C felony.</p> <p>§12.1-32-01(4): The penalty for a class C felony shall be imprisonment for a maximum of 5 years, a fine of \$5,000, or both.</p>	

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			over that other person.			
Ohio	Ohio Rev. Code Ann. §§ 2907.01 & 2907.03; § 2929.14. (Page's 1998 and Supp. 2003).	§ 2907. Sexual Offenses. § 2929. Penalties and sentencing.	§2907.03 (A): No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person. (11) The person is confined in a detention facility, and the offender is an employee of that detention facility.	§ 2907.01(A): "Sexual conduct" means vaginal intercourse between a male and female; anal intercourse; fellatio, and cunnilingus between persons regardless of sex; and, without privilege to do so, the insertion, however slight, of any part of the body or any instrument, apparatus, or other object into the vaginal or anal cavity of another. Penetration, however slight, is insufficient to complete vaginal or anal intercourse.	§ 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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Oklahoma	Okla. Stat. Ann. tit. 21, §§1111, 1114, 1115, & 1116. (West 1983 and Supp. 2003).	<p>§ 1111. Rape Defined</p> <p>§ 1114. Rape in the first degree - second degree.</p> <p>§ 1115. Punishment for rape in the first degree.</p> <p>§ 1116. Rape in the second degree; a felony.</p>	<p>§ 1111(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:</p> <p>7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim.</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 imprisonment for a</p>	§1111(A): Marriage is a defense.

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			<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>		term of 1-15 years.	
Oregon	No Legislation ¹					

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Pennsylvania	PA Consolidated Stat. Title 18 §§ 3124.2 & 106. (Supp. 2003).	§ 3124: Institutional sexual assault. § 106. Classes of offenses.	§ 3124.2(a): Except as provided in Sections 3121 (Relating to Rape), 3122.1 (Relating to Statutory Sexual Assault), 3123 (Relating to Involuntary Deviate Sexual intercourse), 3124.1 (relating to Sexual Assault) and 3125 (Relating to Aggravated Indecent Assault), A person who is an employee or agent of the Department of Corrections or a county corrections authority, state or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse, or indecent contact with an inmate, detainee, patient	§ 3124.2(b): As used in this section, the term "agent" means a person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution who is employed by any state or county agency or any person employed by an entity	§ 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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			or resident.	providing contract services to the agency.		
Rhode Island	R.I. Gen. Laws §§ 11-25-24 & 11-37-1 (Lexis 2003).	§ 11-25-24. Correctional employees — sexual relations with inmates — felony. § 11-37-1. Definitions.	§ 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 accused’s instruction, but emission of semen is not required.	§ 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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South Carolina	S.C. Code Ann. § 44-23-1150 (1985 and Supp. 2003)	§ 44-23-1150. Sexual misconduct with an inmate, patient or offender.	<p>§ 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.</p> <p>§ 44-23-1150(D): A person who knowingly or willfully submits inaccurate or untruthful information concerning sexual misconduct as defined in this section is guilty of the misdemeanor of falsely reporting sexual misconduct and, upon conviction, must be imprisoned for not more than one year.</p> <p>(E): A person who has knowledge of</p>	<p>§ 44-23-1150(A)(1): 'Actor' means an employee, volunteer, agent, or contractor of a public entity that has statutory or contractual responsibility for inmates or patients confined in a prison, jail, or mental health facility, or who is an offender on parole, probation, or other community supervision programs.</p> <p>(2): 'Victim' means an inmate or patient who</p>	<p>§ 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.</p> <p>(2): When the sexual misconduct does not involve sexual intercourse but involves other sexual contact which is</p>	§ 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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South Carolina cont'			<p>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>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 (c)(2) The term sexual contact, as used in this subsection, refers to an intrusion of any part of a person's body or of any object into the 'intimate 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>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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South Dakota	S.D. Codified Laws Ann. §§ 24-1-26.1, 22-6-1, 22-22-2. (Lexis 1998 and Supp. 2003).	§ 24-1-26.1. Sexual acts prohibited between prison employees and prisoners. § 22-6-1: Felony classes and penalties – restitution – habitual criminal sentences – unclassified felonies. § 22-22-2. Definitions.	§ 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 or anal openings of another person’s body.	§ 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 a term of 2 years and/or a fine of \$2,000.	

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State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Tennessee	§§ 41-21-241, 39-13-501, 39-1-601. (Lexis 1998 and Supp. 2003).	§ 41-21-241 Sexual contact with inmates. § 39-13-501. Definitions § 39-16-601. Definitions for obstruction of justice offenses.	§ 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 the immediate area of the victim’s, the defendant’s, or any other person’s	§ 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 imprisonment or a fine not to exceed \$2,500 or both.	

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Tennessee cont'				<p>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 bod 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): "Custody" means under arrest by a law enforcement officer or under restraint by a public servant pursuant to an order of a court;</p> <p>(4): "Penal institution" ... includes any institution or facility used to house or detain a person:</p> <p>(A) convicted of a crime;</p> <p>(B) adjudicated delinquent by a juvenile court;</p> <p>(C) who is direct or indirect custody after a lawful arrest.</p>		

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Texas	Tex. Penal Code Ann. §§ 39.04 & 12.35. (West 1994 and Supp. 2004).	§ 39.04 Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with person in custody. § 12.35. State jail felony punishment.	§39.04(a): An official of a correctional facility or employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if he intentionally: (2) engages in sexual contact, sexual intercourse or deviate sexual intercourse with an individual in custody.	§39.04(e): In this section: (2) "Custody" means the detention, arrest, or confinement of an adult offender or the detention or the commitment of an offender to a facility operated by or under contract with the TX	§39.04(b) An offense under Section (a)(2) is a state jail felony. § 39.04(g): An offense under Subsection (f) is a state jail felony. §12.35(a) & (b): The	

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			<p>§ 39.04(f): An employee of the Texas Department of Criminal Justice commits an offense if the employee engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual who is not the employee's spouse and who the employee knows is under the supervision of the department but not in the custody of the department.</p>	<p>Youth Commission or a facility operated by or under contract with a juvenile board of a juvenile offender.</p>	<p>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> <p>§12.35(c): Additional penalties may apply depending on prior offense history.</p>	
Utah	<p>UT ST § 76-5-412.</p> <p>(West 2003).</p>	<p>§ 76-5-412: Custodial sexual relations – custodial sexual misconduct – definitions – penalties – defenses.</p>	<p>§ 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.</p> <p>(3) Acts referred to in Subsection (2)(a) are: (a) having sexual intercourse with a</p>	<p>§ 76-5-412 (1) As used in this section: (b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is: (i) a prisoner, as defined in Section 76-5-101, and</p>	<p>§ 76-5-412(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony</p> <p>(b) A violation of</p>	<p>§ 76-5-412 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either</p>

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			<p>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>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>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: (a) \$10,000 for a felony conviction of the first degree or second degree; (b) \$5,000 for a felony conviction of the third degree; (c) \$2,500 for a class A misdemeanor conviction;</p>	<p>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	No legislation.					

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Virginia	Code of Va. §§ 18.2-64.2 & 18.2-10. (Michie 2003).	§ 18.2-64.2. Carnal knowledge of an inmate, parolee, probationer, or pretrial or post-trial offender; penalty. § 18.2-10. Punishment for conviction of felony.	§ 18.2-64.2: An accused shall be guilty of carnal knowledge of an inmate, parolee, detainee, probationer, or pretrial or post-trial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure	§ 18.2-64.2: For the purposes of this section, "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and	§ 18.2-64.2: Such offense is a Class 6 felony. § 18.2-10(f): The penalty for a Class 6 felony is imprisonment for 1-5 years if tried by a jury	

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			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.	animate or inanimate object sexual penetration.	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. ch. 9A §§ 44.160, 44.170, & 20.021. (West & Supp. 2004).	§ 44.160. Custodial sexual misconduct in the first degree. § 44.170. Custodial sexual misconduct in the second degree.	§ 44.160: A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person; (a) when (i) the victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails,		§ 44.160(3): Custodial sexual misconduct in the first degree is a class C felony. § 20.021(1)(c): The	§§ 44.160(2), 44.170(2): Consent of the victim is not a defense. § 44.180: It is an affirmative defense to prosecution under §§ 10

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		<p>§ 20.021. Maximum sentences for crimes committed July 1, 1984 and after. (Effective until July 1, 2004.)</p>	<p>prisons, detention centers, or work release facilities, or is under correctional supervision; and</p> <p>(ii) the perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the resident reasonably believes the perpetrator has, the ability to influence the terms, conditions, length or fact of incarceration or correctional supervision; or</p> <p>(b) when the victim is being detained, under arrest or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.</p> <p>§ 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>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>§ 44.170(3): Custodial sexual misconduct in the second degree is a gross misdemeanor.</p> <p>§ 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>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 & Supp. 2003).	§ 61-8B-10. Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties	§ 61-8B-10(a): Any person, employed by the division of corrections, working at a correctional facility managed by the commissioner of corrections pursuant to contract or as an employee of a state agency, working at a correctional facility managed by the division of juvenile		§ 61-8B-10(a): Upon conviction thereof, the employee shall be sentenced to one to five years or fined up to \$5,000.	

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			<p>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 by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with someone said parole officer or probation officer is charged with supervising is guilty of a felony.</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 & 939.50. (2003)	§940.29. Abuse of residents of penal facilities. § 939.50. Classification of	§ 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 person confined in or a resident of any such institution or place or who		<p>§ 940.29: The abuse of residents of penal facilities is a Class I felony.</p> <p>§ 939.50(3)(i): The</p>	

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		felonies.	knowingly permits another person to do so is guilty of a Class I felony.		penalty for a Class I felony shall be imprisonment for a term not to exceed 3½ years and/or a fine not to exceed \$10,000.	
Wyoming	Wyo. Stat. Ann. §§ 6-2-303 & 6-2-306. (1988 and Supp. 2003).	§ 6-2-303. Sexual assault in the second degree. § 6-2-306. Penalties for sexual assault.	§ 6-2-303 (a): Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting assault in the first degree: (vi) the actor is in a position of authority over the	§ 6-2-301(a)(iv): Position of authority means that position occupied by a parent, guardian, relative, household member,	§ 6-2-306(a)(ii): Sexual assault in the 2 nd degree is a felony punishable by imprisonment for not	

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			victim and uses this position of authority to cause the victim to submit.	<p>teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person.</p> <p>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.</p>	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>§ 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 against that person, (2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both; (b)(1) renders another person unconscious, and thereby engages in a sexual act with that person, or (2) administers to another person by force or threat of force or without the knowledge or permission of that person a drug, intoxicant or other similar substance and thereby (A): substantially impairs the ability of that other person to appraise or control conduct, and (B) engages in a sexual act with that other person; or attempts to do so, shall be fined under this title, imprisoned for any term of years, or life, or both. (c) With children. Whoever, in the special maritime and territorial jurisdiction of the U.S. or in a Federal prison, 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 Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly -</p> <p>(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or</p>		<p>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>§ 2244(a): Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison,</p>	<p>§ 2243(c)(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.</p> <p>(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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United States cont'			<p>(2) engages in a sexual act with another person if that other person is - (A) incapable of appraising the nature of the conduct; or</p> <p>(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; or attempts to do so, shall be fined under this title, imprisoned not more than 20 years, or both.</p> <p>§ 2243 (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>knowingly engages in or causes sexual contact with or by another person, if so to do would violate -</p> <p>(1) section 2241 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;</p> <p>(2) section 2242 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;</p> <p>(3) subsection (a) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or</p> <p>(4) subsection (b) of section 2243 of this title had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than six months, or both.</p>	