

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

Alabama	
Statute (Alabama)	<p>ALA. CODE § 13A-6-61<sup>1</sup> (West 2011). <u>Rape in the First Degree</u></p> <p>(a) A person commits the crime of rape in the first degree if:</p> <p>(1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or</p> <p>(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being physically helpless or mentally incapacitated; or</p> <p>(3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.</p> <p>ALA. CODE § 13A-6-62 (West 2011).<sup>2</sup> <u>Rape in the Second Degree</u></p> <p>(a) A person commits the crime of rape in the second degree if:</p> <p>(1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.</p> <p>(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.</p> <p>ALA. CODE § 13A-6-63 (West 2011). <u>Sodomy in the First Degree</u></p> <p>(a) A person commits the crime of sodomy in the first degree if:</p> <p>(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or</p> <p>(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or</p> <p>(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.</p>

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Statute Cont' (Alabama)	<p>ALA. CODE § 13A-6-64 (West 2011).<sup>3</sup>  <u>Sodomy in the Second Degree</u></p> <p>(a) A person commits the crime of sodomy in the second degree if:  (1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.  (2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.</p> <p>ALA. CODE § 13A-6-65 (West 2011).<sup>4</sup>  <u>Sexual Misconduct</u></p> <p>(a) A person commits the crime of sexual misconduct if:  (1) Being a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with her consent where consent was obtained by the use of any fraud or artifice; or  (2) Being a female, she engages in sexual intercourse with a male without his consent; or  (3) He or she engages in deviate sexual intercourse with another person under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64. Consent is no defense to a prosecution under this subdivision.</p> <p>ALA. CODE § 13A-6-65.1 (West 2011).  <u>Sexual Torture</u></p> <p>(a) A person commits the crime of sexual torture:  (1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.  (2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.  (3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.</p> <p>ALA. CODE § 13A-6-66 (West 2011).  <u>Sexual Abuse in the First Degree</u></p>
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Statute Cont' (Alabama)	<p>(a) A person commits the crime of sexual abuse in the first degree if:</p> <p>(1) He subjects another person to sexual contact by forcible compulsion; or</p> <p>(2) He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated; or</p> <p>ALA. CODE § 13A-6-67 (West 2011).<sup>5</sup>  <u>Sexual Abuse in the Second Degree</u></p> <p>(a) A person commits the crime of sexual abuse in the second degree if:</p> <p>(1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or</p> <p>(2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.</p> <p>(b) Sexual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.</p> <p>ALA. CODE § 13A-6-68 (West 2011).  <u>Indecent exposure</u></p> <p>(a) A person commits the crime of indecent exposure if, with intent to arouse or gratify sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm in any public place or on the private premises of another or so near thereto as to be seen from such private premises.</p> <p>(b) Indecent exposure is a Class A misdemeanor.</p> <p>ALA. CODE § 13A-6-69 (West 2011).  <u>Enticing child to enter vehicle, house, etc., for immoral purposes</u></p> <p>(a) It shall be unlawful for any person with lascivious intent to entice, allure, persuade or invite, or attempt to entice, allure, persuade or invite, any child under 16 years of age to enter any vehicle, room, house, office or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.</p>
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Statute Cont' (Alabama)	<p>ALA. CODE § 13A-6-69.1 (West 2011).  <u>Sexual abuse of a child less than 12 years old.</u></p> <p>(a) A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to sexual contact.  (b) Sexual abuse of a child less than 12 years old is a Class B felony.</p> <p>ALA. CODE § 13A-6-111 (West 2011).  <u>Transmitting obscene material to a child by computer.</u></p> <p>(a) A person is guilty of transmitting obscene material to a child if the person transmits, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with the child.  (b) For purposes of determining jurisdiction, the offense is committed in this state if the transmission that constitutes the offense either originates in this state or is received in this state.  (c) A person charged under this section shall be tried as an adult and the record of the proceeding shall not be sealed nor subject to expungement.  (d) Transmitting obscene material of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit to a child is a Class B felony.</p> <p>ALA. CODE § 13A-6-121 (West 2011).  <u>Facilitating solicitation of unlawful sexual conduct with a child</u></p> <p>A person who knowingly compiles, enters into, or transmits by use of computer or otherwise; makes, prints, publishes, or reproduces by computerized or other means; knowingly causes or allows to be entered into or transmitted by use of computer or otherwise; or buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement of any child's name, telephone number, place of residence, other geographical location, physical characteristics, or other descriptive or identifying information for the purpose of facilitating, encouraging, offering, or soliciting unlawful sexual conduct of or with any child, or the visual depiction of such conduct, is guilty of facilitating solicitation of unlawful sexual conduct with a child. Any person who violates this section commits a Class C felony.</p>
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<p>Statute Cont' (Alabama)</p>	<p>ALA. CODE § 13A-6-122 (West 2011). <u>Electronic solicitation of a child</u></p> <p>In addition to the provisions of Section 13A-6-69, a person who, knowingly, with the intent to commit an unlawful sex act, entices, induces, persuades, seduces, prevails, advises, coerces, lures, or orders, or attempts to entice, induce, persuade, seduce, prevail, advise, coerce, lure, or order, by means of a computer, on-line service, Internet service, Internet bulletin board service, weblog, cellular phone, video game system, personal data assistant, telephone, facsimile machine, camera, universal serial bus drive, writable compact disc, magnetic storage device, floppy disk, or any other electronic communication or storage device, a child who is at least three years younger than the defendant, or another person believed by the defendant to be a child at least three years younger than the defendant to meet with the defendant or any other person for the purpose of engaging in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his or her benefit or for the benefit of another, is guilty of electronic solicitation of a child. Any person who violates this section commits a Class B felony.</p> <p>ALA. CODE § 13A-6-124 (West 2011). <u>Traveling to meet a child for an unlawful sex act</u></p> <p>Any person who travels either within this state, to this state, or from this state by any means, who attempts to do so, or who knowingly causes another to do so or to attempt to do so for the purpose of engaging in any unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of traveling to meet a child for an unlawful sex act. Any person who violates this section commits a Class A felony. Notwithstanding any law to the contrary, a conviction under this section shall be considered a criminal sex offense under Section 15-20-21.</p> <p>ALA. CODE § 13A-6-125 (West 2011). <u>Facilitating the travel of a child for an unlawful sex act</u></p> <p>Any person who facilitates, arranges, provides, or pays for the transport of a child for the purposes of engaging in an unlawful sex act with a child, including sexual intercourse, sodomy, a sexual performance, obscene sexual performance, or other sexual conduct for his or her benefit or for the benefit of another shall be guilty of facilitating the transport of a child for an unlawful sex act. Any person who violates this section commits a Class A felony.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Alabama)</p>	<p>ALA. CODE § 13A-12-191 (West 2011). <u>Dissemination or public display of obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts</u></p> <p>Any person who shall knowingly disseminate or display publicly any obscene matter containing a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony.</p> <p>ALA. CODE § 13A-12-192 (West 2011). <u>Possession and possession with intent to disseminate obscene matter containing visual depiction of persons under 17 years of age involved in obscene acts</u></p> <p>(a) Any person who knowingly possesses with intent to disseminate any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class B felony. Possession of three or more copies of the same visual depiction contained in obscene matter is prima facie evidence of possession with intent to disseminate the same.</p> <p>(b) Any person who knowingly possesses any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct shall be guilty of a Class C felony.</p> <p>ALA. CODE § 13A-12-196 (West 2011). <u>Parents or guardians permitting children to engage in production of obscene matter guilty of Class A felony</u></p> <p>Any parent or guardian who knowingly permits or allows their child, ward, or dependent under the age of 17 years to engage in the production of any obscene matter containing a visual depiction of such child, ward, or dependent under the age of 17 years engaged in any act of sado-masochistic abuse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony.</p> <p>ALA. CODE § 13A-12-197 (West 2011). <u>Production of obscene matter containing visual depiction of person under 17 years of age involved in obscene acts</u></p>
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Statute Cont' (Alabama)	(a) Any person who knowingly films, prints, records, photographs or otherwise produces any obscene matter that contains a visual depiction of a person under the age of 17 years engaged in any act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, breast nudity, genital nudity, or other sexual conduct shall be guilty of a Class A felony. (b) For any person who violates this section, each depiction of each individual less than 17 years of age constitutes a separate offense.
Age of Consent (Alabama)	ALA. CODE § 13A-6-70 (West 2011). <sup>6</sup> <u>Lack of consent</u>  (c) A person is deemed incapable of consent if he is: (1) Less than 16 years old
Definitions (Alabama)	ALA. CODE § 13A-6-60 (West 2011). <u>Definitions</u>  The following definitions apply in this article: (1) SEXUAL INTERCOURSE. Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. (2) DEVIATE SEXUAL INTERCOURSE. Any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another. (3) SEXUAL CONTACT. Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party. (4) FEMALE. Any female person. (5) MENTALLY DEFECTIVE. Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct. (6) MENTALLY INCAPACITATED. Such term means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other incapacitating act committed upon him without his consent. (7) PHYSICALLY HELPLESS. Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. (8) FORCIBLE COMPULSION. Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.  ALA. CODE § 13A-6-120 (West 2011). <sup>7</sup>

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<p>Definitions Cont' (Alabama)</p>	<p><u>Definitions</u></p> <p>For the purposes of this article, a child is defined as a person under 16 years of age.</p> <p>ALA. CODE § 15-20-21 (West 2011).</p> <p><u>Definitions</u></p> <p>For purposes of this article, the following words shall have the following meanings:</p> <p>(1) Adult criminal sex offender. A person convicted of a criminal sex offense, including a person who has pleaded nolo contendere to a criminal sex offense, regardless of whether adjudication was withheld.</p> <p>(2) Child care facility. A licensed daycare center, a licensed child care facility, or any other child care service that is exempt from licensing pursuant to Section 38-7-3.</p> <p>(3) Community notification flyer. This notification shall include the following information on the criminal sex offender: Name; actual living address; sex; date of birth; complete physical description, including distinguishing features such as scars, birthmarks, or any identifying physical characteristics; and a current photograph. This notification shall also include a statement of the criminal sex offense for which he or she has been convicted, including the age and gender of the victim, the geographic area where the offense occurred, and the date upon which the criminal sex offender will be released. This notification shall also include a statement that the same information is on file at the sheriff's office and police headquarters, if a police department has jurisdiction over the criminal sex offender's residence, and that the information will be available to the general public for inspection and identification purposes during regular business hours.</p> <p>(4) Criminal sex offense. Any of the following offenses:</p> <ul style="list-style-type: none"> <li>a. Rape in the first or second degree, as proscribed by Section 13A-6-61 or 13A-6-62; provided that a sentencing court may exempt from this article a juvenile or youthful offender criminal sex offender for a criminal sex offense as defined in Section 13A-6-62(a)(1).</li> <li>b. Sodomy in the first or second degree, as proscribed by Section 13A-6-63 or 13A-6-64.</li> <li>c. Sexual torture, as proscribed by Section 13A-6-65.1.</li> <li>d. Sexual abuse in the first or second degree as proscribed by Section 13A-6-66 or 13A-6-67.</li> <li>e. Enticing a child to enter a vehicle, room, house, office, or other place for immoral purposes, as proscribed by Section 13A-6-69.</li> <li>f. Promoting prostitution in the first or second degree, as proscribed by Section 13A-12-111 or 13A-12-112.</li> <li>g. Violation of the Alabama Child Pornography Act, as proscribed by Section 13A-12-191, 13A-12-192, 13A-12-196, or 13A-12-197.</li> <li>h. Kidnapping of a minor, except by a parent, in the first or second degree, as proscribed by Section 13A-6-43 or 13A-6-44.</li> <li>i. Incest, as proscribed by Section 13A-13-3, when the offender is an adult and the victim is a minor.</li> <li>j. Soliciting a child by computer for the purposes of committing a sexual act and transmitting obscene material to a child by computer, as</li> </ul>
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<p>Definitions Cont' (Alabama)</p>	<p>proscribed by Sections 13A-6-110 and 13A-6-111.</p> <p>k. Any solicitation, attempt, or conspiracy to commit any of the offenses listed in paragraphs a. to j., inclusive.</p> <p>l. Any crime committed in any state or a federal, military, Indian, or a foreign country jurisdiction which, if it had been committed in this state under the current provisions of law, would constitute an offense listed in paragraphs a. to k., inclusive.</p> <p>m. The foregoing notwithstanding, any crime committed in any jurisdiction which, irrespective of the specific description or statutory elements thereof, is in any way characterized or known as rape, sodomy, sexual assault, sexual battery, sexual abuse, sexual torture, solicitation of a child, enticing or luring a child, child pornography, lewd and lascivious conduct, taking indecent liberties with a child, or molestation of a child.</p> <p>(5) Criminal sex offense involving a child. A conviction for any criminal sex offense in which the victim was a child under the age of 12 and any offense involving child pornography.</p> <p>(6) Employment. Includes employment that is full-time or part-time for any period, whether financially compensated, volunteered, or for the purpose of government or educational benefit.</p> <p>(7) Juvenile criminal sex offender. An individual adjudicated delinquent of a criminal sex offense.</p> <p>(8) Mental abnormality. A congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sex offense to a degree that makes the person a menace to the health and safety of other persons.</p> <p>(9) Predatory. An act directed at a stranger, or a person with whom a relationship has been established, or promoted for the purpose of victimization.</p> <p>(10) Release. Release from a state prison, county jail, or municipal jail, or release or discharge from the custody of the Department of Youth Services or other juvenile detention, or placement on an appeal bond, probation or parole or aftercare, or placement into any facility or treatment program that allows the offender to have unsupervised access to the public.</p> <p>(11) Responsible agency. The person or government entity whose duty it is to obtain information from a criminal sex offender before release and to transmit that information to police departments or sheriffs responsible for providing community notification. For a criminal sex offender being released from state prison, the responsible agency is the Department of Corrections. For a criminal sex offender being released from a county jail, the responsible agency is the sheriff of that county. For a criminal sex offender being released from a municipal jail, the responsible agency is the police department of that municipality. For a criminal sex offender being placed on probation, including conditional discharge or unconditional discharge, without any sentence of incarceration, the responsible agency is the sentencing court. For a criminal sex offender being released from the Department of Youth Services, the responsible agency is the Department of Youth Services. For a criminal sex offender who is being released from a jurisdiction outside this state and who is to reside in this state, the responsible agency is the Department of Public Safety.</p> <p>(12) Risk assessment. A written report on the assessment of risk for sexually re-offending conducted by a sexual treatment program</p>
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American University, Washington College of Law

Current as of June 2011

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Definitions Cont' (Alabama)	<p>approved by the Department of Youth Services. The report shall include, but not be limited to, the following regarding the criminal sex offender: Criminal history, mental status, attitude, previous sexual offender treatment and response to treatment, social factors, conditions of release expected to minimize risk of sexual re-offending, and characteristics of the criminal sex offense.</p> <p>(13) School. A licensed or accredited public or private school, or church school, that offers instruction in grades K-12. This definition shall not include private residences in which students are taught by parents or tutors.</p> <p>(14) Sentencing court. The court of conviction or the court that determines sentence as a result of conviction or adjudication.</p> <p>(15) Sexually violent predator. A person who has been convicted of a criminal sex offense and who suffers from a mental abnormality or personality disorder that makes the person likely to engage in predatory criminal sex offenses.</p> <p>(16) Student. A person who is enrolled on a full-time or part-time basis, in any public or private educational institution, including any schools as defined in subdivision (13).</p> <p>(17) Youthful offender criminal sex offender. An individual adjudicated a youthful offender for a criminal sex offense.</p>
Defenses (Alabama)	None.
Penalty (Alabama)	<p>ALA. CODE § 13A-5-6 (West 2011).<sup>8</sup></p> <p><u>Sentences of imprisonment for felonies.</u></p> <p>(a) Sentences for felonies shall be for a definite term of imprisonment, which imprisonment includes hard labor, within the following limitations:</p> <p>(1) For a Class A felony, for life or not more than 99 years or less than 10 years.</p> <p>(2) For a Class B felony, not more than 20 years or less than 2 years.</p> <p>(3) For a Class C felony, not more than 10 years or less than 1 year and 1 day.</p> <p>(4) For a Class A felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class A felony criminal sex offense involving a child as defined in Section 15-20-21(5), not less than 20 years.</p> <p>(5) For a Class B or C felony in which a firearm or deadly weapon was used or attempted to be used in the commission of the felony, or a Class B felony criminal sex offense involving a child as defined in Section 15-20-21(5), not less than 10 years.</p> <p>(b) The actual time of release within the limitations established by subsection (a) of this section shall be determined under procedures established elsewhere by law.</p> <p>(c) In addition to any penalties heretofore or hereafter provided by law, in all cases where an offender is designated as a sexually violent predator pursuant to Section 15-20-25.3, or where an offender is convicted of a Class A felony criminal sex offense involving a child as</p>

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Penalty Cont' (Alabama)	<p>defined in Section 15-20- 21(5), and is sentenced to a county jail or the Alabama Department of Corrections, the sentencing judge shall impose an additional penalty of not less than 10 years of post-release supervision to be served upon the defendant's release from incarceration.</p> <p>ALA. CODE § 13A-5-7 (West 2011).  <u>Sentences of imprisonment for misdemeanors and violations.</u></p> <p>(a) Sentences for misdemeanors shall be a definite term of imprisonment in the county jail or to hard labor for the county, within the following limitations:            (1) For a Class A misdemeanor, not more than one year.            (2) For a Class B misdemeanor, not more than six months.            (3) For a Class C misdemeanor, not more than three months.            (b) Sentences for violations shall be for a definite term of imprisonment in the county jail, not to exceed 30 days.</p>
<b>Alaska</b>	
Statute (Alaska)	<p>ALASKA STAT. § 11.41.410 (West 2011).  <u>Sexual assault in the first degree</u></p> <p>(a) An offender commits the crime of sexual assault in the first degree if            (1) the offender engages in sexual penetration with another person without consent of that person;            (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious physical injury to that person;            (3) the offender engages in sexual penetration with another person            (A) who the offender knows is mentally incapable; and            (B) who is in the offender's care            (i) by authority of law; or            (ii) in a facility or program that is required by law to be licensed by the state; or            (4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and            (A) the offender is a health care worker; and</p>

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Statute Cont' (Alaska)	<p>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;</p> <p>(3) engages in sexual penetration with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person; or</p> <p>(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or apparent custody of the officer, or is committed to the custody of law enforcement agency.<sup>9</sup></p> <p>(b) Sexual assault in the third degree is a class C felony.</p> <p>ALASKA STAT. § 11.41.427 (West 2011). <u>Sexual assault in the fourth degree</u></p> <p>(a) An offender commits the crime of sexual assault in the fourth degree if</p> <p>(1) while employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment; or</p> <p>(2) the offender engages in sexual contact with a person 18 or 19 years of age who the offender knows is committed to the custody of the Department of Health and Social Services under AS 47.10 or AS 47.12 and the offender is the legal guardian of the person.</p> <p>(3) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual contact with a person with reckless disregard that the person in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.<sup>10</sup></p> <p>(b) Sexual assault in the fourth degree is a class A misdemeanor.</p> <p>ALASKA STAT. § 11.41.434 (West 2011). <u>Sexual Abuse of a Minor in the First Degree</u></p> <p>(a) An offender commits the crime of sexual abuse of a minor in the first degree if</p> <p>(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;</p> <p>(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or</p>
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Statute Cont' (Alaska)	<p>(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and  (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or  (B) the offender occupies a position of authority in relation to the victim.  (b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.</p> <p>ALASKA STAT. § 11.41.436 (West 2011).  <u>Sexual Abuse of a Minor in the Second Degree</u></p> <p>(a) An offender commits the crime of sexual abuse of a minor in the second degree if  (1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least three years younger than the offender, or aids, induces, causes or encourages a person who is 13, 14, or 15 years of age and at least three years younger than the offender to engage in sexual penetration with another person;  (2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;  (3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;  (4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455 (a)(2) - (6) [(2) the lewd touching of another person's genitals, anus, or breast; (3) the lewd touching by another person of the child's genitals, anus, or breast; (4) masturbation; (5) bestiality; (6) the lewd exhibition of the child's genitals] or  (5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and  (A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or  (B) the offender occupies a position of authority in relation to the victim.  (6) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim; or  (7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.  (b) Sexual abuse of a minor in the second degree is a class B felony.</p> <p>ALASKA STAT. § 11.41.438 (West 2011).  <u>Sexual Abuse of a Minor in the Third Degree</u></p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Alaska)	<p>(a) An offender commits the crime of sexual abuse of a minor in the third degree if being 17 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least four years younger than the offender.</p> <p>(b) Sexual abuse of a minor in the third degree is a class C felony.</p> <p>ALASKA STAT. § 11.41.440 (West 2011).  <u>Sexual Abuse of a Minor in the Fourth Degree</u></p> <p>(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if</p> <p>(1) being under 16 years of age, the offender engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or</p> <p>(2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.</p> <p>(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.</p> <p>ALASKA STAT. § 11.41.455 (West 2011).<sup>11</sup>  <u>Unlawful exploitation of a minor</u></p> <p>(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) -- (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:</p> <p>(1) sexual penetration;</p> <p>(2) the lewd touching of another person's genitals, anus, or breast;</p> <p>(3) the lewd touching by another person of the child's genitals, anus, or breast;</p> <p>(4) masturbation;</p> <p>(5) bestiality;</p> <p>(6) the lewd exhibition of the child's genitals; or</p> <p>(7) sexual masochism or sadism.</p> <p>(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the</p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Alaska)	<p>conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.</p> <p>(c) Unlawful exploitation of a minor is a</p> <p>(1) class A felony</p> <p>ALASKA STAT. § 11.41.458 (West 2011). <u>Indecent exposure in the first degree</u></p> <p>(a) An offender commits the crime of indecent exposure in the first degree if the offender violates AS 11.41.460(a), the offense occurs within the observation of a person under 16 years of age, and</p> <p>(1) while committing the act constituting the offense, the offender knowingly masturbates; or</p> <p>(2) the offender has been previously convicted under</p> <p>(A) this section;</p> <p>(B) AS 11.41.460(a); or</p> <p>(C) a law or ordinance of this or another jurisdiction with elements similar to a crime listed under (A) or (B) of this paragraph.</p> <p>(b) Indecent exposure in the first degree is a class C felony.</p> <p>ALASKA STAT. § 11.41.460 (West 2011). <u>Indecent exposure in the second degree</u></p> <p>(a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.</p> <p>(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor.</p> <p>ALASKA STAT. § 11.61.116 (West 2011). <u>Sending an Explicit Image of a Minor</u></p> <p>(a) A person commits the offense of sending an explicit image of a minor if the person, with intent to annoy or humiliate another person, distributes an electronic photograph or video that depicts the genitals, anus, or female breast of that other person taken when that person was a minor under 16 years of age.</p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Alaska)	<p>(c) Sending an explicit image of a minor is</p> <ol style="list-style-type: none"> <li>(1) a class B misdemeanor if the person distributes the image to another person;</li> <li>(2) a class A misdemeanor if the person distributes the image to an Internet website that is accessible to the public.</li> </ol> <p>ALASKA STAT. § 11.61.123 (West 2011).  <u>Indecent Viewing or Photography</u></p> <p>(a) A person commits the crime of indecent viewing or photography if, in the state, the person knowingly views, or produces a picture of, the private exposure of the genitals, anus, or female breast of another person and the view or production is without the knowledge or consent of</p> <ol style="list-style-type: none"> <li>(1) the parent or guardian of the person viewed, or who is shown in the picture, if the person who is viewed or shown is under 16 years of age; and</li> <li>(2) the person viewed or shown in the picture, if the person viewed or shown is at least 13 years of age.</li> </ol> <p>(b) Each viewing of a person, and each production of a picture of a person, whose genitals, anus, or female breast are viewed or are shown in a picture constitutes a separate violation of this section.</p> <p>(c) This section does not apply to viewing or photography conducted by a law enforcement agency for a law enforcement purpose.</p> <p>(f) Indecent viewing or photography is a</p> <ol style="list-style-type: none"> <li>(1) class C felony if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, a minor;</li> <li>(2) class A misdemeanor if the person viewed or shown in a picture was, at the time of the viewing or production of the picture, an adult.</li> </ol> <p>ALASKA STAT. § 11.61.125 (West 2011).  <u>Distribution of Child Pornography</u></p> <p>(a) A person commits the crime of distribution of child pornography if the person distributes in this state or advertises, promotes, solicits, or offers to distribute in this state any material that is proscribed under AS 11.61.127.</p> <p>(b) This section does not apply to acts that are an integral part of the exhibition or performance of a motion picture if the acts are performed within the scope of employment by a motion picture operator or projectionist employed by the owner or manager of a theater or other place for the showing of motion pictures, unless the motion picture operator or projectionist</p> <ol style="list-style-type: none"> <li>(1) has a financial interest in the theater or place in which employed; or</li> <li>(2) causes the performance or motion picture to be performed or exhibited without the consent of the manager or owner of the theater or other place of showing.</li> </ol>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Alaska)	<p>(c) The possession of 100 or more films, audio, video, electronic, or electromagnetic recordings, photographs, negatives, slides, books, newspapers, magazines, or other materials, including a combination of these items totaling 100 or more, is prima facie evidence of distribution and intent to distribute under (a) of this section.</p> <p>(e) Distribution of child pornography is a</p> <p>(1) class B felony; or</p> <p>(2) class A felony if the person has been previously convicted of distribution of child pornography in this jurisdiction or a similar crime in this or another jurisdiction.</p> <p>ALASKA STAT. § 11.61.127 (West 2011). <u>Possession of Child Pornography</u></p> <p>(a) A person commits the crime of possession of child pornography if the person knowingly possesses or knowingly accesses on a computer with intent to view any material that visually depicts conduct described in AS 11.41.455(a) knowing that the production of the material involved the use of a child under 18 years of age who engaged in the conduct or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct.</p> <p>(b) This section does not apply to persons providing plethysmograph assessments in the course of a sex offender treatment program that meets the minimum standards under AS 33.30.011(5).</p> <p>(c) Each film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts conduct described in AS 11.41.455(a) that is possessed or accessed in violation of (a) of this section is a separate violation of this section.</p> <p>(e) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a minor depicted.</p> <p>(g) Possession of child pornography is a class C felony.</p>
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Definitions (Alaska)	<p>ALASKA STAT. § 11.41.470 (West 2011). <u>Definitions</u></p>

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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (Alaska)</p>	<p>Unless the context requires otherwise,</p> <p>(1) "health care worker" includes a person who is or purports to be an anesthesiologist, acupuncturist, chiropractor, dentist, health aide, hypnotist, massage therapist, mental health counselor, midwife, nurse, nurse practitioner, osteopath, naturopath, physical therapist, physical therapy assistant, physician, physician assistant, psychiatrist, psychologist, psychological associate, radiologist, religious healing practitioner, surgeon, x-ray technician, or a substantially similar position;</p> <p>(2) "incapacitated" means temporarily incapable of appraising the nature of one's own conduct or physically unable to express unwillingness to act;</p> <p>(3) "legal guardian" means a person who is under a duty to exercise general supervision over a minor or other person committed to the custody of the Department of Health and Social Services under AS 47.10 [Children in Need of Aid] or AS 47.12 [Delinquent Minors] as a result of a court order, statute, or regulation, and includes Department of Health and Social Services employees, foster parents, and staff members and other employees of group homes or youth facilities where the minor or other person is placed as a result of a court order or the action of the Department of Health and Social Services, and police officers, probation officers, and social workers when those persons are exercising custodial control over a minor or other person.</p> <p>(4) "mentally incapable" means suffering from a mental disease or defect that renders the person incapable of understanding the nature or consequences of the person's conduct, including the potential for harm to that person;</p> <p>(5) "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;</p> <p>(6) "sexual act" means sexual penetration or sexual contact;</p> <p>(7) "victim" means the person alleged to have been subjected to sexual assault in any degree or sexual abuse of a minor in any degree;</p> <p>(8) "without consent" means that a person</p> <p>(A) with or without resisting, is coerced by the use of force against a person or property, or by the express or implied threat of death, imminent physical injury, or kidnapping to be inflicted on anyone; or</p> <p>(B) is incapacitated as a result of an act of the defendant.</p> <p>ALASKA STAT. § 11.41.455 (West 2011). <u>Unlawful exploitation of a minor</u></p> <p>In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.</p>
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Definitions Cont' (Alaska)	<p>ALASKA STAT. § 11.61.116 (West 2011). <u>Sending an Explicit Image of a Minor</u></p> <p>(b) In this section, (1) “computer” has the meaning given in AS 11.46.990; (2) “distributes” means to deliver the image to another person by sending the image to the other person's computer or telephone; (3) “Internet” has the meaning given in AS 11.46.710(d).</p> <p>ALASKA STAT. § 11.61.123 (West 2011). <u>Indecent Viewing or Photography</u></p> <p>(e) In this section, (1) “picture” means a film, photograph, negative, slide, book, newspaper, or magazine, whether in print, electronic, magnetic, or digital format; and (2) “private exposure” means that a person has exposed the person's body or part of the body in a place, and under circumstances, that the person reasonably believed would not result in the person's body or body parts being (A) viewed by the defendant; or (B) produced in a picture; “private exposure” does not include the exposure of a person's body or body parts in a law enforcement facility, correctional facility, designated treatment facility, or a juvenile detention facility; in this paragraph, “correctional facility” has the meaning given in AS 33.30.901, “designated treatment facility” has the meaning given in AS 47.30.915, and “juvenile detention facility” has the meaning given in AS 47.12.990.</p> <p>ALASKA STAT. § 11.61.125 (West 2011). <u>Distribution of Child Pornography</u></p> <p>(d) In this section, “distribution” includes the following, whether or not for monetary or other consideration: delivering, selling, renting, leasing, lending, giving, circulating, exhibiting, presenting, providing, exchanging, placing on a computer network or computer system, and providing billing collection, or other ancillary services for or otherwise supporting these activities.</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Defenses (Alaska)</p>	<p>ALASKA STAT. § 11.41.432 (West 2011). <u>Defenses</u></p> <p>(a) It is a defense to a crime charged under AS 11.41.410(a)(3), 11.41.420(a)(2), 11.41.420(a)(3), or 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. (b) Except as provided in (a) of this section, in a prosecution under AS 11.41.410 or 11.41.420, it is not a defense that the victim was, at the time of the alleged offense, the legal spouse of the defendant.</p> <p>ALASKA STAT. § 11.61.123 (West 2011). <u>Indecent Viewing or Photography</u></p> <p>(d) In a prosecution under this section, it is an affirmative defense that the viewing or photography was conducted as a security surveillance system, notice of the viewing or photography was posted, and any viewing or use of pictures produced is done only in the interest of crime prevention or prosecution.</p> <p>ALASKA STAT. § 11.61.127 (West 2011). <u>Possession of Child Pornography</u></p> <p>(d) In a prosecution under (a) of this section, it is an affirmative defense that the person (1) possessed or accessed fewer than three depictions described in (a) of this section; and (2) without allowing any person other than a law enforcement agency to view the depictions, either took reasonable steps to destroy the depictions, or reported the matter to a law enforcement agency and allowed the agency access to the depictions.</p>
<p>Penalty (Alaska)</p>	<p>ALASKA STAT. § 12.55.125 (West 2010).<sup>12</sup> <u>Sentences of imprisonment for felonies</u></p> <p>(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as</p>

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Penalty Cont' (Alaska)	<p>provided in AS 12.55.155--12.55.175:</p> <p>(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;</p> <p>(2) if the offense is a first felony conviction</p> <p>(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise clearly identified peace officer, firefighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;</p> <p>(3) if the offense is a second felony conviction, 10 to 14 years;</p> <p>(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (1) of this section, 15 to 20 years.</p> <p>(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;</p> <p>(2) if the offense is a first felony conviction,</p> <p>(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;</p> <p>(3) if the offense is a second felony conviction, four to seven years;</p> <p>(4) if the offense is a third felony conviction, six to 10 years.</p> <p>(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;</p> <p>(2) if the offense is a second felony conviction, two to four years;</p> <p>(3) if the offense is a third felony conviction, three to five years;</p> <p>(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.</p>
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Penalty Cont' (Alaska)	<p>(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155--12.55.175, (1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;</p> <p>(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085;</p> <p>(3) terms of imprisonment may not be otherwise reduced.</p> <p>(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).</p> <p>(i) A defendant convicted of</p> <p>(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was</p> <p>(i) less than 13 years of age, 25 to 35 years;</p> <p>(ii) 13 years of age or older, 20 to 30 years;</p> <p>(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;</p> <p>(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;</p> <p>(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;</p> <p>(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (l) of this section, 40 to 60 years;</p> <p>(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;</p> <p>(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was</p> <p>(i) under 13 years of age, 20 to 30 years;</p>
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Penalty Cont' (Alaska)	<p>(ii) 13 years of age or older, 15 to 30 years;</p> <p>(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;</p> <p>(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;</p> <p>(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;</p> <p>(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (I) of this section, 35 to 50 years;</p> <p>(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (I) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;</p> <p>(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(A) if the offense is a first felony conviction, five to 15 years;</p> <p>(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;</p> <p>(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;</p> <p>(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;</p> <p>(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;</p> <p>(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155--12.55.175:</p> <p>(A) if the offense is a first felony conviction, two to 12 years;</p> <p>(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, eight to 15 years;</p> <p>(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;</p> <p>(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;</p> <p>(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.</p>
<b>Arizona</b>	

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American University, Washington College of Law

Current as of June 2011



# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

Statute (Arizona)	<p>ARIZ. REV. STAT. ANN. § 13-1402 (West 2011).  <u>Indecent exposure; exception; classification</u></p> <p>A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act.  B. Indecent exposure does not include an act of breast-feeding by a mother.  C. Indecent exposure to a person who is fifteen or more years of age is a class 1 misdemeanor. Indecent exposure to a person who is under fifteen years of age is a class 6 felony.</p> <p>ARIZ. REV. STAT. ANN. § 13-1403 (West 2011).  <u>Public sexual indecency; public sexual indecency to a minor; classifications</u></p> <p>A. A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:  1. An act of sexual contact.  2. An act of oral sexual contact.  3. An act of sexual intercourse.  4. An act of bestiality.  B. A person commits public sexual indecency to a minor if the person intentionally or knowingly engages in any of the acts listed in subsection A of this section and such person is reckless about whether a minor under the age of fifteen years is present.  C. Public sexual indecency is a class 1 misdemeanor. Public sexual indecency to a minor is a class 5 felony.</p> <p>ARIZ. REV. STAT. ANN. § 13-1404 (West 2011).  <u>Sexual Abuse</u></p> <p>A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person who is fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.  B. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony.</p>
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Statute Cont' (Arizona)	<p>ARIZ. REV. STAT. ANN. § 13-1405 (West 2011). <u>Sexual Conduct with a Minor</u></p> <p>A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.</p> <p>B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to § 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was the minor's parent, stepparent, adoptive parent, legal guardian foster parent or the minor's teacher or clergyman or priest and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed has been served or commuted.</p> <p>C. For the purposes of this section, "teacher" means a certificated teacher as defined in § 15-501 or any other person who directly provides instruction to pupils in any school district, charter school, or accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.</p> <p>ARIZ. REV. STAT. ANN. § 13-1406 (West 2011). <u>Sexual assault; classification; increased punishment</u></p> <p>A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.</p> <p>B. Sexual assault is a class 2 felony. If the victim is under fifteen years of age, sexual assault is punishable pursuant to § 13-604.01[See sentencing under "Imprisonment"]. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable.</p> <p>D. If the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to § 13-604.01, subsection A [See sentencing under "Imprisonment"] .</p> <p>ARIZ. REV. STAT. ANN. § 13-1410 (West 2011). <u>Molestation of a child; classification</u></p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Arizona)	<p>A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.</p> <p>B. Molestation of a child is a class 2 felony that is punishable pursuant to § 13-705.</p> <p>ARIZ. REV. STAT. ANN. § 13-1417 (West 2011).  <u>Continuous sexual abuse of a child; classification</u></p> <p>A. A person who over a period of three months or more in duration engages in three or more acts in violation of § 13-1405, 13-1406 or 13-1410 with a child who is under fourteen years of age is guilty of continuous sexual abuse of a child.</p> <p>B. Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to § 13-705.</p> <p>C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred. The trier of fact does not need to agree on which acts constitute the requisite number.</p> <p>D. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved. If more than one victim is involved, a separate count may be charged for each victim.</p> <p>ARIZ. REV. STAT. ANN. § 13-1419 (West 2011).  <u>Unlawful sexual conduct; correctional facilities; classification; definition</u></p> <p>A. A person commits unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. For the purposes of this subsection, “person” means a person who:</p> <ol style="list-style-type: none"> <li>1. Is employed by the state department of corrections or the department of juvenile corrections.</li> <li>2. Is employed by a private prison facility, a juvenile detention facility or a city or county jail.</li> <li>3. Contracts to provide services with the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.</li> <li>4. Is an official visitor, volunteer or agency representative of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.</li> </ol> <p>B. This section does not apply to a person who is employed by the state department of corrections, a private prison facility or a city or</p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Arizona)	<p>county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.</p> <p>C. Unlawful sexual conduct with an offender who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with an offender who is between fifteen and seventeen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.</p> <p>D. For the purposes of this section, “any act of a sexual nature”:</p> <ol style="list-style-type: none"> <li>Includes the following: <ol style="list-style-type: none"> <li>Any completed, attempted, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.</li> <li>Any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.</li> <li>Any act of photographing, videotaping, filming, digitally recording or otherwise viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either: <ol style="list-style-type: none"> <li>While the prisoner or offender is in a state of undress or partial dress.</li> <li>While the prisoner or offender is urinating or defecating.</li> </ol> </li> </ol> </li> <li>Does not include an act done pursuant to a bona fide medical exam or lawful internal search.</li> </ol> <p>ARIZ. REV. STAT. ANN. § 13-1423 (West 2011).  <u>Violent sexual assault; natural life sentence</u></p> <p>A. A person is guilty of violent sexual assault if in the course of committing an offense under § 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.</p>
Age of Consent ♦ (Arizona)	18
Definitions (Arizona)	<p>ARIZ. REV. STAT. ANN. § 13-1401 (West 2011).  <u>Definitions</u></p>

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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (Arizona)</p>	<p>In this chapter, unless the context otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Oral sexual contact" means oral contact with the penis, vulva or anus.</li> <li>2. "Sexual contact" means any direct or indirect touching, fondling or manipulating of any part of the genitals, anus or female breast by any part of the body or by any object or causing a person to engage in such contact.</li> <li>3. "Sexual intercourse" means penetration into the penis, vulva or anus by any part of the body or by any object or masturbatory contact with the penis or vulva.</li> <li>4. "Spouse" means a person who is legally married and cohabiting.</li> <li>5. "Without consent" includes any of the following: <ol style="list-style-type: none"> <li>(a) The victim is coerced by the immediate use or threatened use of force against a person or property.</li> <li>(b) The victim is incapable of consent by reason of mental disorder, mental defect, drugs, alcohol, sleep or any other similar impairment of cognition and such condition is known or should have reasonably been known to the defendant. For purposes of this subdivision, "mental defect" means the victim is unable to comprehend the distinctively sexual nature of the conduct or is incapable of understanding or exercising the right to refuse to engage in the conduct with another.</li> <li>(c) The victim is intentionally deceived as to the nature of the act.</li> <li>(d) The victim is intentionally deceived to erroneously believe that the person is the victim's spouse.</li> </ol> </li> </ol> <p>ARIZ. REV. STAT. ANN. § 13-1405 (West 2011). <u>Sexual Conduct with a Minor</u></p> <p>C. For the purposes of this section, "teacher" means a certificated teacher as defined in § 15-501 or any other person who directly provides academic instruction to pupils in any school district, charter school, accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.</p>
<p>Defenses (Arizona)</p>	<p>ARIZ. REV. STAT. ANN. § 13-1407 (West 2011). <u>Defenses</u></p> <p>A. It is a defense to a prosecution pursuant to §§ 13-1404 and 13-1405 involving a minor if the act was done in furtherance of lawful medical practice.</p> <p>B. It is a defense to a prosecution pursuant to §§ 13-1404 and 13-1405 in which the victim's lack of consent is based on incapacity to consent because the victim was fifteen, sixteen or seventeen years of age if at the time the defendant engaged in the conduct constituting the</p>

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Defenses Cont' (Arizona)	<p>offense the defendant did not know and could not reasonably have known the age of the victim.</p> <p>C. It is a defense to a prosecution pursuant to § 13-1402, 13-1404, 13-1405 or 13-1406 if the act was done by a duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person who renders emergency care at the scene of an emergency occurrence, the act consisted of administering a recognized and lawful form of treatment that was reasonably adapted to promoting the physical or mental health of the patient and the treatment was administered in an emergency when the duly licensed physician or registered nurse or a person acting under the physician's or nurse's direction, or any other person rendering emergency care at the scene of an emergency occurrence, reasonably believed that no one competent to consent could be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent.</p> <p>D. It is a defense to a prosecution pursuant to § 13-1404 or 13-1405 that the person was the spouse of the other person at the time of commission of the act. It is not a defense to a prosecution pursuant to § 13-1406 that the defendant was the spouse of the victim at the time of commission of the act.</p> <p>E. It is a defense to a prosecution pursuant to § 13-1404 or 13-1410 that the defendant was not motivated by a sexual interest. It is a defense to a prosecution pursuant to § 13-1404 involving a victim under fifteen years of age that the defendant was not motivated by a sexual interest.</p> <p>F. It is a defense to a prosecution pursuant to §§ 13-1405 and 13-3560 if the victim is fifteen, sixteen or seventeen years of age, the defendant is under nineteen years of age or attending high school and is no more than twenty-four months older than the victim and the conduct is consensual.</p>
Penalty (Arizona)	<p>ARIZ. REV. STAT. ANN. § 13-1402 (West 2011). <u>Indecent exposure; exception; classification</u></p> <p>D. A person who is convicted of a felony violation of this section and has two or more historical prior felony convictions for a violation of this section or § 13-1403 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age shall be sentenced pursuant to § 13-709.05.</p> <p>ARIZ. REV. STAT. ANN. § 13-1403 (West 2011).</p>

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Penalty Cont' (Arizona)	<p><u>Public sexual indecency; public sexual indecency to a minor; classifications</u></p> <p>D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or § 13-1402 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age shall be sentenced to a term of imprisonment as follows:  Mitigated: 6 years  Minimum: 8 years  Presumptive: 10 years  Maximum: 12 years  E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.</p> <p>ARIZ. REV. STAT. ANN. § 13-1406 (West 2011).  <u>Sexual assault; classification; increased punishment</u></p> <p>B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to § 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to § 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable.</p> <p>The term for a first offense is as follows:  Minimum: 5.25 years                      Presumptive: 7 years                      Maximum: 14 years</p> <p>The term for a defendant who has one historical prior felony conviction is as follows:  Minimum: 7 years                      Presumptive: 10.5 years                      Maximum: 21 years</p> <p>The term for a defendant who has two or more historical prior felony convictions is as follows:</p>
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Penalty Cont' (Arizona)	Minimum: 14 years	Presumptive: 15.75	Maximum: 28 years
	<p>C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.</p> <p>D. Notwithstanding § 13-703, § 13-704, § 13-705, § 13-706, subsection A and § 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to § 13-705.</p> <p>ARIZ. REV. STAT. ANN. § 13-1423 (West 2011).  <u>Violent sexual assault; natural life sentence</u></p> <p>B. Notwithstanding § 13-703, § 13-704, § 13-705, § 13-706, subsection A and § 13-708, subsection D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.</p> <p>ARIZ. REV. STAT. ANN. § 13-702 (West 2011).<sup>13</sup>  <u>First time felony offenders; sentencing; definition</u></p> <p>A. Unless a specific sentence is otherwise provided, the term of imprisonment for a first felony offense shall be the presumptive sentence determined pursuant to subsection D of this section. Except for those felonies involving a dangerous offense or if a specific sentence is otherwise provided, the court may increase or reduce the presumptive sentence within the ranges set by subsection D of this section. Any reduction or increase shall be based on the aggravating and mitigating circumstances listed in § 13-701, subsections D and E and shall be within the ranges prescribed in subsection D of this section.</p> <p>B. If a person is convicted of a felony without having previously been convicted of any felony and if at least two of the aggravating factors listed in § 13-701, subsection D apply, the court may increase the maximum term of imprisonment otherwise authorized for that offense to an aggravated term. If a person is convicted of a felony without having previously been convicted of any felony and if the court finds at least two mitigating factors listed in § 13-701, subsection E apply, the court may decrease the minimum term of imprisonment otherwise authorized for that offense to a mitigated term.</p> <p>C. The aggravated or mitigated term imposed pursuant to subsection D of this section may be imposed only if at least two of the</p>		

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Penalty Cont' (Arizona)	aggravating circumstances are found beyond a reasonable doubt to be true by the trier of fact or are admitted by the defendant, except that an aggravating circumstance under § 13-701, subsection D, paragraph 11 shall be found to be true by the court, or in mitigation of the crime are found to be true by the court, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of these findings are set forth on the record at the time of sentencing.					
	D. The term of imprisonment for a presumptive, minimum, maximum, mitigated or aggravated sentence shall be within the range prescribed under this subsection. The terms are as follows:					
	<u>Felony</u>	<u>Mitigated</u>	<u>Minimum</u>	<u>Presumptive</u>	<u>Maximum</u>	<u>Aggravated</u>
	Class 2	3 years	4 years	5 years	10 years	12.5 years
	Class 3	2 years	2.5 years	3.5 years	7 years	8.75 years
	Class 4	1 year	1.5 years	2.5 years	3 years	3.75 years
	Class 5	.5 years	.75 years	1.5 years	2 years	2.5 years
	Class 6	.33 years	.5 years	1 year	1.5 years	2 years
	ARIZ. REV. STAT. ANN. § 13-705 (West 2011). <sup>14</sup>					
	<u>Dangerous crimes against children; sentences; definitions</u>					
	A. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger or sexual conduct with a minor who is twelve years of age or younger shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. This subsection does not apply to masturbatory contact.					
	B. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is					

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Penalty Cont' (Arizona)	<p>convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is under twelve years of age, second degree murder of a minor who is under twelve years of age, sexual assault of a minor who is under twelve years of age, sexual conduct with a minor who is under twelve years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is under twelve years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a term of imprisonment as follows:</p> <p>Minimum: 13 years                      Presumptive: 20 years                      Maximum: 27 years</p> <p>C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen or fourteen years of age, second degree murder of a minor who is twelve, thirteen or fourteen years of age, sexual assault of a minor who is twelve, thirteen or fourteen years of age, taking a child for the purpose of prostitution, child prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen years of age, continuous sexual abuse of a child, sex trafficking of a minor who is under fifteen years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is twelve, thirteen or fourteen years of age or involving or using minors in drug offenses shall be sentenced to a term of imprisonment as follows:</p> <p>Minimum: 13 years                      Presumptive: 20 years                      Maximum: 27 years</p> <p>A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:</p> <p>Minimum: 23 years                      Presumptive: 30 years                      Maximum: 37 years</p> <p>D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a term of imprisonment as follows:</p> <p>Minimum: 10 years                      Presumptive: 17 years                      Maximum: 24 years</p> <p>A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:</p> <p>Minimum: 21 years                      Presumptive: 28 years                      Maximum: 35 years</p> <p>E. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

Penalty Cont' (Arizona)	<p>dangerous crime against children involving luring a minor for sexual exploitation or unlawful age misrepresentation and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 41-1604.07 or the sentence is commuted:  Minimum: 5 years                      Presumptive: 10 years                      Maximum: 15 years</p> <p>A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 41-1604.07 or the sentence is commuted:  Minimum: 8 years                      Presumptive: 15 years                      Maximum: 22 years</p> <p>F. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving sexual abuse or bestiality under § 13-1411, subsection A, paragraph 2 and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 41-1604.07 or the sentence is commuted:  Minimum: 2.5 years                      Presumptive: 5 years                      Maximum: 7.5 years</p> <p>A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to § 41-1604.07 or the sentence is commuted:  Minimum: 8 years                      Presumptive: 15 years                      Maximum: 22 years</p> <p>G. The presumptive sentences prescribed in subsections B, C and D of this section or subsections E and F of this section if the person has previously been convicted of a predicate felony may be increased or decreased pursuant to § 13-701, subsections C, D and E.</p> <p>H. Except as provided in subsection F of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed by the court has been served or commuted.</p> <p>I. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection C or D of this section and</p>
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Penalty Cont' (Arizona)	<p>(a) Second degree murder.</p> <p>(b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.</p> <p>(c) Sexual assault.</p> <p>(d) Molestation of a child.</p> <p>(e) Sexual conduct with a minor.</p> <p>(f) Commercial sexual exploitation of a minor.</p> <p>(g) Sexual exploitation of a minor.</p> <p>(h) Child abuse as prescribed in § 13-3623, subsection A, paragraph 1.</p> <p>(i) Kidnapping.</p> <p>(j) Sexual abuse.</p> <p>(k) Taking a child for the purpose of prostitution as prescribed in § 13-3206.</p> <p>(l) Child prostitution as prescribed in § 13-3212.</p> <p>(m) Involving or using minors in drug offenses.</p> <p>(n) Continuous sexual abuse of a child.</p> <p>(o) Attempted first degree murder.</p> <p>(p) Sex trafficking.</p> <p>(q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.</p> <p>(r) Bestiality as prescribed in § 13-1411, subsection A, paragraph 2.</p> <p>(s) Luring a minor for sexual exploitation.</p> <p>(t) Aggravated luring a minor for sexual exploitation.</p> <p>(u) Unlawful age misrepresentation.</p> <p>2. "Predicate felony" means any felony involving child abuse pursuant to § 13-3623, subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.</p> <p>ARIZ. REV. STAT. ANN. § 13-707 (West 2011).</p> <p><u>Misdemeanors; sentencing</u></p> <p>A. A sentence of imprisonment for a misdemeanor shall be for a definite term to be served other than a place within custody of the state department of corrections. The court shall fix the term of imprisonment within the following maximum limitations:</p>
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Penalty Cont' (Arizona)	<p>1. For a class 1 misdemeanor, six months.</p> <p>2. For a class 2 misdemeanor, four months.</p> <p>3. For a class 3 misdemeanor, thirty days.</p>
<b>Arkansas</b>	
Statute (Arkansas)	<p>ARK. CODE ANN. § 5-14-103 (West 2011). <u>Rape</u></p> <p>(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:</p> <p>(1) By forcible compulsion;</p> <p>(2) Who is incapable of consent because he or she is:</p> <p>(A) Physically helpless;</p> <p>(B) Mentally defective; or</p> <p>(C) Mentally incapacitated;</p> <p>(3)(A) Who is less than fourteen (14) years of age.</p> <p>(B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or</p> <p>(4)(A) Who is a minor and the actor is the victim's:</p> <p>(i) Guardian;</p> <p>(ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;</p> <p>(iii) Brother or sister of the whole or half blood or by adoption; or</p> <p>(iv) Nephew, niece, or first cousin.</p> <p>(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.</p> <p>(b) It is no defense to a prosecution under subdivisions (a)(3) or (4) of this section that the victim consented to the conduct.</p> <p>(c)(1) Rape is a Class Y felony.</p> <p>(2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.</p>

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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Arkansas)</p>	<p>(d)(1) A court may issue a permanent no contact order when:            (A) A defendant pleads guilty or nolo contendere; or            (B) All of the defendant's appeals have been exhausted and the defendant remains convicted.            (2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter such orders as are consistent with § 5-2-305.</p> <p>ARK. CODE ANN. § 5-14-110 (West 2011).<sup>15</sup>  <u>Sexual indecency with a child</u></p> <p>(a) A person commits sexual indecency with a child if:            (1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:            (A) Sexual intercourse;            (B) Deviate sexual activity; or            (C) Sexual contact;            (2)(A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of any other person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.            (B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim; or            (3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of any other person, the person purposely exposes his or her sex organs to a minor, and the actor is:            (A) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;            (B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or            (C) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;            (4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, a person who is eighteen (18) years of age or older causes or coerces a minor to expose his or her sex organs to another person, and the actor is:            (A) Employed with the Department of Correction, the Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;            (B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or</p>
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<p>Statute Cont' (Arkansas)</p>	<p>(C) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor; or  (5) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of himself, herself, or another person.  (b) Sexual indecency with a child is a Class D felony.</p> <p>ARK. CODE ANN. § 5-14-111 (West 2011).  <u>Public sexual indecency</u></p> <p>(a) A person commits public sexual indecency if he or she engages in any of the following acts in a public place or public view:  (1) An act of sexual intercourse;  (2) An act of deviate sexual activity; or  (3) An act of sexual contact.</p> <p>ARK. CODE ANN. § 5-14-124 (West 2010).  <u>Sexual assault in the first degree</u></p> <p>(a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is:  (1) Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county jail or juvenile detention facility, or their contractors or agents;  (2) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or  (3) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim.  (b) It is no defense to a prosecution under this section that the victim consented to the conduct.  (c) It is an affirmative defense to a prosecution under subdivision (a)(3) of this section that the actor was not more than three (3) years older than the victim.</p>
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<p>Statute Cont' (Arkansas)</p>	<p>(d) Sexual assault in the first degree is a Class A felony.</p> <p>ARK. CODE ANN. § 5-14-125 (West 2011). <u>Sexual assault in the second degree</u></p> <p>(a) A person commits sexual assault in the second degree if the person:</p> <p>(1) Engages in sexual contact with another person by forcible compulsion;</p> <p>(2) Engages in sexual contact with another person who is incapable of consent because he or she is:</p> <p>(A) Physically helpless;</p> <p>(B) Mentally defective; or</p> <p>(C) Mentally incapacitated;</p> <p>(3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:</p> <p>(A) Less than fourteen (14) years of age; and</p> <p>(B) Not the person's spouse;</p> <p>(4)(A) Engages in sexual contact with a minor and the actor is:</p> <p>(i) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;</p> <p>(ii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or</p> <p>(iii) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.</p> <p>(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;</p> <p>(5)(A) Being a minor, engages in sexual contact with another person who is:</p> <p>(i) Less than fourteen (14) years of age; and</p> <p>(ii) Not the person's spouse.</p> <p>(B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:</p> <p>(i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or</p> <p>(ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older;</p> <p>(6) Is a teacher, athletic coach or counselor in a public school in a grade kindergarten through twelve (K-12) and engages in sexual contact with another person who is:</p> <p>(A) A student enrolled in the public school; and</p> <p>(B) Less than twenty-one (21) years of age.</p>
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<p>Statute Cont' (Arkansas)</p>	<p>(b)(1) Sexual assault in the second degree is a Class B felony.  (2) Sexual assault in the second degree is a Class D felony if committed by a minor with another person who is:  (A) Less than fourteen (14) years of age; and  (B) Not the person's spouse.</p> <p>ARK. CODE ANN. § 5-14-126 (West 2011).  <u>Sexual assault in the third degree</u></p> <p>(a) A person commits sexual assault in the third degree if the person:  (1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:  (A) Employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail;  (B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or  (C) A mandated reporter under § 12-18-402(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or  (2)(A) Being a minor, engages in sexual intercourse or deviate sexual activity with another person who is:  (i) Less than fourteen (14) years of age; and  (ii) Not the person's spouse.  (B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more than three (3) years older than the victim.  (b) It is no defense to a prosecution under this section that the victim consented to the conduct.  (c) Sexual assault in the third degree is a Class C felony.</p> <p>ARK. CODE ANN. § 5-14-127 (West 2011).  <u>Sexual assault in the fourth degree</u></p> <p>(a) A person commits sexual assault in the fourth degree if the person:  (1) Being twenty (20) years of age or older:  (A) Engages in sexual intercourse or deviate sexual activity with another person who is:</p>
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Statute Cont' (Arkansas)	<p>(i) Less than sixteen (16) years of age; and</p> <p>(ii) Not the person's spouse; or</p> <p>(B) Engages in sexual contact with another person who is:</p> <p>(i) Less than sixteen (16) years of age; and</p> <p>(ii) Not the person's spouse; or</p> <p>(2) Engages in sexual contact with another person who is not the actor's spouse, and the actor is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or a city or county jail; or</p> <p>(b)(1) Sexual assault in the fourth degree under subdivisions (a)(1)(A) and (a)(2) of this section is a Class D felony.</p> <p>(2) Sexual assault in the fourth degree under subdivision (a)(1)(B) of this section is a Class A misdemeanor if the person engages only in sexual contact with another person as described in subdivision (a)(1)(B) of this section.</p>
Age of Consent ♦ (Arkansas)	16
Definitions (Arkansas)	<p>ARK. CODE ANN. § 5-14-101 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in this chapter:</p> <p>(1) "Deviate sexual activity" means any act of sexual gratification involving:</p> <p>(A) The penetration, however slight, of the anus or mouth of a person by the penis of another person; or</p> <p>(B) The penetration, however slight, of the labia majora or anus of a person by any body member or foreign instrument manipulated by another person;</p> <p>(2) "Forcible compulsion" means physical force or a threat, express or implied, of death or physical injury to or kidnapping of any person;</p> <p>(3) "Guardian" means a parent, stepparent, legal guardian, legal custodian, foster parent, or any person who by virtue of a living arrangement is placed in an apparent position of power or authority over a minor;</p> <p>(4)(A) "Mentally defective" means that a person suffers from a mental disease or defect that renders the person:</p> <p>(i) Incapable of understanding the nature and consequences of a sexual act; or</p> <p>(ii) Unaware a sexual act is occurring.</p> <p>(B) A determination that a person is mentally defective shall not be based solely on the person's intelligence quotient;</p>

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Definitions Cont' (Arkansas)	<p>(5) "Mentally incapacitated" means that a person is temporarily incapable of appreciating or controlling the person's conduct as a result of the influence of a controlled or intoxicating substance:</p> <p>(A) Administered to the person without the person's consent; or</p> <p>(B) That renders the person unaware a sexual act is occurring;</p> <p>(6) "Physically helpless" means that a person is:</p> <p>(A) Unconscious;</p> <p>(B) Physically unable to communicate a lack of consent; or</p> <p>(C) Rendered unaware a sexual act is occurring;</p> <p>(7) "Public place" means a publicly or privately owned place to which the public or a substantial number of people have access;</p> <p>(8) "Public view" means observable or likely to be observed by a person in a public place;</p> <p>(9) "Sexual contact" means any act of sexual gratification involving the touching, directly or through clothing, of the sex organs, buttocks, or anus of a person or the breast of a female; and</p> <p>(10) "Sexual intercourse" means penetration, however slight, of the labia majora by a penis.</p> <p>(11) "Minor" means a person who is less than eighteen (18) years of age.</p>
Defenses (Arkansas)	<p>ARK. CODE ANN. § 5-14-103 (West 2011). <u>Rape</u></p> <p>(a)(3)(B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or</p> <p>(a)(4)(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.</p> <p>ARK. CODE ANN. § 5-14-110 (West 2011). <u>Sexual indecency with a child</u></p> <p>(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim; or</p> <p>ARK. CODE ANN. § 5-14-124 (West 2011). <u>Sexual assault in the first degree</u></p>

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<p>Defenses Cont' (Arkansas)</p>	<p>(c) It is an affirmative defense to a prosecution under subdivision (a)(3) of this section that the actor was not more than three (3) years older than the victim.</p> <p>ARK. CODE ANN. § 5-14-125 (West 2011). <u>Sexual assault in the second degree</u></p> <p>(B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:</p> <p>(i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or</p> <p>(ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older; or</p> <p>ARK. CODE ANN. § 5-14-126 (West 2011). <u>Sexual assault in the third degree</u></p> <p>(B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more than three (3) years older than the victim.</p>
<p>Penalty (Arkansas)</p>	<p>ARK. CODE ANN. § 5-4-201 (West 2011) <u>Imposition of fines</u></p> <p>(a) A defendant convicted of a felony may be sentenced to pay a fine:</p> <p>(1) Not exceeding fifteen thousand dollars (\$15,000) if the conviction is of a Class A felony or Class B felony;</p> <p>(2) Not exceeding ten thousand dollars (\$10,000) if the conviction is of a Class C felony or Class D felony;</p> <p>(3) In accordance with a limitation of the statute defining the felony if the conviction is of an unclassified felony.</p> <p>(b) A defendant convicted of a misdemeanor may be sentenced to pay a fine:</p> <p>(1) Not exceeding two thousand five hundred dollars (\$2,500) if the conviction is of a Class A misdemeanor;</p> <p>(2) Not exceeding one thousand dollars (\$1,000) if the conviction is of a Class B misdemeanor;</p> <p>(3) Not exceeding five hundred dollars (\$500) if the conviction is of a Class C misdemeanor; or</p> <p>(4) In accordance with a limitation of the statute defining the misdemeanor if the conviction is of an unclassified misdemeanor.</p> <p>(c) A defendant convicted of a violation may be sentenced to pay a fine:</p> <p>(1) Not exceeding one hundred dollars (\$100) if the violation is defined by the Arkansas Criminal Code or defined by a statute enacted subsequent to January 1, 1976, that does not prescribe a different limitation on the amount of the fine; or</p> <p>(2) In accordance with a limitation of the statute defining the violation if that statute prescribes limitations on the amount of the fine.</p>

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Penalty Cont' (Arkansas)	<p>ARK. CODE ANN. § 5-4-401 (West 2011).  <u>Felonies, incarceration</u></p> <p>(a) A defendant convicted of a felony shall receive a determinate sentence according to the following limitations:  (2) For a Class A felony, the sentence shall be not less than six (6) years nor more than thirty (30) years;  (3) For a Class B felony, the sentence shall be not less than five (5) years nor more than twenty (20) years;  (4) For a Class C felony, the sentence shall be not less than three (3) years nor more than ten (10) years;  (5) For a Class D felony, the sentence shall not exceed six (6) years; and  (b) A defendant convicted of a misdemeanor may be sentenced according to the following limitations:  (1) For a Class A misdemeanor, the sentence shall not exceed one (1) year;  (2) For a Class B misdemeanor, the sentence shall not exceed ninety (90) days;  (3) For a Class C misdemeanor, the sentence shall not exceed thirty (30) days; and  (4) For an unclassified misdemeanor, the sentence shall be in accordance with a limitation of the statute defining the misdemeanor.</p>
<b>California</b>	
Statute (California)	<p>CAL. PENAL CODE § 261.5 (West 2011).  <u>Unlawful sexual intercourse with person under 18; age of perpetrator; civil penalties</u></p> <p>(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a “minor” is a person under the age of 18 years and an “adult” is a person who is at least 18 years of age.  (b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.  (c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.  (d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (California)</p>	<p>imprisonment in the state prison for two, three, or four years.</p> <p>CAL. PENAL CODE § 266h (West 2011). <u>Pimping and pimping a minor; punishment</u></p> <p>(a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.</p> <p>(b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:</p> <p>(1) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.</p> <p>(2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.</p> <p>CAL. PENAL CODE § 266i (West 2011). <u>Pandering and pandering with a minor; punishment</u></p> <p>(a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years:</p> <p>(1) Procures another person for the purpose of prostitution.</p> <p>(2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute.</p> <p>(3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.</p> <p>(4) By promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.</p>
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<p>Statute Cont' (California)</p>	<p>(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.</p> <p>(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.</p> <p>CAL. PENAL CODE § 266j (West 2011). <u>Procurement of child under age 16 for lewd or lascivious acts; punishment</u></p> <p>Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars (\$15,000).</p> <p>CAL. PENAL CODE § 267 (West 2011). <u>Abduction; person under 18 for purpose of prostitution; punishment</u></p> <p>Every person who takes away any other person under the age of 18 years from the father, mother, guardian, or other person having the legal charge of the other person, without their consent, for the purpose of prostitution, is punishable by imprisonment in the state prison, and a fine not exceeding two thousand dollars (\$2,000).</p> <p>CAL. PENAL CODE § 269 (West 2011). <u>Aggravated sexual assault of a child; violation; penalty</u></p> <p>(a) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:</p> <ol style="list-style-type: none"> <li>(1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.</li> <li>(2) Rape or sexual penetration, in concert, in violation of Section 264.1.</li> <li>(3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.</li> <li>(4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.</li> </ol>
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<p>Statute Cont' (California)</p>	<p>(5) Sexual penetration, in violation of subdivision (a) of Section 289.</p> <p>CAL. PENAL CODE § 285 (West 2011). <u>Incest</u></p> <p>Persons being within the degrees of consanguinity within which marriages are declared by law to be incestuous and void, who intermarry with each other, or who being 14 years of age or older, commit fornication or adultery with each other, are punishable by imprisonment in the state prison.</p> <p>CAL. PENAL CODE § 286 (West 2011). <u>Sodomy; punishment</u></p> <p>(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.</p> <p>(b)(1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.</p> <p>(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.</p> <p>(c)(1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(2) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(d) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (California)</p>	<p>(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.</p> <p>(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:</p> <p>(1) Was unconscious or asleep.</p> <p>(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.</p> <p>(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.</p> <p>(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.</p> <p>(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.</p> <p>(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.</p> <p>(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (California)</p>	<p>(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.</p> <p>(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.</p> <p>CAL. PENAL CODE § 288 (West 2011). <u>Lewd or lascivious acts; penalties; psychological harm to victim</u></p> <p>(a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(b)(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(c)(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.</p> <p>(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.</p> <p>(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (California)</p>	<p>permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.</p> <p>(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:</p> <p>(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:</p> <p>(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.</p> <p>(B) Clinics.</p> <p>(C) Home health agencies.</p> <p>(D) Adult day health care centers.</p> <p>(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.</p> <p>(F) Sheltered workshops.</p> <p>(G) Camps.</p> <p>(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.</p> <p>(I) Respite care facilities.</p> <p>(J) Foster homes.</p> <p>(K) Regional centers for persons with developmental disabilities.</p> <p>(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.</p> <p>(M) An agency that supplies in-home supportive services.</p> <p>(N) Board and care facilities.</p> <p>(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.</p> <p>(P) Private residences.</p> <p>(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:</p> <p>(A) Bathing.</p> <p>(B) Dressing.</p> <p>(C) Grooming.</p> <p>(D) Medication storage.</p> <p>(E) Medical dispensation.</p> <p>(F) Money management.</p>
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<p>Statute Cont' (California)</p>	<p>(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.</p> <p>(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).</p> <p>(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.</p> <p>CAL. PENAL CODE § 288a (West 2011). <u>Oral Copulation</u></p> <p>(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.</p> <p>(b)(1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.</p> <p>(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.</p> <p>(c)(1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(2) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(d) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (1) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (2) where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat,</p>
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<p>Statute Cont' (California)</p>	<p>or (3) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.</p> <p>(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.</p> <p>(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:</p> <ol style="list-style-type: none"> <li>(1) Was unconscious or asleep.</li> <li>(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.</li> <li>(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.</li> <li>(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.</li> </ol> <p>(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.</p> <p>(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.</p>
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American University, Washington College of Law

Current as of June 2011



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<p>Statute Cont' (California)</p>	<p>(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.</p> <p>(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.</p> <p>CAL. PENAL CODE § 288.2 (West 2011). <u>Harmful matter sent with intent of seduction of minor</u></p> <p>(a) Every person who, with knowledge that a person is a minor, or who fails to exercise reasonable care in ascertaining the true age of a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by any means, including, but not limited to, live or recorded telephone messages, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.</p> <p>A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.</p> <p>(b) Every person who, with knowledge that a person is a minor, knowingly distributes, sends, causes to be sent, exhibits, or offers to distribute or exhibit by electronic mail, the Internet, as defined in Section 17538 of the Business and Professions Code, or a commercial online service, any harmful matter, as defined in Section 313, to a minor with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of a minor, and with the intent, or for the purpose of seducing a minor, is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.</p> <p>A person convicted of a second and any subsequent conviction for a violation of this section is guilty of a felony.</p> <p>(e) It does not constitute a violation of this section for a telephone corporation, as defined in Section 234 of the Public Utilities Code, a</p>
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<p>Statute Cont' (California)</p>	<p>cable television company franchised pursuant to Section 53066 of the Government Code, or any of its affiliates, an Internet service provider, or commercial online service provider, to carry, broadcast, or transmit messages described in this section or perform related activities in providing telephone, cable television, Internet, or commercial online services.</p> <p>CAL. PENAL CODE § 288.5 (West 2011). <u>Continuous sexual abuse of a child</u></p> <p>(a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.</p> <p>(b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.</p> <p>(c) No other act of substantial sexual conduct, as defined in subdivision (b) of Section 1203.066, with a child under 14 years of age at the time of the commission of the offenses, or lewd and lascivious acts, as defined in Section 288, involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.</p> <p>CAL. PENAL CODE § 288.7 (West 2011) <u>Sexual intercourse or sodomy with child 10 years of age or younger; punishment; oral copulation or sexual penetration of child 10 years of age or younger; punishment</u></p> <p>(a) Any person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 25 years to life.</p> <p>(b) Any person 18 years of age or older who engages in oral copulation or sexual penetration, as defined in Section 289, with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 15 years to life.</p> <p>CAL. PENAL CODE § 289 (West 2011). <u>Forcible acts of sexual penetration; punishment</u></p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (California)</p>	<p>(a)(1) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.</p> <p>(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.</p> <p>(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:</p> <ol style="list-style-type: none"> <li>(1) Was unconscious or asleep.</li> <li>(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.</li> <li>(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.</li> <li>(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.</li> </ol>
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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (California)</p>	<p>(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.</p> <p>As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.</p> <p>(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.</p> <p>(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.</p> <p>(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.</p> <p>(k) As used in this section:</p> <p>(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.</p> <p>(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.</p> <p>(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.</p> <p>(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.</p> <p>(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.</p>
<p>Age of</p>	<p>18</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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Consent ♦ (California)	
Definitions (California)	<p>CAL. PENAL CODE §261 (West 2011).  <u>Rape Defined</u></p> <p>(a) Rape is an act of sexual intercourse accomplished with a person not the spouse of the perpetrator, under any of the following circumstances:</p> <p>(1) Where a person is incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.</p> <p>(2) Where it is accomplished against a person's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the person or another.</p> <p>(3) Where a person is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused.</p> <p>(4) Where a person is at the time unconscious of the nature of the act, and this is known to the accused. As used in this paragraph, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:</p> <p>(A) Was unconscious or asleep.</p> <p>(B) Was not aware, knowing, perceiving, or cognizant that the act occurred.</p> <p>(C) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.</p> <p>(D) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.</p> <p>(5) Where a person submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief.</p> <p>(6) Where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat. As used in this paragraph, "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.</p> <p>(7) Where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official. As used in this paragraph, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest,</p>

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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (California)</p>	<p>or deport another. The perpetrator does not actually have to be a public official.</p> <p>(b) As used in this section, “duress” means a direct or implied threat of force, violence, danger, or retribution sufficient to coerce a reasonable person of ordinary susceptibilities to perform an act which otherwise would not have been performed, or acquiesce in an act to which one otherwise would not have submitted. The total circumstances, including the age of the victim, and his or her relationship to the defendant, are factors to consider in appraising the existence of duress.</p> <p>(c) As used in this section, “menace” means any threat, declaration, or act which shows an intention to inflict an injury upon another.</p> <p>CAL. PENAL CODE § 261.6 (West 2011).  <u>Consent; current or previous dating or marital relationship; admissibility of evidence or burden of proof</u></p> <p>Consent; current or previous dating or marital relationship; admissibility of evidence or burden of proof          In prosecutions under Section 261, 262, 286, 288a, or 289, in which consent is at issue, “consent” shall be defined to mean positive cooperation in act or attitude pursuant to an exercise of free will. The person must act freely and voluntarily and have knowledge of the nature of the act or transaction involved.          A current or previous dating or marital relationship shall not be sufficient to constitute consent where consent is at issue in a prosecution under Section 261, 262, 286, 288a, or 289.          Nothing in this section shall affect the admissibility of evidence or the burden of proof on the issue of consent.</p> <p>CAL. PENAL CODE § 6031.4 (West 2011).  <u>Local Detention Facility</u></p> <p>(a) For the purpose of this title, "local detention facility" means any city, county, city and county, or regional facility used for the confinement for more than 24 hours of adults, or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.</p> <p>(b) In addition to those provided for in subdivision (a), for the purposes of this title, "local detention facility" also includes any city, county, city and county, or regional facility, constructed on or after January 1, 1978, used for the confinement, regardless of the length of confinement, of adults or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.</p> <p>(c) "Local detention facility" also includes any adult detention facility, exclusive of any facility operated by the California Department of Corrections or any facility holding inmates pursuant to Section 2910.5, Chapter 4 (commencing with Section 3410) of Title 2 of, Chapter 9.2 (commencing with Section 6220) of Title 7 of, Chapter 9.5 (commencing with Section 6250) of Title 7 of, or Chapter 9.6 (commencing</p>
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<p>Definitions Cont' (California)</p>	<p>with Section 6260) of Title 7 of, Part 3, that holds local prisoners under contract on behalf of cities, counties, or cities and counties. Nothing in this subdivision shall be construed as affecting or authorizing the establishment of private detention facilities.</p> <p>(d) For purposes of this title, a local detention facility does not include those rooms that are used for holding persons for interviews, interrogations, or investigations, and are either separate from a jail or located in the administrative area of a law enforcement facility.</p> <p>CAL. PENAL CODE § 4504 (West 2011). <u>Confined in Prison</u></p> <p>(a) A person is deemed confined in a "state prison" if he is confined in any of the prisons and institutions specified in Section 5003 [(a) The California State Prison at San Quentin, (b) The California State Prison at Folsom, (c) The California Institution for Men, (d) The California Institution for Women, (e) The Deuel Vocational Institution, (f) The California Medical Facility, (g) The Correctional Training Facility, (h) The California Men's Colony, (i) The California Correctional Institution at Tehachapi, (j) The California Rehabilitation Center, (k) The California Correctional Center at Susanville, (l) The Sierra Correctional Center, (m) The Richard J. Donovan Correctional Facility at Rock Mountain, (n) Mule Creek State Prison, (o) Northern California Women's Facility, (p) Pelican Bay State Prison, (q) Avenal State Prison, (r) California State Prison--King's County at Corcoran, (s) Chuckawalla Valley State Prison, (t) Those other institutions and prison facilities as the Department of Corrections or the Director of Corrections may be authorized by law to establish, including, but not limited to, prisons in Madera, Kern, Imperial, and Los Angeles Counties] by order made pursuant to law, including, but not limited to,</p> <p>CAL. PENAL CODE § 288a (West 2011). <u>Oral Copulation</u></p> <p>(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.</p> <p>CAL. PENAL CODE § 286 (West 2011). <u>Sodomy</u></p> <p>(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.</p>
<p>Defenses (California)</p>	<p>CAL. PENAL CODE § 288.2 (West 2011). <u>Harmful matter sent with intent of seduction of minor</u></p>

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Defenses Cont' (California)	<p>(c) It shall be a defense to any prosecution under this section that a parent or guardian committed the act charged in aid of legitimate sex education.</p> <p>(d) It shall be a defense in any prosecution under this section that the act charged was committed in aid of legitimate scientific or educational purposes.</p>
Penalty (California)	<p>Per California Penal Code, the penalties are included in the “Statutes” section of this chart. However, for ease of reference we have included brief summaries of the penalties for each offense.</p> <p>CAL. PENAL CODE 261.5 (West 2011).  <u>Unlawful sexual intercourse</u></p> <p>(c) Any person who [violates this section] is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison.</p> <p>(d) Any who [violates this section] is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment in the state prison for two, three, or four years.</p> <p>(A) A civil penalty not to exceed two thousand dollars (\$2,000).          (B) A civil penalty not to exceed five thousand dollars (\$5,000).          (C) A civil penalty not to exceed ten thousand dollars (\$10,000).          (D) A civil penalty not to exceed twenty-five thousand dollars (\$25,000).</p> <p>(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.</p> <p>(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section</p> <p>CAL. PENAL CODE § 266h (West 2011)  <u>Pimping and pimping a minor</u></p>

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<p>Penalty Cont' (California)</p>	<p>(b)(1) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.</p> <p>(2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.</p> <p>CAL. PENAL CODE § 266i (West 2011) <u>Pandering and pandering with a minor</u></p> <p>(a) Any person who [violates this section] is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.</p> <p>(b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:</p> <p>(1) If the other person is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.</p> <p>(2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.</p> <p>CAL. PENAL CODE § 266j (West 2011). <u>Procurement of a child under age 16 for lewd or lascivious acts</u></p> <p>Any person who [violates this section] is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars (\$15,000).</p> <p>CAL. PENAL CODE § 267 (West 2011). <u>Abduction; person under 18 for purpose of prostitution</u></p> <p>Every person who [violates this section] is punishable by imprisonment in the state prison and a fine not to exceed two thousand dollars (\$2,000).</p> <p>CAL. PENAL CODE § 269 (West 2011). <u>Aggravated sexual assault of a child; violation; penalty</u></p>
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<p>Penalty Cont' (California)</p>	<p>(b) Any person who violates this section shall be punished by imprisonment for 15 years to life. (c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.</p> <p>CAL. PENAL CODE § 285 (West 2011). <u>Incest</u></p> <p>A person who violates this section is punishable by imprisonment in a state prison for 16, 24, or 36 months.<sup>16</sup></p> <p>CAL. PENAL CODE § 286 (West 2011). <u>Sodomy</u></p> <p>Any person who violates section (b)(1), (e), or (h) shall be punished by imprisonment for not more than one year. Any person who violates section (c)(1), (c)(2), (c)(3), (f), (g), (i), (j), or (k) shall be punished by imprisonment for three, six, or eight years. Any person who violates section (d) shall be punished by imprisonment for five, seven, or nine years. (m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section. . . .</p> <p>CAL. PENAL CODE § 288 (West 2011). <u>Lewd and Lascivious Acts</u></p> <p>Any person who violates this section (a), (b)(1), or (b)(2) is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years. Any person who violates section (c)(1) is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year Any person who violates section (c)(2) is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. (e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000).</p>
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<p>Penalty Cont' (California)</p>	<p>CAL. PENAL CODE § 288a (West 2011). <u>Oral Copulation</u></p> <p>Any person who violates section (b)(1), (e) or (h) shall be punished by imprisonment for a period of not more than one year. Any person who violates section (c)(1), (c)(2), (c)(3), (f), (g), (i), (j), or (k) shall be punished by imprisonment in the state prison for three, six, or eight years. Any person who violates section (d) shall be punished by imprisonment in the state prison for five, seven, or nine years. (m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section.</p> <p>CAL. PENAL CODE § 288.2 (West 2011).<sup>17</sup> <u>Harmful matter sent with intent of seduction of minor</u></p> <p>Every person who violates section (a) or (b) is guilty of a public offense and shall be punished by imprisonment in the state prison or in a county jail.</p> <p>CAL. PENAL CODE § 288.3 (West 2011). <u>Contact of minor with intent to commit sexual offense; punishment</u></p> <p>(a) Every person who [violates this section] shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense. (c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.</p>
<p><b>Colorado</b></p>	
<p>Statute (Colorado)</p>	<p>COLO. REV. STAT. ANN. § 18-3-402 (West 2011). <u>Sexual assault</u></p>

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<p>Statute Cont' (Colorado)</p>	<p>(1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:</p> <p>(a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or</p> <p>(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or</p> <p>(c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or</p> <p>(d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or</p> <p>(e) At the time of the commission of the act, the victim is at least fifteen years of age but less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or</p> <p>(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or</p> <p>(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or</p> <p>(h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.</p> <p>(2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.</p> <p>(3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501(3).</p> <p>(3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.</p> <p>(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:</p> <p>(a) The actor causes submission of the victim through the actual application of physical force or physical violence; or</p> <p>(b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or</p> <p>(c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; or</p> <p>(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.</p> <p>(e) Deleted by Laws 2002, Ch. 322, § 2, eff. July 1, 2002.</p> <p>(5)(a) Sexual assault is a class 2 felony if any one or more of the following circumstances exist:</p> <p>(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons; or</p> <p>(II) The victim suffers serious bodily injury; or</p>
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<p>Statute Cont' (Colorado)</p>	<p>(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.</p> <p>COLO. REV. STAT. ANN. § 18-3-404 (West 2011). <u>Unlawful Sexual Contact</u></p> <p>(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:</p> <ul style="list-style-type: none"> <li>(a) The actor knows that the victim does not consent; or</li> <li>(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or</li> <li>(c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or</li> <li>(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or</li> <li>(e) Repealed by Laws 1990, H.B.90-1133, § 25, eff. July 1, 1990.</li> <li>(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or (g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.</li> </ul> <p>(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 [Sexual Assault, See Above] to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.</p> <p>(1.7) Any person who knowingly observes or takes a photograph of another person's intimate parts without that person's consent, in a situation where the person observed has a reasonable expectation of privacy, for the purpose of the observer's own sexual gratification, commits unlawful sexual contact. For purposes of this subsection (1.7), "photograph" includes any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material.</p> <p>(2)(a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime.</p> <p>(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402(4)(a), (4)(b), or (4)(c) [Sexual Assault, See Above] or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Colorado)</p>	<p>COLO. REV. STAT. ANN. 18-3-405 (West 2011). <u>Sexual assault on a child</u></p> <p>(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim. (2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if: (a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or (b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or (c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or (d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401(1)(a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401(2.5).</p> <p>COLO. REV. STAT. ANN. § 18-3-405.3 (West 2011). <u>Sexual assault on a child by one in a position of trust</u></p> <p>(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child less than eighteen years of age and the actor committing the offense is one in a position of trust with respect to the victim. (2) Sexual assault on a child by one in a position of trust is a class 3 felony if: (a) The victim is less than fifteen years of age; or (b) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time need be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401(1)(a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in</p>
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	<p>section 18-3-401(2.5).</p> <p>(3) Sexual assault on a child by one in a position of trust is a class 4 felony if the victim is fifteen years of age or older but less than eighteen years of age and the offense is not committed as part of a pattern of sexual abuse, as described in paragraph (b) of subsection (2) of this section.</p> <p>COLO. REV. STAT. ANN. § 18-3-405.4 (West 2011).</p> <p><u>Internet sexual exploitation of a child</u></p> <p>(1) An actor commits internet sexual exploitation of a child if the actor knowingly importunes, invites, or entices through communication via a computer network or system, telephone network, or data network or by a text message or instant message, a person whom the actor knows or believes to be under fifteen years of age and at least four years younger than the actor, to:</p> <p>(a) Expose or touch the person's own or another person's intimate parts while communicating with the actor via a computer network or system, telephone network, or data network or by a text message or instant message; or</p> <p>(b) Observe the actor's intimate parts via a computer network or system, telephone network, or data network or by a text message or instant message.</p> <p>(2) Deleted by Laws 2009, Ch. 343, § 1, eff. July 1, 2009.</p> <p>(3) Internet sexual exploitation of a child is a class 4 felony.</p>
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Definitions (Colorado)	<p>COLO. REV. STAT. § 18-3-401 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in this part 4, unless the context otherwise requires:</p> <p>(1) "Actor" means the person accused of a sexual offense pursuant to this part 4.</p> <p>(1.5) "Consent" means cooperation in act or attitude pursuant to an exercise of free will and with knowledge of the nature of the act. A current or previous relationship shall not be sufficient to constitute consent under the provisions of this part 4. Submission under the influence of fear shall not constitute consent. Nothing in this definition shall be construed to affect the admissibility of evidence or the burden of proof in regard to the issue of consent under this part 4.</p>

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Definitions Cont' (Colorado)	<p>(1.7) "Diagnostic test" means a human immunodeficiency virus (HIV) screening test followed by a supplemental HIV test for confirmation in those instances when the HIV screening test is repeatedly reactive.</p> <p>(2) "Intimate parts" means the external genitalia or the perineum or the anus or the buttocks or the pubes or the breast of any person.</p> <p>(2.5) "Pattern of sexual abuse" means the commission of two or more incidents of sexual contact involving a child when such offenses are committed by an actor upon the same victim.</p> <p>(3) "Physically helpless" means unconscious, asleep, or otherwise unable to indicate willingness to act.</p> <p>(3.5) One in a "position of trust" includes, but is not limited to, any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities concerning a child, including a guardian or someone otherwise responsible for the general supervision of a child's welfare, or a person who is charged with any duty or responsibility for the health, education, welfare, or supervision of a child, including foster care, child care, family care, or institutional care, either independently or through another, no matter how brief, at the time of an unlawful act.</p> <p>(4) "Sexual contact" means the knowing touching of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or the knowing touching of the clothing covering the immediate area of the victim's or actor's intimate parts if that sexual contact is for the purposes of sexual arousal, gratification, or abuse.</p> <p>(5) "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>(6) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anilingus, 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>(7) "Victim" means the person alleging to have been subjected to a criminal sexual assault.</p>
Defenses (Colorado)	None.
Penalty (Colorado)	<p>COLO. REV. STAT. ANN. § 18-1.3-406 (West 2011).</p> <p><u>Mandatory sentences for violent crimes</u></p> <p>(1)(a) Any person convicted of a crime of violence shall be sentenced pursuant to the provisions of section 18-1.3-401(8) to the department of corrections for a term of incarceration of at least the midpoint in, but not more than twice the maximum of, the presumptive range provided for such offense in section 18-1.3-401(1)(a), as modified for an extraordinary risk crime pursuant to section 18-1.3-401(10), without suspension; except that, within ninety days after he or she has been placed in the custody of the department of corrections, the</p>

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<p>Penalty Cont' (Colorado)</p>	<p>department shall transmit to the sentencing court a report on the evaluation and diagnosis of the violent offender, and the court, in a case which it considers to be exceptional and to involve unusual and extenuating circumstances, may thereupon modify the sentence, effective not earlier than one hundred twenty days after his or her placement in the custody of the department. Such modification may include probation if the person is otherwise eligible therefor. Whenever a court finds that modification of a sentence is justified, the judge shall notify the state court administrator of his or her decision and shall advise said administrator of the unusual and extenuating circumstances that justified such modification. The state court administrator shall maintain a record, which shall be open to the public, summarizing all modifications of sentences and the grounds therefor for each judge of each district court in the state. A person convicted of two or more separate crimes of violence arising out of the same incident shall be sentenced for such crimes so that sentences are served consecutively rather than concurrently.</p> <p>(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), any person convicted of a sex offense, as defined in section 18-1.3-1003(5), committed on or after November 1, 1998, that constitutes a crime of violence shall be sentenced to the department of corrections for an indeterminate term of incarceration of at least the midpoint in the presumptive range specified in section 18-1.3-401(1)(a)(V)(A) up to a maximum of the person's natural life, as provided in section 18-1.3-1004(1).</p> <p>(2)(a)(I) "Crime of violence" means any of the crimes specified in subparagraph (II) of this paragraph (a) committed, conspired to be committed, or attempted to be committed by a person during which, or in the immediate flight therefrom, the person:</p> <p>(A) Used, or possessed and threatened the use of, a deadly weapon; or</p> <p>(B) Caused serious bodily injury or death to any other person except another participant.</p> <p>(II) Subparagraph (I) of this paragraph (a) applies to the following crimes:</p> <p>(A) Any crime against an at-risk adult or at-risk juvenile;</p> <p>(E) A sexual offense pursuant to part 4 of article 3 of this title;</p> <p>(b)(I) "Crime of violence" also means any unlawful sexual offense in which the defendant caused bodily injury to the victim or in which the defendant used threat, intimidation, or force against the victim. For purposes of this subparagraph (I), "unlawful sexual offense" shall have the same meaning as set forth in section 18-3-411(1), and "bodily injury" shall have the same meaning as set forth in section 18-1-901(3)(c).</p> <p>(II) The provisions of subparagraph (I) of this paragraph (b) shall apply only to felony unlawful sexual offenses.</p> <p>(c) As used in this section, "at-risk adult" has the same meaning as set forth in section 18-6.5-102(1), and "at-risk juvenile" has the same meaning as set forth in section 18-6.5-102(1.5).</p> <p>(3) In any case in which the accused is charged with a crime of violence as defined in subsection (2)(a)(I) of this section, the indictment or information shall so allege in a separate count, even though the use or threatened use of such deadly weapon or infliction of such serious bodily injury or death is not an essential element of the crime charged.</p> <p>(4) The jury, or the court if no jury trial is had, in any case as provided in subsection (3) of this section shall make a specific finding as to</p>
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<p>Penalty Cont' (Colorado)</p>	<p>whether the accused did or did not use, or possessed and threatened to use, a deadly weapon during the commission of such crime or whether such serious bodily injury or death was caused by the accused. If the jury or court finds that the accused used, or possessed and threatened the use of, such deadly weapon or that such injury or death was caused by the accused, the penalty provisions of this section shall be applicable.</p> <p>(5) In any case in which the accused is charged with a crime of violence as defined in subsection (2)(a)(II) of this section, the indictment or information shall so allege in a separate count, even though the use of threat, intimidation, or force or the infliction of bodily injury is not an essential element of the crime charged.</p> <p>(6) The jury, or the court if no jury trial is had, in any case as provided in subsection (5) of this section shall make a specific finding as to whether the accused did or did not use threat, intimidation, or force during the commission of such crime or whether such bodily injury was caused by the accused. If the jury or court finds that the accused used threat, intimidation, or force or that such bodily injury was caused by the accused, the penalty provisions of this section shall be applicable.</p> <p>COLO. REV. STAT. ANN. § 18-3-402 (West 2011). <u>Sexual assault</u></p> <p>(b)(I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401(8)(e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406(2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.</p> <p>(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.</p> <p>(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.</p> <p>COLO. REV. STAT. ANN. § 18-1.3-401 (West 2011).<sup>18</sup> <u>Felonies classified--presumptive penalties</u></p> <p>(1)(a)(I) As to any person sentenced for a felony committed after July 1, 1979, and before July 1, 1984, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:</p> <table data-bbox="321 1226 945 1299"> <thead> <tr> <th><u>Class</u></th><th><u>Presumptive Range</u></th></tr> </thead> <tbody> <tr> <td>1</td><td>Life imprisonment or death</td></tr> </tbody> </table>	<u>Class</u>	<u>Presumptive Range</u>	1	Life imprisonment or death
<u>Class</u>	<u>Presumptive Range</u>				
1	Life imprisonment or death				

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Penalty Cont' (Colorado)	2	Eight to twelve years plus one year of parole	
	3	Four to eight years plus on year of parole	
	4	Two to four years plus on year of parole	
	5	One to two years plus one year of parole	
	(II) As to any person sentenced for a felony committed on or after July 1, 1984, and before July 1, 1985, felonies are divided into five classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:		
<u>Class</u>		<u>Presumptive Range</u>	
1		Life imprisonment or death	
2		Eight to twelve years	
3		Four to eight years	
4		Two to four years	
5		One to two years	
(III)(A) As to any person sentenced for a felony committed on or after July 1, 1985, except as otherwise provided in sub-subparagraph (E) of this subparagraph (III), in addition to, or in lieu of, any sentence to imprisonment, probation, community corrections, or work release, a fine within the following presumptive ranges may be imposed for the specified classes of felonies:			
<u>Class</u>		<u>Minimum Sentence</u>	<u>Maximum Sentence</u>
1		No fine	No fine
2		Five thousand dollars	One million dollars
3		Three thousand dollars	Seven hundred fifty thousand dollars
4		Two thousand dollars	Five hundred thousand dollars
5		One thousand dollars	One hundred thousand dollars
6		One thousand dollars	One hundred thousand dollars
(A.5) Notwithstanding any provision of law to the contrary, any person who attempts to commit, conspires to commit, or commits against an elderly person any felony set forth in part 4 of article 4 of this title, part 1, 2, 3, or 5 of article 5 of this title, article 5.5 of this title, or section 11-51-603, C.R.S., shall be required to pay a mandatory and substantial fine within the limits permitted by law. However, all			

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Penalty Cont' (Colorado)	moneys collected from the offender shall be applied in the following order: Costs for crime victim compensation fund pursuant to section 24-4.1-119, C.R.S.; surcharges for victims and witnesses assistance and law enforcement fund pursuant to section 24-4.2-104, C.R.S.; restitution; time payment fee; late fees; and any other fines, fees, or surcharges. For purposes of this sub-subparagraph (A.5), an “elderly person” or “elderly victim” means a person sixty years of age or older.		
	(B) Failure to pay a fine imposed pursuant to this subparagraph (III) is grounds for revocation of probation or revocation of a sentence to community corrections, assuming the defendant's ability to pay. If such a revocation occurs, the court may impose the maximum sentence allowable in the given sentencing ranges.		
	(C) Each judicial district shall have at least one clerk who shall collect and administer the fines imposed under this subparagraph (III) and under section 18-1.3-501 in accordance with the provisions of sub-subparagraph (D) of this subparagraph (III).		
	(D) All fines collected pursuant to this subparagraph (III) shall be deposited in the fines collection cash fund, which fund is hereby created. The general assembly shall make annual appropriations out of such fund for administrative and personnel costs incurred in the collection and administration of said fines. All unexpended balances shall revert to the general fund at the end of each fiscal year.		
	(E) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (III), a person who has been twice convicted of a felony under the laws of this state, any other state, or the United States prior to the conviction for which he or she is being sentenced shall not be eligible to receive a fine in lieu of any sentence to imprisonment, community corrections, or work release but shall be sentenced to at least the minimum sentence specified in subparagraph (V) of this paragraph (a) and may receive a fine in addition to said sentence.		
	(IV) As to any person sentenced for a felony committed on or after July 1, 1985, but prior to July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:		
	<u>Class</u>	<u>Minimum Sentence</u>	<u>Maximum Sentence</u>
	1	Life imprisonment	Death
	2	Eight years imprisonment	Twenty-four years imprisonment
	3	Four years imprisonment	Sixteen years imprisonment
4	Two years imprisonment	Eight years imprisonment	
5	One year imprisonment	Four years imprisonment	
6	One year imprisonment	Two years imprisonment	
	(V)(A) As to any person sentenced for a felony committed on or after July 1, 1993, felonies are divided into six classes which are distinguished from one another by the following presumptive ranges of penalties which are authorized upon conviction:		
	Sentence	Sentence	Period of Parole

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Penalty Cont' (Colorado)	1	Life imprisonment	Death	None
	2	Eight years imprisonment	Twenty-four years imprisonment	Five years
	3	Four years imprisonment	Twelve years imprisonment	Five years
	4	Two years imprisonment	Six years imprisonment	Three years
	5	One year imprisonment	Three years imprisonment	Two years
	6	One year imprisonment	Eighteen months imprisonment	One year
	COLO. REV. STAT. ANN. § 18-1.3-501 (West 2011). <u>Misdemeanors classified--penalties</u>			
(1)(a) Misdemeanors are divided into three classes which are distinguished from one another by the following penalties which are authorized upon conviction except as provided in subsection (1.5) of this section:				
<u>Class</u>	<u>Minimum Sentence</u>	<u>Maximum Sentence</u>		
1	Six months imprisonment, or five hundred dollars fine, or both	Eighteen months imprisonment, or five thousand dollars fine, or both		
2	Three months imprisonment, or two hundred fifty dollars fine, or both	Twelve months imprisonment, or one thousand dollars fine, or both		
3	Fifty dollars fine	Six months imprisonment, or seven hundred fifty dollars fine, or both		

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Connecticut	
Statute (Connecticut)	<p>CONN. GEN. STAT. ANN. § 53a-70 (West 2011).  <u>Sexual Assault in the First Degree: Class B or A Felony</u></p> <p>(a) A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person, or (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person, or (3) commits sexual assault in the second degree as provided in section 53a-71 [2° Sexual Assault, see below] and in the commission of such offense is aided by two or more other persons actually present, or (4) engages in sexual intercourse with another person and such other person is mentally incapacitated to the extent that such other person is unable to consent to such sexual intercourse.</p> <p>(b) (1) Except as provided in subdivision (2) of this subsection, sexual assault in the first degree is a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court or, if the victim of the offense is under ten years of age, for which ten years of the sentence imposed may not be suspended or reduced by the court. (2) Sexual assault in the first degree is a class A felony if the offense is a violation of subdivision (1) of subsection (a) of this section and the victim of the offense is under sixteen years of age or the offense is a violation of subdivision (2) of subsection (a) of this section. Any person found guilty under said subdivision (1) or (2) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim is under ten years of age or of which five years of the sentence imposed may not be suspended or reduced by the court if the victim is under sixteen years of age.</p> <p>CONN. GEN. STAT. § 53a-70a (West 2011).  <u>Aggravated sexual assault in the first degree: Class B or A felony</u></p> <p>(a) A person is guilty of aggravated sexual assault in the first degree when such person commits sexual assault in the first degree as provided in section 53a-70, and in the commission of such offense (1) such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a deadly weapon, (2) with intent to disfigure the victim</p>

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<p>Statute Cont' (Connecticut)</p>	<p>seriously and permanently, or to destroy, amputate or disable permanently a member or organ of the victim's body, such person causes such injury to such victim, (3) under circumstances evincing an extreme indifference to human life such person recklessly engages in conduct which creates a risk of death to the victim, and thereby causes serious physical injury to such victim, or (4) such person is aided by two or more other persons actually present. No person shall be convicted of sexual assault in the first degree and aggravated sexual assault in the first degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.</p> <p>(b) Aggravated sexual assault in the first degree is a class B felony or, if the victim of the offense is under sixteen years of age, a class A felony. Any person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court, except that, if such person committed sexual assault in the first degree by violating subdivision (1) of subsection (a) of section 53a-70, and the victim of the offense is under sixteen years of age, twenty years of the sentence imposed may not be suspended or reduced by the court.</p> <p>CONN. GEN. STAT. § 53a-70c (West 2011). <u>Aggravated sexual assault of a minor: Class A felony</u></p> <p>(a) A person is guilty of aggravated sexual assault of a minor when such person commits a violation of subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-70a, 53a-71, 53a-86, 53a-87 or 53a-196a and the victim of such offense is under thirteen years of age, and (1) such person kidnapped or illegally restrained the victim, (2) such person stalked the victim, (3) such person used violence to commit such offense against the victim, (4) such person caused serious physical injury to or disfigurement of the victim, (5) there was more than one victim of such offense under thirteen years of age, (6) such person was not known to the victim, or (7) such person has previously been convicted of a violent sexual assault.</p> <p>CONN. GEN. STAT. § 53a-71 (West 2011). <u>Sexual assault in the second degree: Class C or B felony</u></p> <p>(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is mentally defective to the extent that such other person is unable to consent to such sexual intercourse; or (3) such other person is physically helpless; or (4) such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or (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; or (6) the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a</p>
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<p>Statute Cont' (Connecticut)</p>	<p>or other firearm. No person shall be convicted of sexual assault in the third degree and sexual assault in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.</p> <p>(b) Sexual assault in the third degree with a firearm is a class C felony or, if the victim of the offense is under sixteen 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 two years of the sentence imposed may not be suspended or reduced by the court and a period of special parole which together constitute a sentence of ten years.</p> <p>CONN. GEN. STAT. § 53a-73a (West 2011). <u>Sexual assault in the fourth degree: Class A misdemeanor or class D felony</u></p> <p>(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) mentally defective or mentally incapacitated to the extent that such other person is unable to consent to such sexual contact, or (D) physically helpless, or (E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age.</p> <p>(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.</p>
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Statute Cont' (Connecticut)	<p>CONN. GEN. STAT. § 53a-90a (West 2011).  <u>Enticing a minor. Penalties</u></p> <p>(a) A person is guilty of enticing a minor when such person uses an interactive computer service to knowingly persuade, induce, entice or coerce any person under sixteen years of age to engage in prostitution or sexual activity for which the actor may be charged with a criminal offense. For purposes of this section, “interactive computer service” means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.</p> <p>(b) (1) Except as provided in subdivision (2) of this subsection, enticing a minor is a class D felony for a first offense, a class C felony for a second offense and a class B felony for any subsequent offense.</p> <p>(2) Enticing a minor is a class B felony if the victim of the offense is under thirteen years of age. . . .</p> <p>CONN. GEN. STAT. § 53a-90b (West 2011).  <u>Misrepresentation of age to entice a minor: Class C felony</u></p> <p>(a) A person is guilty of misrepresentation of age to entice a minor when such person, in the course of and in furtherance of the commission of a violation of section 53a-90a, intentionally misrepresents such person's age.</p> <p>(b) Misrepresentation of age to entice a minor is a class C felony.</p>
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Definitions (Connecticut)	<p>CONN. GEN. STAT. § 53a-65 (West 2011).<sup>19</sup>  <u>Definitions</u></p> <p>As used in this part, except section 53a-70b, the following terms have the following meanings:</p> <p>(1) “Actor” means a person accused of sexual assault.</p> <p>(2) “Sexual intercourse” means vaginal intercourse, anal intercourse, fellatio or cunnilingus between persons regardless of sex. Its meaning is limited to persons not married to each other. Penetration, however slight, is sufficient to complete vaginal intercourse, anal intercourse or fellatio and does not require emission of semen. Penetration may be committed by an object manipulated by the actor into the genital or</p>

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<p>Definitions Cont' (Connecticut)</p>	<p>anal opening of the victim's body.</p> <p>(3) "Sexual contact" means any contact with the intimate parts of a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person or any contact of the intimate parts of the actor with a person not married to the actor for the purpose of sexual gratification of the actor or for the purpose of degrading or humiliating such person.</p> <p>(4) "Mentally defective" means that a person suffers from a mental disease or defect which renders such person incapable of appraising the nature of such person's conduct.</p> <p>(5) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling such person's conduct owing to the influence of a drug or intoxicating substance administered to such person without such person's consent, or owing to any other act committed upon such person without such person's consent.</p> <p>(6) "Physically helpless" means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>(7) "Use of force" means: (A) Use of a dangerous instrument; or (B) use of actual physical force or violence or superior physical strength against the victim.</p> <p>(8) "Intimate parts" means the genital area or any substance emitted therefrom, groin, anus or any substance emitted therefrom, inner thighs, buttocks or breasts.</p> <p>(9) "Psychotherapist" means a physician, psychologist, nurse, substance abuse counselor, social worker, clergyman, marital and family therapist, mental health service provider, hypnotist or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy.</p> <p>(10) "Psychotherapy" means the professional treatment, assessment or counseling of a mental or emotional illness, symptom or condition.</p> <p>(11) "Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the patient or former patient is unable to withhold consent to sexual contact by or sexual intercourse with the psychotherapist.</p> <p>(12) "Therapeutic deception" means a representation by a psychotherapist that sexual contact by or sexual intercourse with the psychotherapist is consistent with or part of the patient's treatment.</p> <p>(13) "School employee" means a teacher, substitute teacher, school administrator, school superintendent, guidance counselor, psychologist, social worker, nurse, physician, school paraprofessional or coach employed by a local or regional board of education or a private elementary or secondary school or working in a public or private elementary or secondary school.</p>
<p>Defenses (Connecticut)</p>	<p>CONN. GEN. STAT. § 53a-67 (West 2011).</p> <p><u>Affirmative defenses</u></p>

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## NIC/WCL Project on Addressing Prison Rape

Defenses (Connecticut)	<p>(a) In any prosecution for an offense under this part based on the victim's being mentally defective, mentally incapacitated or physically helpless, it shall be an affirmative defense that the actor, at the time such actor engaged in the conduct constituting the offense, did not know of such condition of the victim.</p> <p>(b) In any prosecution for an offense under this part, except an offense under section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72a or 53a-72b, it shall be an affirmative defense that the defendant and the alleged victim were, at the time of the alleged offense, living together by mutual consent in a relationship of cohabitation, regardless of the legal status of their relationship.</p>
Penalty (Connecticut)	<p>CONN. GEN. STAT. ANN. § 53a-70 (West 2011).  <u>Sexual Assault in the First Degree: Class B or A Felony</u></p> <p>(3) Any person found guilty under this section shall be sentenced to a term of imprisonment and a period of special parole which together constitute a sentence of at least ten years.</p> <p>CONN. GEN. STAT. § 53a-70a (West 2011).  <u>Aggravated sexual assault in the first degree: Class B or A felony</u></p> <p>(b) Aggravated sexual assault in the first degree is a class B felony or, if the victim of the offense is under sixteen years of age, a class A felony. Any person found guilty under this section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court, except that, if such person committed sexual assault in the first degree by violating subdivision (1) of subsection (a) of section 53a-70, and the victim of the offense is under sixteen years of age, twenty years of the sentence imposed may not be suspended or reduced by the court. Any person found guilty under this section shall be sentenced to a period of special parole pursuant to subsection (b) of section 53a-28 of at least five years.</p> <p>CONN. GEN. STAT. § 53a-70c (West 2011).<sup>20</sup>  <u>Aggravated sexual assault of a minor: Class A felony</u></p> <p>(b) Aggravated sexual assault of a minor is a class A felony and any person found guilty under this section shall, for a first offense, be sentenced to a term of imprisonment of twenty-five years which may not be suspended or reduced by the court and, for any subsequent offense, be sentenced to a term of imprisonment of fifty years which may not be suspended or reduced by the court.</p>

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<p>Penalty Cont' (Connecticut)</p>	<p>CONN. GEN. STAT. § 53a-71 (West 2011). <u>Sexual assault in the second degree: Class C or B felony</u></p> <p>(b) [A]ny person found guilty under this section shall be sentenced to a term of imprisonment of which nine months of the sentence imposed may not be suspended or reduced by the court.</p> <p>CONN. GEN. STAT. § 53a-72b (West 2011). <u>Sexual assault in the third degree with a firearm: Class C or B felony</u></p> <p>(b) [A]ny person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court and a period of special parole which together constitute a sentence of ten years.</p> <p>CONN. GEN. STAT. § 53a-90a (West 2011). <u>Enticing a minor. Penalties</u></p> <p>(2) [A]ny person found guilty of such class B felony shall, for a first offense, be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and, for any subsequent offense, be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court.</p> <p>CONN. GEN. STAT. § 53a-35a (West 2011). <u>Imprisonment for any felony committed on or after July 1, 1981: Definite sentences; terms authorized</u></p> <p>For any felony committed on or after July 1, 1981, the sentence of imprisonment shall be a definite sentence and the term shall be fixed by the court as follows: (1) For a capital felony, a term of life imprisonment without the possibility of release unless a sentence of death is imposed in accordance with section 53a-46a; (2) for the class A felony of murder, a term not less than twenty-five years nor more than life; (3) for the class A felony of aggravated sexual assault of a minor under section 53a-70c, a term not less than twenty-five years or more than fifty years<sup>21</sup>; (4) for a class A felony other than an offense specified in subdivision (2) or (3) of this section, a term not less than ten years nor more than twenty-five years; (5) for the class B felony of manslaughter in the first degree with a firearm under section 53a-55a, a term not less than five years nor more than forty years; (6) for a class B felony other than manslaughter in the first degree with a firearm under section 53a-55a, a term not less than one year nor more than twenty years, except that for a conviction under section 53a-59(a)(1), 53a-59a,</p>
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<p>Penalty Cont' (<i>Connecticut</i>)</p>	<p>53a-70a, 53a-94a, 53a-101(a)(1) or 53a-134(a)(2), the term shall be not less than five years nor more than twenty years; (7) for a class C felony, a term not less than one year nor more than ten years, except that for a conviction under section 53a-56a, the term shall be not less than three years nor more than ten years; (8) for a class D felony, a term not less than one year nor more than five years, except that for a conviction under section 53a-60b or 53a-217, the term shall be not less than two years nor more than five years, for a conviction under section 53a-60c, the term shall be not less than three years nor more than five years, and for a conviction under section 53a-216, the term shall be five years; (9) for an unclassified felony, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.</p> <p>CONN. GEN. STAT. § 53a-36 (West 2011). <u>Imprisonment for misdemeanor: Maximum and minimum sentences</u></p> <p>A sentence of imprisonment for a misdemeanor shall be a definite sentence and the term shall be fixed by the court as follows: (1) For a class A misdemeanor, a term not to exceed one year except that when a person is found guilty under section 53a-61(a)(3) or 53a-61a, the term shall be one year and such sentence shall not be suspended or reduced; (2) for a class B misdemeanor, a term not to exceed six months; (3) for a class C misdemeanor, a term not to exceed three months; (4) for an unclassified misdemeanor, a term in accordance with the sentence specified in the section of the general statutes that defines the crime.</p> <p>CONN. GEN. STAT. § 53a-41 (West 2011). <u>Fines for felonies</u></p> <p>A fine for the conviction of a felony shall be fixed by the court as follows: (1) For a class A felony, an amount not to exceed twenty thousand dollars; (2) for a class B felony, an amount not to exceed fifteen thousand dollars; (3) for a class C felony, an amount not to exceed ten thousand dollars; (4) for a class D felony, an amount not to exceed five thousand dollars; (5) for an unclassified felony, an amount in accordance with the fine specified in the section of the general statutes that defines the crime.</p> <p>CONN. GEN. STAT. § 53a-42 (West 2011). <u>Fines for misdemeanors</u></p> <p>A fine for the conviction of a misdemeanor shall be fixed by the court as follows: (1) For a class A misdemeanor, an amount not to exceed two thousand dollars; (2) for a class B misdemeanor, an amount not to exceed one thousand dollars; (3) for a class C misdemeanor, an amount not to exceed five hundred dollars; (4) for an unclassified misdemeanor, an amount in accordance with the fine specified in the</p>
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	section of the general statutes that defines the crime.
<b>Delaware</b>	
Statute ( <i>Delaware</i> )	<p>DEL. CODE ANN. tit. 11§ 765 (West 2011).  <u>Indecent exposure in the first degree; class A misdemeanor</u></p> <p>(a) A male is guilty of indecent exposure in the first degree if he exposes his genitals or buttocks to a person who is less than 16 years of age under circumstances in which he knows his conduct is likely to cause affront or alarm.  (b) A female is guilty of indecent exposure in the first degree if she exposes her genitals, breast or buttocks to a person who is less than 16 years of age under circumstances in which she knows her conduct is likely to cause affront or alarm.  Indecent exposure in the first degree is a class A misdemeanor.</p> <p>DEL. CODE ANN. tit. 11§ 766 (West 2011).  <u>Incest; class A misdemeanor</u></p> <p>(a) A person is guilty of incest if the person engages in sexual intercourse with another person with whom the person has one of the following relationships:  A male and his child.  A male and his parent.  A male and his brother.  A male and his sister.  A male and his grandchild.  A male and his niece or nephew.  A male and his father's sister or brother.  A male and his mother's sister or brother.  A male and his father's wife.  A male and his wife's child.  A male and the child of his wife's son or daughter.</p>

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<p>Statute Cont' (Delaware)</p>	<p>A female and her parent. A female and her child. A female and her brother. A female and her sister. A female and her grandchild. A female and her niece or nephew. A female and her father's sister or brother. A female and her mother's sister or brother. A female and her mother's husband. A female and her husband's child. A female and the child of her husband's son or daughter. (b) The relationships referred to herein include blood relationships without regard to legitimacy and relationships by adoption. Incest is a class A misdemeanor and is an offense within the original jurisdiction of the Family Court.</p> <p>DEL. CODE ANN. tit. 11, § 768 (West 2011). <u>Unlawful sexual contact in the second degree; class F felony</u></p> <p>A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person. Unlawful sexual contact in the second degree is a class F felony.</p> <p>DEL. CODE ANN. tit. 11§ 769 (West 2011). <u>Unlawful sexual contact in the first degree; class D felony</u></p> <p>(a) A person is guilty of unlawful sexual contact in the first degree when: (1) In the course of committing unlawful sexual contact in the third degree or in the course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument. (2) The person intentionally has sexual contact with another person who has not yet reached that person's sixteenth birthday and the</p>
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<p>Statute Cont' (Delaware)</p>	<p>defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(3) The person intentionally has sexual contact with another person who is less than 13 years of age or causes the victim to have sexual contact with the person or a third person.</p> <p>(b) Unlawful sexual contact in the first degree is a class D felony.</p> <p>DEL. CODE ANN. tit. 11, § 770 (West 2011). <u>Rape in the fourth degree; class C felony</u></p> <p>(a) A person is guilty of rape in the fourth degree when the person:</p> <p>(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or</p> <p>(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or</p> <p>(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:</p> <p>a. The sexual penetration occurs without the victim's consent; or</p> <p>b. The victim has not reached that victim's sixteenth birthday; or</p> <p>(4) Intentionally engages in sexual intercourse or sexual penetration with another person, and the victim has reached that victim's sixteenth birthday but has not yet reached that victim's eighteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(b) Paragraphs (a)(3) and (a)(4) of this section do not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.</p> <p>Rape in the fourth degree is a class C felony.</p> <p>DEL. CODE ANN. tit. 11, § 771 (West 2011). <u>Rape in the third degree; class B felony</u></p> <p>(a) A person is guilty of rape in the third degree when the person:</p> <p>(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached that victim's sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached that victim's fourteenth birthday and the person has</p>
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<p>Statute Cont' (<i>Delaware</i>)</p>	<p>reached that person's nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or</p> <p>(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:</p> <p>a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or</p> <p>b. The victim has not reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.</p> <p>(b) Paragraph (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.</p> <p>(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian or guardians, the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.</p> <p>(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.</p> <p>Rape in the third degree is a class B felony.</p> <p>DEL. CODE ANN. tit. 11, § 772 (West 2011). <u>Rape in the second degree; class B felony</u></p> <p>(a) A person is guilty of rape in the second degree when the person:</p> <p>(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or</p> <p>(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:</p> <p>a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or</p> <p>b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:</p> <p>1. Any felony; or</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (Delaware)</p>	<p>2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or</p> <p>c. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or</p> <p>d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or</p> <p>e. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or</p> <p>f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or</p> <p>g. The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday; or</p> <p>h. The victim has not yet reached that victim's sixteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.</p> <p>Rape in the second degree is a class B felony.</p> <p>DEL. CODE ANN. tit. 11, § 773 (West 2011).</p> <p><u>Rape in the first degree; class A felony</u></p> <p>(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:</p> <p>(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or</p> <p>(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:</p> <p>a. Any felony; or</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Delaware)</p>	<p>b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or</p> <p>(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or</p> <p>(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title [discussing liability for crimes of another, not covering the actions of law enforcement officers acting in the lawful performance of duty] existed between the defendant and another person or persons with respect to the commission of the crime; or</p> <p>(5) The victim has not yet reached his or her twelfth birthday, and the defendant has reached his or her eighteenth birthday; or</p> <p>(6) The victim has not yet reached his or her sixteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.</p> <p>(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:</p> <p>(1) The victim had not yet reached his or her 16th birthday at the time of the offense and the person inflicts serious physical injury on the victim; or</p> <p>(2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or</p> <p>(3) The person is convicted of rape against 3 or more separate victims; or</p> <p>(4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.</p> <p>Rape in the first degree is a class A felony.</p> <p>DEL. CODE ANN. tit. 11, § 776 (West 2011). <u>Continuous sexual abuse of a child; class B felony</u></p> <p>(a) A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in 3 or more acts of sexual conduct with a child under the age of 18 years of age over a</p>
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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Delaware)</p>	<p>period of time, not less than 3 months in duration.</p> <p>(b) Sexual conduct under this section is defined as any of those criminal sexual acts defined under § 768, § 769, § 770, § 771, § 772, § 773, or § 1108 of this title.</p> <p>(c) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.</p> <p>(d) Continuous sexual abuse of a child is a class B felony.</p> <p>DEL. CODE ANN. tit. 11, § 777 (West 2011).<sup>22</sup> <u>Dangerous crime against a child, definitions, sentences</u></p> <p>(a) A “dangerous crime against a child” is defined as any criminal sexual conduct against a minor under the age of 14 years as defined in §§ 770-773 or §§ 1108-1112A of this title. For purposes of this section only, and § 762(a) of this title to the contrary notwithstanding, the defendant may use as an affirmative defense that the defendant believed that the victim of the crime was over the age of 16 years of age.</p> <p>(b) Except as otherwise provided in this title, a person who is at least 18 years of age, or who has been tried as an adult and who is convicted of a dangerous crime against a child as defined in subsection (a) of this section, shall be guilty of a class B felony. For a second offense under this section, the Court shall impose a mandatory sentence of life imprisonment.</p> <p>DEL. CODE ANN. tit. 11, § 777A (West 2011). <u>Sex offender unlawful sexual conduct against a child</u></p> <p>(a) A sex offender who knowingly commits any sexual offense against a child is guilty of sex offender unlawful sexual conduct against a child.</p> <p>(b) For purposes of this section, the term “sex offender” shall mean any person registered or required to be registered pursuant to §§ 4120(b)(1) and 4121(a)(4) of this title, or the laws of any other state, the United States or any territory of the United States.</p> <p>(c) For purposes of this section, the term “sexual offense” shall mean any offense designated as a sexual offense by § 761(g) of this title.</p> <p>(d) For purposes of this section, the term “child” shall mean any individual who has not reached that child’s eighteenth birthday. If the underlying sexual offense involves an offense defined by §§ 1108, 1109, 1110, 1111 and 1112A of this title, the term “child” shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.</p> <p>(e) Sex offender unlawful sexual conduct against a child shall be punished as follows:</p> <p>(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender unlawful sexual conduct against a child shall be a class G</p>
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<p>Statute Cont' (Delaware)</p>	<p>felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;</p> <p>(2) If the underlying sexual offense is a class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony 1 grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;</p> <p>(3) If the underlying sexual offense is a misdemeanor and the victim is under eighteen years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;</p> <p>(4) If the underlying sexual offense is a class C, D, E, F, or G felony and the victim is under eighteen years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;</p> <p>(5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.</p> <p>(f) The provisions of this section shall not apply if the defendant is also a child.</p> <p>DEL. CODE ANN. tit. 11, § 778 (West 2011).</p> <p><u>Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree: penalties</u></p> <p>A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:</p> <p>(1) Intentionally engages in sexual intercourse with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(2) Intentionally engages in sexual penetration with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(3) Intentionally engages in sexual intercourse or sexual penetration with a child who has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(4) Intentionally engages in sexual intercourse or sexual penetration with a child and the victim has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.</p> <p>(5) Engages in an act of sexual extortion, as defined in § 774 of this title, against a child who has not yet reached that child's own sixteenth</p>
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Age of Consent ♦ (Delaware)	18
Definitions (Delaware)	<p>DEL. CODE ANN. tit. 11§ 761 (West 2011).</p> <p><u>Definitions generally applicable to sexual offenses</u></p>

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<p>Definitions Cont' (<i>Delaware</i>)</p>	<p>(a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.</p> <p>(b) "Cunnilingus" means any oral contact with the female genitalia.</p> <p>(c) "Fellatio" means any oral contact with the male genitalia.</p> <p>(d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.</p> <p>(e) "Position of trust, authority or supervision over a child" includes, but is not limited to:</p> <ol style="list-style-type: none"> <li>(1) Familial or custodial authority or supervision; or</li> <li>(2) A teacher, instructor, coach, babysitter, day care provider, or aide or any other person having regular direct contact with children through affiliation with a school, church or religious institution, athletic or charitable organization or any other organization, whether such a person is compensated or acting as a volunteer.</li> </ol> <p>(f) "Sexual contact" means:</p> <ol style="list-style-type: none"> <li>(1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or</li> <li>(2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia; or</li> <li>(3) Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks or genitalia which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact shall also include touching when covered by clothing.</li> </ol> <p>(g) "Sexual intercourse" means:</p> <ol style="list-style-type: none"> <li>(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or</li> <li>(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.</li> </ol> <p>(h) "Sexual offense" means any offense defined by §§ 763-780 and §§ 1108-1112A, 1352(2) and 1353(2) of this title.</p> <p>(i) "Sexual penetration" means:</p> <ol style="list-style-type: none"> <li>(1) The unlawful placement of an object, as defined in subsection (c) of this section, inside the anus or vagina of another person; or</li> <li>(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.</li> </ol> <p>(j) "Without consent" means:</p>
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Definitions Cont' (Delaware)	<p>(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or</p> <p>(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or</p> <p>(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or</p> <p>(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or</p> <p>(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.</p> <p>(k) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.</p>
Defenses (Delaware)	<p>DEL. CODE ANN. tit. 11 § 762 (d) (West 2011)</p> <p><u>Provisions generally applicable to sexual offenses</u></p> <p>(d) Teenage defendant.--As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached that victim's sixteenth birthday, where the person committing the sexual act is no more than 4 years older than the victim, it is an affirmative defense that the victim consented to the act "knowingly" as defined in § 231 of this title. Sexual conduct pursuant to this section will not be a crime. This affirmative defense will not apply if the victim had not yet reached that victim's twelfth birthday at the time of the</p>

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Penalty (Delaware)	<p>DEL. CODE ANN. tit. 11, § 772 (West 2011).  <u>Rape in the second degree; class B felony</u></p> <p>(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.</p> <p>DEL. CODE ANN. tit. 11, § 777 (West 2011).  <u>Dangerous crime against a child, definitions, sentences</u></p> <p>(b) For a second offense under this section, the Court shall impose a mandatory sentence of life imprisonment.  (c) A person sentence pursuant to this section shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the Court has been served.</p> <p>DEL. CODE ANN. tit. 11, § 779A (West 2011).  <u>Sex offender unlawful sexual conduct against a child</u></p> <p>(e) Sex offender unlawful sexual conduct against a child shall be punished as follows:  (1) If the underlying sexual offense is a misdemeanor, the crime of sex offender unlawful sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;  (2) If the underlying sexual offense is a class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony 1 grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;  (3) If the underlying sexual offense is a misdemeanor and the victim is under eighteen years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;  (4) If the underlying sexual offense is a class C, D, E, F, or G felony and the victim is under eighteen years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;  (5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.</p>

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<p>Penalty Cont' (Delaware)</p>	<p>(f) The provisions of this section shall not apply if the defendant is also a child.</p> <p>DEL. CODE ANN. tit. 11, § 4205 (2011). <u>Sentence for felonies</u></p> <p>(a) A sentence of incarceration for a felony shall be a definite sentence. (b) The term of incarceration which the court may impose for a felony is fixed as follows: (1) For a class A felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first-degree murder in which event § 4209 of this title shall apply. (2) For a class B felony not less than 2 years up to 25 years to be served at Level V. (3) For a class C felony up to 15 years to be served at Level V. (4) For a class D felony up to 8 years to be served at Level V. (5) For a class E felony up to 5 years to be served at Level V. (6) For a class F felony up to 3 years to be served at Level V. (7) For a class G felony up to 2 years to be served at Level V.</p> <p>DEL. CODE ANN. tit. 11, § 4205A (West 2011). <u>Additional penalty for serious sex offenders or pedophile offenders</u></p> <p>(a) Notwithstanding any provision of this chapter or any other laws to the contrary, a defendant convicted of any crime set forth in § 771(a)(2), § 772, § 773, § 777, § 777A, § 778(a), or § 778(b) of this title shall be sentenced to not less than 25 years up to life imprisonment to be served at Level V if: (1) The defendant has previously been convicted or adjudicated delinquent of any sex offense set forth in this title and classified as a class A or B felony, or any similar offense under the laws of another state, the United States or any territory thereof; or (2) The victim of the instant offense is a child less than 14 years of age.</p> <p>DEL. CODE ANN. tit. 11, § 4206 (West 2011). <u>Sentence for misdemeanors</u></p> <p>(a) The sentence for a class A misdemeanor may include up to 1 year incarceration at Level V and such fine up to \$2,300, restitution or other</p>
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Penalty Cont' (Delaware)	<p>conditions as the court deems appropriate.</p> <p>(b) The sentence for a class B misdemeanor may include up to 6 months incarceration at Level V and such fine up to \$1,150, restitution or other conditions as the court deems appropriate.</p>
<b>District of Columbia</b>	
Statute (D.C.)	<p>D.C. CODE § 22-3008 (West 2011). <u>First degree child sexual abuse</u></p> <p>Whoever, being at least 4 years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act [violates this section].</p> <p>D.C. CODE § 22-3009 (West 2011). <u>Second degree child sexual abuse</u></p> <p>Whoever, being at least 4 years older than a child, engages in sexual contact with that child or causes that child to engage in sexual contact [violates this section].</p> <p>D.C. CODE § 22-3009.01 (West 2011). <u>First degree sexual abuse of a minor</u></p> <p>Whoever, being 18 years of age or older, is in a significant relationship with a minor, and engages in a sexual act with that minor or causes that minor to engage in a sexual act [violates this section].</p> <p>D.C. CODE § 22-3009.02 (West 2011). <u>Second degree sexual abuse of a minor</u></p> <p>Whoever, being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes</p>

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<p>Statute Cont' (D.C.)</p>	<p>that minor to engage in a sexual contact [violates this section].</p> <p>D.C. CODE § 22-3010 (West 2011). <u>Enticing a child</u></p> <p>(a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 and §§ 22-3008 to 22-3009.02, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$50,000, or both.</p> <p>(b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$50,000, or both.</p> <p>D.C. CODE § 22-3010.01 (West 2011). <u>Misdemeanor sexual abuse of a child or minor</u></p> <p>(a) Whoever, being 18 years of age or older and more than 4 years older than a child, or being 18 years of age or older and being in a significant relationship with a minor, engages in sexually suggestive conduct with that child or minor shall be imprisoned for not more than 180 days, or fined in an amount not to exceed \$1,000, or both.</p> <p>(b) For the purposes of this section, the term “sexually suggestive conduct” means engaging in any of the following acts in a way which is intended to cause or reasonably causes the sexual arousal or sexual gratification of any person:</p> <ol style="list-style-type: none"> <li>(1) Touching a child or minor inside his or her clothing;</li> <li>(2) Touching a child or minor inside or outside his or her clothing close to the genitalia, anus, breast, or buttocks;</li> <li>(3) Placing one's tongue in the mouth of the child or minor; or</li> <li>(4) Touching one's own genitalia or that of a third person.</li> </ol> <p>D.C. CODE § 22-3102 (West 2011). <u>Prohibited acts</u></p> <p>(a) It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual</p>
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Statute Cont' (D.C.)	<p>performance by a minor.</p> <p>(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 16 years of age to engage in a sexual performance or being the parent, legal guardian, or custodian of a minor, he or she consents to the participation by a minor in a sexual performance.</p> <p>(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 16 years of age.</p> <p>(b) It shall be unlawful in the District of Columbia for a person, knowing the character and content thereof, to attend, transmit, or possess a sexual performance by a minor.</p> <p>(c) If the sexual performance consists solely of a still or motion picture, then this section:</p> <p>(1) Shall not apply to the minor or minors depicted in a still or motion picture who possess it or transmit it to another person unless at least one of the minors depicted in it does not consent to its possession or transmission; and</p> <p>(2) Shall not apply to possession of a still or motion picture by a minor, or by an adult not more than 4 years older than the minor or minors depicted in it, who receives it from a minor depicted in it unless the recipient knows that at least one of the minors depicted in the still or motion picture did not consent to its transmission.</p> <p>(d) For the purposes of subsections (b) and (c) of this section, the term:</p> <p>(1) "Possess," "possession," or "possessing" requires accessing the sexual performance if electronically received or available.</p> <p>(2) "Still or motion picture" includes a photograph, motion picture, electronic or digital representation, video, or other visual depiction, however produced or reproduced.</p> <p>(3) "Transmit" or "transmission" includes distribution, and can occur by any means, including electronically."</p>
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Definitions (D.C.)	<p>D.C. CODE § 22-3001(West 2011).</p> <p><u>Definitions</u></p> <p>For the purposes of this chapter:</p> <p>(1) "Actor" means a person accused of any offense proscribed under this chapter.</p> <p>(2) "Bodily injury" means injury involving loss or impairment of the function of a bodily member, organ, or mental faculty, or physical</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (D.C.)</p>	<p>disfigurement, disease, sickness, or injury involving significant pain.</p> <p>(3) “Child” means a person who has not yet attained the age of 16 years.</p> <p>(4) “Consent” means words or overt actions indicating a freely given agreement to the sexual act or contact in question. Lack of verbal or physical resistance or submission by the victim, resulting from the use of force, threats, or coercion by the defendant shall not constitute consent.</p> <p>(4A) “Domestic partner” shall have the same meaning as provided in § 32-701(3).</p> <p>(4B) “Domestic partnership” shall have the same meaning as provided in § 32-701 (4).</p> <p>(5) “Force” means the use or threatened use of a weapon; the use of such physical strength or violence as is sufficient to overcome, restrain, or injure a person; or the use of a threat of harm sufficient to coerce or compel submission by the victim.</p> <p>(5A) “Minor” means a person who has not yet attained the age of 18 years.</p> <p>(6) “Official custody” means:</p> <p>(A) Detention following arrest for an offense; following surrender in lieu of arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion;</p> <p>(B) Custody for purposes incident to any detention described in subparagraph (A) of this paragraph, including transportation, medical diagnosis or treatment, court appearance, work, and recreation; or</p> <p>(C) Probation or parole.</p> <p>(7) “Serious bodily injury” means bodily injury that involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.</p> <p>(8) “Sexual act” means:</p> <p>(A) The penetration, however slight, of the anus or vulva of another by a penis;</p> <p>(B) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or</p> <p>(C) The penetration, however slight, of the anus or vulva by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.</p> <p>(D) The emission of semen is not required for the purposes of subparagraphs (A)-(C) of this paragraph.</p> <p>(9) “Sexual contact” means the touching with any clothed or unclothed body part or any object, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.</p> <p>(10) “Significant relationship” includes:</p> <p>(A) A parent, sibling, aunt, uncle, or grandparent, whether related by blood, marriage, domestic partnership, or adoption;</p> <p>(B) A legal or de facto guardian or any person, more than 4 years older than the victim, who resides intermittently or permanently in the same</p>
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American University, Washington College of Law

Current as of June 2011

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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (D.C.)</p>	<p>dwelling as the victim; (C) The person or the spouse, domestic partner, or paramour of the person who is charged with any duty or responsibility for the health, welfare, or supervision of the victim at the time of the act; and (D) Any employee or volunteer of a school, church, synagogue, mosque, or other religious institution, or an educational, social, recreational, athletic, musical, charitable, or youth facility, organization, or program, including a teacher, coach, counselor, clergy, youth leader, chorus director, bus driver, administrator, or support staff, or any other person in a position of trust with or authority over a child or a minor. (11) "Victim" means a person who is alleged to have been subject to any offense set forth in subchapter II of this chapter.</p> <p>D.C. CODE § 22-3101 (West 2011). <u>Definitions</u></p> <p>For the purposes of this chapter, the term:</p> <p>(1) "Knowingly" means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry, or both. (2) "Minor" means any person under 16 years of age. (3) "Performance" means any play, motion picture, photograph, electronic representation, dance, or any other visual presentation or exhibition. (4) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish or distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same. (5) "Sexual conduct" means: (A) Actual or simulated sexual intercourse: (i) Between the penis and the vulva, anus, or mouth; (ii) Between the mouth and the vulva or anus; or (iii) Between an artificial sexual organ or other object or instrument used in the manner of an artificial sexual organ and the anus or vulva; (B) Masturbation; (C) Sexual bestiality; (D) Sadomasochistic sexual activity for the purpose of sexual stimulation; or (E) Lewd exhibition of the genitals. (6) "Sexual performance" means any performance or part thereof which includes sexual conduct by a person under 16 years of age.</p>
<p>Defenses</p>	<p>D.C. CODE § 22-3011 (West 2011).</p>

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<p>(D.C.)</p> <p>Defenses Cont'</p> <p>(D.C.)</p>	<p><u>Defenses to child sexual abuse and sexual abuse of a minor</u></p> <p>(a) Neither mistake of age nor consent is a defense to a prosecution under §§ 22-3008 to 22-3010.01, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403.</p> <p>(b) Marriage or domestic partnership between the defendant and the child or minor at the time of the offense is a defense, which the defendant must establish by a preponderance of the evidence, to a prosecution under §§ 22-3008 to 22-3010.01, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403, involving only the defendant and the child or minor.</p> <p>D.C. CODE § 22-3104 (West 2011). <u>Affirmative defenses</u></p> <p>(a) Under this chapter it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was 16 years of age or over.</p> <p>(b)(1) Except as provided in paragraph (2) of this subsection, in any prosecution for an offense pursuant to § 22-3102(2) it shall be an affirmative defense that the person so charged was:</p> <p>(A) A librarian engaged in the normal course of his or her employment; or</p> <p>(B) A motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter, or in any other nonmanagerial or nonsupervisory capacity in a motion picture theater.</p> <p>(2) The affirmative defense provided by paragraph (1) of this subsection shall not apply if the person described therein has a financial interest (other than his or her employment, which employment does not encompass compensation based upon any proportion of the gross receipts) in:</p> <p>(A) The promotion of a sexual performance for sale, rental, or exhibition;</p> <p>(B) The direction of any sexual performance; or</p> <p>(C) The acquisition of the performance for sale, retail, or exhibition.</p> <p>(c) It shall be an affirmative defense to a charge under § 22-3102 that the defendant:</p> <p>(1) Possessed or accessed less than 6 still photographs or one motion picture, however produced or reproduced, of a sexual performance by a minor; and</p> <p>(2) Promptly and in good faith, and without retaining, copying, or allowing any person, other than a law enforcement agency, to access any photograph or motion picture:</p> <p>(A) Took reasonable steps to destroy each such photograph or motion picture; or</p> <p>(B) Reported the matter to a law enforcement agency and afforded that agency access to each such photograph or motion picture.</p>
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Penalty (D.C.)	<p>D.C. CODE § 22-3008 (West 2011). <u>First degree child sexual abuse</u></p> <p>Whoever [violates this section] shall be imprisoned for any term of years or for life and, in addition, may be fined an amount not to exceed \$250,000. However, the court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.</p> <p>D.C. CODE § 22-3009 (West 2011). <u>Second degree child sexual abuse</u></p> <p>Whoever [violates this section] shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not to exceed \$100,000.</p> <p>D.C. CODE § 22-3009.01 (West 2011). <u>First degree sexual abuse of a minor</u></p> <p>Whoever [violates this section] shall be imprisoned for not more than 15 years and may be fined in an amount not to exceed \$150,000, or both.</p> <p>D.C. CODE § 22-3009.02 (West 2011). <u>Second degree sexual abuse of a minor</u></p> <p>Whoever [violates this section] shall be imprisoned for not more than 7 1/2 years and may be fined in an amount not to exceed \$75,000, or both.</p> <p>D.C. CODE § 22-3010 (West 2011). <u>Enticing a child</u></p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (D.C.)</p>	<p>(a) Whoever [violates this section] shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$50,000, or both. (b) Whoever [violates this section] shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$50,000, or both. (c) No person shall be consecutively sentenced for enticing a child or minor to engage in a sexual act or sexual contact under subsection (a)(2) of this section and engaging in that sexual act or sexual contact with that child or minor, provided, that the enticement occurred closely associated in time with the sexual act or sexual contact.</p> <p>D.C. CODE § 22-3010.01 (West 2011). <u>Misdemeanor sexual abuse of a child or minor</u></p> <p>(a) Whoever [violates this section] shall be imprisoned for not more than 180 days, or fined in an amount not to exceed \$1,000, or both.</p> <p>D.C. CODE § 22-3103 (West 2011). <u>Penalties</u></p> <p>Violation of this chapter shall be a felony and shall be punished by: (1) A fine of not more than \$5,000 or imprisonment for not more than 10 years, or both for the first offense; or (2) A fine of not more than \$15,000 or imprisonment for not more than 20 years, or both for the 2nd and each subsequent offense.</p> <p>D.C. CODE § 24-403 (West 2011). <u>Indeterminate sentences; life sentences; minimum sentences</u></p> <p>(a) Except as provided in subsections (b) and (c) of this section, in imposing sentence on a person convicted in the District of Columbia of a felony, the justice or judge of the court imposing such sentence shall sentence the person for a maximum period not exceeding the maximum fixed by law, and for a minimum period not exceeding one-third of the maximum sentence imposed, and any person so convicted and sentenced may be released on parole as herein provided at any time after having served the minimum sentence. Where the maximum sentence imposed is life imprisonment, a minimum sentence shall be imposed which shall not exceed 15 years imprisonment. (b) The minimum sentence imposed under this section on a person convicted of an assault with intent to commit rape in violation of § 22-401, or of armed robbery in violation of § 22-4502 shall be not less than 2 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence as defined in § 22-4501, providing for the control of dangerous weapons in the District of Columbia. The minimum sentence imposed under this section on a person convicted of rape in violation of § 22-4801, shall not be less than 7 years if the violation occurs after the person has been convicted in the District of Columbia or elsewhere of a crime of violence, as</p>
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Penalty Cont' (D.C.)	<p>so defined. The maximum sentence in each case to which this subsection applies shall not be less than 3 times the minimum sentence imposed, and shall not be more than the maximum fixed by law.</p> <p>(c) For a person convicted of: (1) a violation of § 22-405 (relating to assault with a dangerous weapon on a police officer) occurring after the person has been convicted of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction; (2) a violation of § 22-4503, providing for the control of dangerous weapons in the District (relating to illegal possession of a pistol), occurring after the person has been convicted of violating that section; or (3) a violation of § 22-2501 (relating to possession of implements of crime) occurring after the person has been convicted in the District of Columbia of a violation of that section or of a felony, either in the District of Columbia or in another jurisdiction, the minimum sentence imposed under this section shall not be less than 1 year, and the maximum sentence shall not be less than 3 times the minimum sentence imposed nor more than the maximum fixed by law.</p>
<b>Florida</b>	
Statute (Florida)	<p>FLA STAT. ANN. § 794.05 (West 2011).  <u>Unlawful sexual activity with certain minors</u></p> <p>(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, “sexual activity” means oral, anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.</p> <p>(2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.</p> <p>(3) The victim's prior sexual conduct is not a relevant issue in a prosecution under this section.</p> <p>(4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.</p> <p>FLA STAT. ANN. § 794.011 (West 2011).  <u>Sexual Battery</u></p>

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<p>Statute Cont' (Florida)</p>	<p>(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141.</p> <p>(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.</p> <p>(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.</p> <p>(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:</p> <p>(a) When the victim is physically helpless to resist.</p> <p>(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.</p> <p>(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.</p> <p>(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.</p> <p>(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.</p> <p>(f) When the victim is physically incapacitated.</p> <p>(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community 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>(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.</p> <p>(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).</p> <p>(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."</p> <p>(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:</p>
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<p>Statute Cont' (Florida)</p>	<p>(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).</p> <p>(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.</p> <p>(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>FLA STAT. ANN. § 800.04 (West 2011).</p> <p><u>Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age</u></p> <p>(4) Lewd or lascivious battery.--A person who:</p> <p>(a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or</p> <p>(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity commits lewd or lascivious battery, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(5) Lewd or lascivious molestation.--</p> <p>(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.</p> <p>(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a) 4.</p> <p>(c)1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or</p> <p>2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p>
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<p>Statute Cont' (Florida)</p>	<p>(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(6) Lewd or lascivious conduct.--</p> <p>(a) A person who:</p> <ol style="list-style-type: none"> <li>1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or</li> <li>2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.</li> </ol> <p>(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(7) Lewd or lascivious exhibition.--</p> <p>(a) A person who:</p> <ol style="list-style-type: none"> <li>1. Intentionally masturbates;</li> <li>2. Intentionally exposes the genitals in a lewd or lascivious manner; or</li> <li>3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.</li> </ol> <p>(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(8) Exception.--A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.</p> <p>FLA STAT. ANN. § 827.071 (West 2011). <u>Sexual performance by a child; penalties</u></p> <p>(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p>
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Statute Cont' (Florida)	<p>(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(5) It is unlawful for any person to knowingly possess a photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession of each such photograph, motion picture, exhibition, show, representation, or presentation is a separate offense. Whoever violates this subsection is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.</p> <p>(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.</p>
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Definitions (Florida)	<p>FLA STAT. ANN. § 794.011 (West 2011). <u>Definitions</u></p> <p>(1) As used in this chapter:</p> <p>(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.</p> <p>(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.</p> <p>(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.</p> <p>(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Definitions Cont' (Florida)</p>	<p>(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.  (f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.  (g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.  (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.  (i) "Victim" means a person who has been the object of a sexual offense.  (j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.</p> <p>FLA STAT. ANN. § 800.04 (West 2011).  <u>Definitions</u></p> <p>(1) Definitions.--As used in this section:  (a) "Sexual activity" 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; however, sexual activity does not include an act done for a bona fide medical purpose.  (b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.  (c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.  (d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.</p> <p>FLA STAT. ANN. § 827.071 (West 2011).  <u>Definitions: Sexual performance by a child</u></p> <p>(1) As used in this section, the following definitions shall apply:  (a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.  (b) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.  (c) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.  (d) "Sodomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.</p>
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Definitions Cont' (Florida)	<p>(e) "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>(f) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.</p> <p>(g) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."</p> <p>(h) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.</p> <p>(i) "Simulated" means the explicit depiction of conduct set forth in paragraph (g) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.</p>
Defenses (Florida)	None.
Penalty (Florida)	<p>FLA STAT. ANN. § 775.082 (West 2011).</p> <p><u>Penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison</u></p> <p>(1) A person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141 results in findings by the court that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole.</p> <p>(2) In the event the death penalty in a capital felony is held to be unconstitutional by the Florida Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in subsection (1). No sentence of death shall be reduced as a result of a determination that a method of execution is held to be unconstitutional under the State Constitution or the Constitution of the United States.</p> <p>(3) A person who has been convicted of any other designated felony may be punished as follows:</p> <p>(a) 1. For a life felony committed prior to October 1, 1983, by a term of imprisonment for life or for a term of years not less than 30.</p>

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Penalty Cont' (Florida)	<p>2. For a life felony committed on or after October 1, 1983, by a term of imprisonment for life or by a term of imprisonment not exceeding 40 years.</p> <p>3. Except as provided in subparagraph 4., for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.</p> <p>4. a. Except as provided in sub-subparagraph b., for a life felony committed on or after September 1, 2005, which is a violation of s. 800.04(5)(b), by:</p> <p>(I) A term of imprisonment for life; or</p> <p>(II) A split sentence that is a term of not less than 25 years' imprisonment and not exceeding life imprisonment, followed by probation or community control for the remainder of the person's natural life, as provided in s. 948.012(4).</p> <p>b. For a life felony committed on or after July 1, 2008, which is a person's second or subsequent violation of s. 800.04(5)(b), by a term of imprisonment for life.</p> <p>(b) For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment.</p> <p>(c) For a felony of the second degree, by a term of imprisonment not exceeding 15 years.</p> <p>(d) For a felony of the third degree, by a term of imprisonment not exceeding 5 years.</p> <p>(4) A person who has been convicted of a designated misdemeanor may be sentenced as follows:</p> <p>(a) For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year;</p> <p>(b) For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days.</p> <p>(5) Any person who has been convicted of a noncriminal violation may not be sentenced to a term of imprisonment nor to any other punishment more severe than a fine, forfeiture, or other civil penalty, except as provided in chapter 316 or by ordinance of any city or county.</p>
<b>Georgia</b>	
Statute (Georgia)	<p>GA. CODE ANN. § 16-6-1 (West 2011).</p> <p><u>Rape</u></p> <p>(a) A person commits the offense of rape when he has carnal knowledge of:</p> <p>(1) A female forcibly and against her will; or</p> <p>(2) A female who is less than ten years of age.</p>

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<p>Statute Cont' (Georgia)</p>	<p>Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.</p> <p>GA. CODE ANN. § 16-6-2<sup>23</sup> (West 2011). <u>Sodomy; aggravated sodomy</u></p> <p>(a)(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.</p> <p>(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.</p> <p>(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>GA. CODE ANN. § 16-6-3 (West 2011). <u>Statutory rape</u></p> <p>(a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.</p> <p>(c) If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.</p> <p>GA. CODE ANN. § 16-6-4 (West 2011). <u>Child molestation; aggravated child molestation</u></p> <p>(a) A person commits the offense of child molestation when such person:</p> <p>(1) Does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person; or</p> <p>(2) By means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in any immoral or</p> <p>(2) If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is</p>
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<p>Statute Cont' (Georgia)</p>	<p>no more than four years older than the victim, such person shall be guilty of a misdemeanor. . . . (c) A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.</p> <p>(d)(2) A person convicted of the offense of aggravated child molestation when:</p> <p>(A) The victim is at least 13 but less than 16 years of age;</p> <p>(B) The person convicted of aggravated child molestation is 18 years of age or younger and is no more than four years older than the victim; and</p> <p>(C) The basis of the charge of aggravated child molestation involves an act of sodomy shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.1.</p> <p>(e) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by paragraph (2) of subsection (a) of this Code section which the person engages in while:</p> <p>(1) Either within or outside of this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides in this state; or</p> <p>(2) Within this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides within or outside this state.</p> <p>GA. CODE ANN. § 16-6-5 (West 2011). <u>Enticing a child for indecent purposes</u></p> <p>(a) A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.</p> <p>(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>GA. CODE ANN. § 16-6-5.1 (West 2011). <u>Sexual assault</u></p> <p>(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 or she 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</p>
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Statute Cont' (Georgia)	<p>such actor has supervisory or disciplinary authority over such other person.</p> <p>(c)(1) 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:</p> <p>(A) In the custody of law; or</p> <p>(B) Detained in or is a patient in a hospital or other institution.</p> <p>(2) A person commits sexual assault when, as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.</p> <p>(3) Consent of the victim shall not be a defense to a prosecution under this subsection.</p> <p>(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits sexual assault when such person engages in sexual contact with another person who has been admitted to or is receiving services from such facility, person, or entity.</p>
Age of Consent ♦ (Georgia)	16
Definitions (Georgia)	<p>GA. CODE ANN. § 16-6-5.1 (West 2011). <u>Sexual assault, Definitions</u></p> <p>(a) As used in this Code section, the term:</p> <p>(1) "Actor" means a person accused of sexual assault.</p> <p>(2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.</p> <p>(3) "Psychotherapy" means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.</p> <p>(4) "Sexual contact" means any contact between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor.</p>
Defenses (Georgia)	None.

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<p>Penalty (Georgia) Penalty Cont' (Georgia)</p>	<p>GA. CODE ANN. § 16-6-1 (West 2011). <u>Rape</u></p> <p>(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.</p> <p>GA. CODE ANN. § 16-6-2 (West 2011). <u>Sodomy; aggravated sodomy</u></p> <p>(b)(1) Except as provided in subsection (d) of this Code section, a person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.</p> <p>(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>GA. CODE ANN. § 16-6-3 (West 2011). <u>Statutory Rape</u></p> <p>(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years; provided, however, that if the person so convicted is 21 years of age or older, such person shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this subsection of the offense of statutory rape shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(c) If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.</p>
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<p>Penalty Cont' (Georgia)</p>	<p>GA. CODE ANN. § 16-6-4 (West 2011). <u>Child molestation; aggravated child molestation</u></p> <p>(b)(1) Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6. 2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.</p> <p>(2) If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(d)(1) Except as provided in paragraph (2) of this subsection, a person convicted of the offense of aggravated child molestation shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.</p> <p>GA. CODE ANN. § 16-6-5 (West 2011). <u>Enticing a child for indecent purposes</u></p> <p>(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>GA. CODE ANN. § 16-6-5.1 (West 2011). <u>Sexual assault</u></p>
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<p>Penalty Cont' (Georgia)</p>	<p>(b) A person convicted of sexual assault shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(c)(1)(B)(4) A person convicted of sexual assault under this subsection shall be punished by imprisonment for not less than ten nor more than 30 years; provided, however, that any person convicted of the offense of sexual assault under this subsection of a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>(d) A person convicted of sexual assault pursuant to this subsection shall be punished by imprisonment for not less than ten nor more than 30 years, or a fine of not more than \$5,000.00, or both. Any violation of this subsection shall constitute a separate offense. Any person convicted under this subsection of the offense of sexual assault shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.</p> <p>GA. CODE ANN. § 17-10-3 (West 2011) <u>Misdemeanors; how punished</u></p> <p>(a) Except as otherwise provided by law, every crime declared to be a misdemeanor shall be punished as follows:  (1) By a fine not to exceed \$ 1,000.00 or by confinement in the county or other jail, county correctional institution, or such other places as counties may provide for maintenance of county inmates, for a total term not to exceed 12 months, or both;  (2) By confinement under the jurisdiction of the Board of Corrections in a state probation detention center or diversion center pursuant to Code Sections 42-8-35.4 and 42-8-35.5, for a determinate term of months which shall not exceed a total term of 12 months; or  (3) If the crime was committed by an inmate within the confines of a state correctional institution, by confinement under the jurisdiction of the Board of Corrections in a state correctional institution or such other institution as the Department of Corrections may direct for a term which shall not exceed 12 months.</p> <p>GA. CODE ANN. § 17-10-6.2 (West 2011). <u>Sentencing of persons convicted of a sexual offense</u></p> <p>(b) Except as provided in subsection (c) of this Code section, and notwithstanding any other provisions of law to the contrary, any person convicted of a sexual offense shall be sentenced to a split sentence which shall include the minimum term of imprisonment specified in the Code section applicable to the offense. No portion of the mandatory minimum sentence imposed shall be suspended, stayed, probated,</p>
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Penalty Cont' (Georgia)	<p>deferred, or withheld by the sentencing court and such sentence shall include, in addition to the mandatory imprisonment, an additional probated sentence of at least one year. No person convicted of a sexual offense shall be sentenced as a first offender pursuant to Article 3 of Chapter 8 of Title 42, relating to probation for first offenders, or any other provision of Georgia law relating to the sentencing of first offenders.</p> <p>(c)(1) In the court's discretion, the court may deviate from the mandatory minimum sentence as set forth in subsection (b) of this Code section, or any portion thereof, provided that:</p> <p>(A) The defendant has no prior conviction of an offense prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16, nor a prior conviction for any offense under federal law or the laws of another state or territory of the United States which consists of the same or similar elements of offenses prohibited by Chapter 6 of Title 16 or Part 2 of Article 3 of Chapter 12 of Title 16;</p> <p>(B) The defendant did not use a deadly weapon or any object, device, or instrument which when used offensively against a person would be likely to or actually did result in serious bodily injury during the commission of the offense;</p> <p>(C) The court has not found evidence of a relevant similar transaction;</p> <p>(D) The victim did not suffer any intentional physical harm during the commission of the offense;</p> <p>(E) The offense did not involve the transportation of the victim; and</p> <p>(F) The victim was not physically restrained during the commission of the offense.</p> <p>(2) If the court deviates in sentencing pursuant to this subsection, the judge shall issue a written order setting forth the judge's reasons. Any such order shall be appealable by the defendant pursuant to Code Section 5-6-34, or by the State of Georgia pursuant to Code Section 5-7-1.</p> <p>(d) If the court imposes a probated sentence, the defendant shall submit to review by the Sexual Offender Registration Review Board for purposes of risk assessment classification within ten days of being sentenced and shall otherwise comply with Article 2 of Chapter 1 of Title 42.</p>
<b>Guam</b>	
Statute (Guam)	<p>GUAM CODE ANN. tit. 9, § 25.15 (West 2011). <u>First Degree Criminal Sexual Conduct</u></p> <p>(a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:</p> <p>(1) the victim is under fourteen (14) years of age;</p>

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<p>Statute Cont' (Guam)</p>	<p>(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;</p> <p>(3) sexual penetration occurs under circumstances involving the commission of any other felony;</p> <p>(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:</p> <p>(i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(ii) the actor uses force or coercion to accomplish the sexual penetration.</p> <p>(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon;</p> <p>(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and</p> <p>(7) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.</p> <p>(b) Criminal sexual conduct in the first degree is a felony in the first degree.</p> <p>GUAM CODE ANN. tit. 9§ 25.20 (West 2011). <u>Second Degree Criminal Sexual Conduct</u></p> <p>(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:</p> <p>(1) that other person is under fourteen (14) years of age;</p> <p>(2) that other person is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit;</p> <p>(3) sexual contact occurs under circumstances involving the commission of any other felony;</p> <p>(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:</p> <p>(i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(ii) the actor uses force or coercion to accomplish the sexual contact.</p> <p>(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;</p> <p>(6) the actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact; and</p> <p>(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.</p> <p>(b) Criminal sexual conduct in the second degree is a felony in the first degree but a person convicted of criminal sexual conduct in the second</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Guam)</p>	<p>degree who receives a sentence of imprisonment shall not be eligible for work release or educational programs outside the confines of prison.</p> <p>GUAM CODE ANN. tit. 9, § 25.25 (West 2011). <u>Third Degree Criminal Sexual Conduct</u></p> <p>(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:  (1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;  (2) force or coercion is used to accomplish the sexual penetration; and  (3) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.  (b) Criminal sexual conduct in the third degree is a felony of the second degree.</p> <p>GUAM CODE ANN. tit. 9§ 25.30 (West 2011). <u>Fourth Degree Criminal Sexual Conduct.</u></p> <p>(a) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if either of the following circumstances exists:  (1) force or coercion is used to accomplish the sexual contact;  (2) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.  (b) Criminal sexual conduct in the fourth degree is a felony of the third degree, except for first time offenders it is a misdemeanor.</p> <p>GUAM CODE ANN. tit. 9 § 25.35 (West 2011). <u>Assault with Intent to Commit Criminal Sexual Conduct</u></p> <p>Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.10 (West 2011). <u>Indecent Electronic Display to a Child</u></p> <p>(a) Any person who intentionally masturbates <i>or</i> intentionally exposes the genitals of him <i>or</i> herself, <i>or</i> of another, in a lewd <i>or</i> lascivious manner live over a computer online service, internet service, <i>or</i> local bulletin board service, and who knows <i>or</i> should know <i>or</i> has reason to</p>
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<p>Statute Cont' (Guam)</p>	<p>believe that the transmission is viewed on a computer <i>or</i> other device capable of electronic data storage <i>or</i> transmission, by:</p> <p>(1) a minor known by the person to be under the age of eighteen (18) years;</p> <p>(2) another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or</p> <p>(3) another person who represents him <i>or</i> herself to be under the age of eighteen (18) years is guilty of indecent electronic display to a child.</p> <p>(b) Indecent electronic display to a child is a Third Degree Felony.</p> <p>(c) It <i>shall not</i> constitute a defense against any charge <i>or</i> violation of this Section that a law enforcement officer, peace officer, <i>or</i> other person working at the direction of law enforcement was involved in the detection <i>or</i> investigation of a violation of this Section.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.20 (West 2011). <u>Electronic Enticement of a Child as a Third Degree Felony</u></p> <p>(a) Any person who knowingly uses a computer online service, internet service, <i>or</i> any other device capable of electronic data storage <i>or</i> transmission to solicit, lure, <i>or</i> entice, <i>or</i> attempt to solicit, lure, <i>or</i> entice:</p> <p>(1) a minor known by the person to be under the age of eighteen (18) years;</p> <p>(2) another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or</p> <p>(3) another person who represents him <i>or</i> herself to be under the age of eighteen (18) years, with the intent to promote <i>or</i> facilitate the commission of another criminal offense as set forth in Title 9 GCA Chapter 89, Section 89.01, is guilty of electronic enticement of a child as a Third Degree Felony.</p> <p>(b) Electronic enticement of a child under this Section is a Third Degree Felony.</p> <p>(c) Each separate use of a computer online service, Internet service, <i>or</i> any other device capable of electronic data storage <i>or</i> transmission wherein an offense described in this Section is committed may be charged as a separate offense.</p> <p>(d) It <i>shall not</i> constitute a defense against any charge <i>or</i> violation of this Section that a law enforcement officer, peace officer, <i>or</i> other person working at the direction of law enforcement was involved in the detection <i>or</i> investigation of a violation of this Section.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.30 (West 2011). <u>Electronic Enticement of a Child as a Second Degree Felony</u></p> <p>(a) Any person who, using a computer online service, Internet service, <i>or</i> any other device capable of electronic data storage <i>or</i> transmission intentionally <i>or</i> knowingly communicates:</p>
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<p>Statute Cont' (Guam)</p>	<p>(1) with a minor known by the person to be under the age of eighteen (18) years;  (2) with another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or  (3) with another person who represents him <i>or</i> herself to be under the age of eighteen (18) years; and with the intent to promote <i>or</i> facilitate the commission of a felony, <i>or</i> another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, <i>or</i> with another person who represents him <i>or</i> herself to be a minor under the age of eighteen (18) years, is guilty of electronic enticement of a child as a Second Degree Felony.  (b) Electronic enticement of a child under this Section is a Second Degree Felony.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.40 (West 2011).  <u>Electronic Enticement of a Child as a First Degree Felony</u></p> <p>(a) Any person who, using a computer online service, internet service, or any other device capable of electronic data storage or transmission intentionally or knowingly communicates:  (1) with a minor known by the person to be under the age of eighteen (18) years;  (2) with another person, in reckless disregard of the risk that the other person is under the age of eighteen (18) years, and the other person is under the age of eighteen (18) years; or  (3) with another person who represents him or herself to be under the age of eighteen (18) years;  (4) with the intent to promote or facilitate the commission of a felony:  (A) that is murder or aggravated murder as defined in Title 9 GCA Chapter 16;  (B) that is a first degree felony; or  (C) that is another criminal offense as set forth in Title 9 GCA Chapter 89, § 89.01, agrees to meet with the minor, or with another person who represents him or herself to be a minor under the age of eighteen (18) years; and  (5) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child as a First Degree Felony.  (b) Electronic enticement of a child under this Section is a First Degree Felony.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.60 (West 2011).  <u>Possession of Child Pornography</u></p>
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<p>Statute Cont' (Guam)</p>	<p>(a) A person commits the offense of possession of child pornography <i>if</i>, knowing <i>or</i> having reason to know its character and content, the person possesses:</p> <ul style="list-style-type: none"> <li>(1) child pornography;</li> <li>(2) any book, magazine, periodical, film, videotape, computer disk, electronically stored data, <i>or</i> any other material that contains an image of child pornography; or</li> <li>(3) any pornographic material that employs, uses, <i>or</i> otherwise contains a minor engaging in <i>or</i> assisting others to engage in sexual conduct.</li> </ul> <p>(b) The fact that a person engaged in the conduct specified by this Section is <i>prima facie</i> evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, <i>or</i> otherwise contained in the pornographic material was, at that time, a minor is <i>prima facie</i> evidence that the defendant knew the person to be a minor.</p> <p>(c) Possession of child pornography under this Section is a Second Degree Felony.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.70 (West 2011). <u>Dissemination of Child Pornography</u></p> <p>(a)A person commits the offense of dissemination of child pornography <i>if</i>, knowing <i>or</i> having reason to know its character and content, the person:</p> <ul style="list-style-type: none"> <li>(1) disseminates child pornography;</li> <li>(2) reproduces child pornography with intent to disseminate;</li> <li>(3) disseminates any book, magazine, periodical, film, videotape, computer disk, electronically stored data, <i>or</i> any other material that contains an image of child pornography;</li> <li>(4) disseminates any pornographic material that employs, uses, <i>or</i> otherwise contains a minor engaging in <i>or</i> assisting others to engage in sexual conduct; or</li> <li>(5) possesses ten (10) <i>or more</i> images of any form of child pornography regardless of content, and the content of at least one (1) image contains one (1) <i>or more</i> of the following: <ul style="list-style-type: none"> <li>(A) a minor who is younger than the age of fourteen (14);</li> <li>(B) sadomasochistic abuse of a minor;</li> <li>(C) sexual penetration of a minor; or</li> <li>(D) bestiality involving a minor.</li> </ul> </li> </ul> <p>(b) The fact that a person engaged in the conduct specified by this Section is <i>prima facie</i> evidence that the defendant had knowledge of the character and content of the material. The fact that the person who was employed, used, <i>or</i> otherwise contained in the pornographic material was, at that time, a minor is <i>prima facie</i> evidence that the defendant knew the person to be a minor.</p>
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American University, Washington College of Law

Current as of June 2011

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Statute Cont' (Guam)	<p>(c) Dissemination of child pornography under this Section is a First Degree Felony.</p> <p>GUAM CODE ANN. tit. 928.52 (West 2011). <u>Use of One's Child in Obscene Acts</u></p> <p>A person is guilty of a felony of the first degree if while having custody or control of any child under the age of sixteen (16) years, he shall knowingly permit that child to be used in or be a party to any material or performance that is obscene.</p> <p>GUAM CODE ANN. tit. 9§ 28.80 (West 2011). <u>Photography of Minors" Sexual Acts: Punished</u></p> <p>A person commits a felony of the first degree if he knowingly:</p> <ol style="list-style-type: none"> <li>(1) sells or offers for sale publications, pictures or films that depict minors under 16 years of age performing sexual acts; or</li> <li>(2) photographs minors under 16 years of age to engaging [sic] sexual acts.</li> </ol>
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Definitions (Guam)	<p>GUAM CODE ANN. tit. 9, § 25.10 (West 2011). <u>Definitions</u></p> <p>(a) As used in this Chapter:</p> <ol style="list-style-type: none"> <li>(1) <i>Actor</i> means a person accused of criminal sexual conduct;</li> <li>(2) <i>Force</i> or <i>Coercion</i> includes but is not limited to any of the following circumstances: <ol style="list-style-type: none"> <li>(i) when the actor overcomes the victim through the actual application of physical force or physical violence;</li> <li>(ii) when the actor coerces the victim to submit by threatening to use force or violence on the victim and the victim believes that the actor has the present ability to execute these threats;</li> <li>(iii) when the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person and the victim believes that the actor has the ability to execute this threat.</li> </ol> </li> </ol> <p>As used in this Subsection, to retaliate includes threats of physical punishment, kidnapping or extortion;</p>

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<p>Definitions Cont' (Guam)</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; or</p> <p>(v) when the actor, through concealment or by the element of surprise, is able to overcome the victim.</p> <p>(3) <i>Intimate Parts</i> includes the primary genital area, groin, inner thigh, buttock or breast of a human being;</p> <p>(4) <i>Mentally Defective</i> means that a person suffers from a mental disease or defect which renders that person temporary or permanently incapable of appraising the nature of his or her conduct;</p> <p>(5) <i>Mentally Incapacitated</i> means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent;</p> <p>(6) <i>Physically Helpless</i> means that a person is unconscious, asleep or for any other reason is physically unable to communicate unwillingness to an act;</p> <p>(7) <i>Personal Injury</i> means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease or loss or impairment of a sexual or reproductive organ;</p> <p>(8) <i>Sexual Contact</i> includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification;</p> <p>(9) <i>Sexual Penetration</i> means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required; and</p> <p>(10) <i>Victim</i> means the person alleging to have been subjected to criminal sexual conduct.</p> <p>(b) Whenever in this Chapter the criminality of conduct depends on a child's being below the age of fourteen (14), it is no defense that the defendant reasonably believed the child to be fourteen (14) or older. Whenever in this Chapter the criminality of conduct depends on a child's being below a specified age older than fourteen (14), it is an affirmative defense that the defendant reasonably believed the child to be of that age or above.</p> <p>GUAM CODE ANN. tit. 9§ 25.01.50 (West 2011)</p> <p><u>Definitions</u></p> <p>As used in this Chapter:</p> <p>(a) <i>Child pornography</i> means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:</p> <p>(1) the pornographic production of the visual representation involves the use of a minor engaging in sexual conduct; or</p>
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<p>Definitions Cont' (Guam)</p>	<p>(2) the pornographic visual representation has been created, adapted, <i>or</i> modified to appear that an identifiable minor is engaging in sexual conduct.</p> <p>(b) <i>Community standards</i> means the standards of Guam.</p> <p>(c) <i>Computer</i> means any electronic, magnetic, optical, electrochemical, <i>or</i> other high-speed data processing device performing logical, arithmetic, <i>or</i> storage functions, and includes, all computer equipment connected <i>or</i> related to such a device in a computer system <i>or</i> computer network, but <i>shall not</i> include an automated typewriter or typesetter, a portable hand-held calculator, <i>or</i> other similar device.</p> <p>(d) <i>Computer equipment</i> means any equipment <i>or</i> devices, including all input, output, processing, storage, software, <i>or</i> communications facilities, intended to interface with the computer.</p> <p>(e) <i>Computer network</i> means two (2) or more computers or computer systems, interconnected by communication lines, including microwave, electronic, or any other form of communication.</p> <p>(f) <i>Computer program or software</i> means a set of computer-readable instructions or statements and related data that, when executed by a computer system, causes the computer system or the computer network to which it is connected to perform computer services.</p> <p>(g) <i>Computer services</i> includes, but is not limited to the use of a computer system, computer network, computer program, data prepared for computer use, and data contained within a computer system or computer network.</p> <p>(h) <i>Computer system</i> means a set of interconnected computer equipment intended to operate as a cohesive system.</p> <p>(i) <i>Data</i> means information, facts, concepts, software, <i>or</i> instructions prepared for use in a computer, computer system, <i>or</i> computer network.</p> <p>(j) <i>Lascivious</i> means tending to incite lust to deprave the morals with respect to sexual relations, <i>or</i> to produce voluptuous <i>or</i> lewd emotions in the average person, applying contemporary community standards.</p> <p>(k) <i>Material</i> means any printed matter, visual representation, <i>or</i> sound recording and includes, but is <i>not limited to</i>, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape <i>or</i> wire recordings.</p> <p>(l) <i>Minor</i> means any person less than eighteen (18) years old.</p> <p>(m) <i>Pornographic</i> shall have the same meaning as in Title 9 GCA Chapter 28, Article 2.</p> <p>(n) <i>Sadomasochistic abuse</i> means flagellation <i>or</i> torture by <i>or</i> upon a person as an act of sexual stimulation <i>or</i> gratification.</p> <p>(o) <i>Sexual conduct</i> means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, <i>or</i> lascivious exhibition of the genital <i>or</i> pubic area of a minor.</p> <p>(p) <i>Visual representation</i> includes, but is <i>not limited to</i>, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.</p> <p>(q) <i>Disseminate</i> means to publish, sell, distribute, transmit, exhibit, present material, mail, ship, <i>or</i> transport by any means, including by computer, <i>or</i> to offer <i>or</i> agree to do the same.</p> <p>GUAM CODE ANN. tit. 9§ 28.40. (West 2011)</p>
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Definitions Cont' (Guam)	<p><u>Definitions</u></p> <p>As used in this Article:</p> <p>(a) <i>Material</i> means any picture, drawing, photograph, motion picture or pictorial representation, or any statue or other figure, or any mechanical, chemical or electrical reproduction, or anything which is or may be used as a means of communication (other than the written or spoken word). Material includes molds, printing plates and other latent representational objects.</p> <p>(b) <i>Prurient interest</i> means a shameful or morbid interest in nudity, sex or excretion.</p> <p>(c) <i>Performance</i> means any physical human bodily activity, whether engaged in alone or with other persons, including but not limited to dancing, acting, simulating or pantomiming which is either public or for commercial gain.</p> <p>(d) <i>Distribute</i> means to transfer possession of material.</p> <p>(e) Any material or performance is <i>obscene</i> if:</p> <p>(1) The average person, applying contemporary community standards, finds that the material or performance, taken as a whole, appeals to the prurient interest; and</p> <p>(2) The material or performance depicts or describes in a patently offensive way, sexual conduct, normal or perverted, actual or simulated; and</p> <p>(3) The material or performance, taken as a whole, lacks serious literary, artistic, political or scientific value.</p> <p>(f) <i>Sadomasochistic abuse</i> means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.</p> <p>(g) <i>Sexual conduct</i> means acts of masturbation, excretory functions, lewd exhibition of the genitals, sadomasochistic abuse, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.</p> <p>(h) <i>Owner</i> means any person who owns or has legal right to possession of any material.</p>
Defenses (Guam)	<p>GUAM CODE ANN. tit. 9§ 28.55 (West 2011).</p> <p><u>Defenses</u></p> <p>It shall be an affirmative defense in a prosecution under this Article for the defendant to show:</p> <p>(1) That the distribution was made to the recipient by a bona fide school, museum or public library or by an employee of such organization acting in the course of his employment or of a retail outlet affiliated with and serving the educational purposes of such organization; or</p> <p>(2) That the act was done for legitimate scientific or education purposes</p>
Penalty (Guam)	<p>GUAM CODE ANN. tit. 9, § 25.15 (West 2011).</p> <p><u>First Degree Criminal Sexual Conduct</u></p>

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<p>Penalty Cont' (Guam)</p>	<p>(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under § 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole. Any person convicted of criminal sexual conduct in the first degree shall not be eligible for work release or educational programs outside the confines of prison nor shall the provisions under § 80.31 apply.</p> <p>GUAM CODE ANN. tit. 9§ 25.20 (West 2011). <u>Second Degree Criminal Sexual Conduct</u></p> <p>(b) Criminal sexual conduct in the second degree is a felony in the first degree but a person convicted of criminal sexual conduct in the second degree who receives a sentence of imprisonment shall not be eligible for work release or educational programs outside the confines of prison.</p> <p>GUAM CODE ANN. tit. 9§ 80.30 (West 2010). <u>Duration of Imprisonment</u></p> <p>Except as otherwise provided by law, a person who has been convicted of a felony may be sentenced to imprisonment as follows:</p> <p>(a) In the case of a felony of the first degree, the court shall impose a sentence of not less than five (5) years and not more than twenty (20) years;</p> <p>(b) In the case of a felony of the second degree, the court shall impose a sentence of not less than three (3) years and not more than ten (10) years; and</p> <p>(c) In the case of a felony of the third degree, the court may impose a sentence of not more than five (5) years.</p>
<p><b>Hawaii</b></p>	
<p>Statute (Hawaii)</p>	<p>HAW. REV. STAT. ANN. § 707-730 (West 2011). <u>Sexual assault in the first degree</u></p>

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<p>Statute Cont' (Hawaii)</p>	<p>(1) A person commits the offense of sexual assault in the first degree if:</p> <ul style="list-style-type: none"> <li>(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;</li> <li>(b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;</li> <li>(c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that: <ul style="list-style-type: none"> <li>(i) The person is not less than five years older than the minor; and</li> <li>(ii) The person is not legally married to the minor;</li> </ul> </li> <li>(d) The person knowingly subjects to sexual penetration another person who is mentally defective; or</li> <li>(e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.</li> </ul> <p>Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices.</p> <p>(2) Sexual assault in the first degree is a class A felony.</p> <p>HAW. REV. STAT. ANN. § 707-731 (West 2011).  <u>Sexual assault in the second degree</u></p> <p>(1) A person commits the offense of sexual assault in the second degree if:</p> <ul style="list-style-type: none"> <li>(a) The person knowingly subjects another person to an act of sexual penetration by compulsion;</li> <li>(b) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless; or</li> <li>(c) The person, while employed: <ul style="list-style-type: none"> <li>(i) In a state correctional facility;</li> <li>(ii) By a private company providing services at a correctional facility;</li> <li>(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;</li> <li>(iv) By a private correctional facility operating in the State of Hawaii; or</li> <li>(v) As a law enforcement officer as defined in section 710-1000(13),</li> </ul> </li> </ul> <p>knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from</p>
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<p>Statute Cont' (Hawaii)</p>	<p>performing a lawful search pursuant to a warrant or exception to the warrant clause. (2) Sexual assault in the second degree is a class B felony.</p> <p>HAW. REV. STAT. ANN. § 707-732 (West 2011). <u>Sexual assault in the third degree</u></p> <p>(1) A person commits the offense of sexual assault in the third degree if:</p> <ul style="list-style-type: none"> <li>(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;</li> <li>(b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;</li> <li>(c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:             <ul style="list-style-type: none"> <li>(i) The person is not less than five years older than the minor; and</li> <li>(ii) The person is not legally married to the minor;</li> </ul> </li> <li>(d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;</li> <li>(e) The person, while employed:             <ul style="list-style-type: none"> <li>(i) In a state correctional facility;</li> <li>(ii) By a private company providing services at a correctional facility;</li> <li>(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;</li> <li>(iv) By a private correctional facility operating in the State of Hawaii; or</li> <li>(v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or</li> </ul> </li> <li>(f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.</li> </ul> <p>Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453 or 455 from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.</p>
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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Hawaii)</p>	<p>(2) Sexual assault in the third degree is a class C felony.</p> <p>HAW. REV. STAT. ANN. § 707-733 (West 2011). <u>Sexual assault in the fourth degree</u></p> <p>(1) A person commits the offense of sexual assault in the fourth degree if:</p> <p>(a) The person knowingly subjects another person to sexual contact by compulsion or causes another person to have sexual contact with the actor by compulsion;</p> <p>(b) The person knowingly exposes the person's genitals to another person under circumstances in which the actor's conduct is likely to alarm the other person or put the other person in fear of bodily injury; or</p> <p>(c) The person knowingly trespasses on property for the purpose of subjecting another person to surreptitious surveillance for the sexual gratification of the actor.</p> <p>(2) Sexual assault in the fourth degree is a misdemeanor.</p> <p>(3) Whenever a court sentences a defendant for an offense under this section, the court may order the defendant to submit to a pre-sentence mental and medical examination pursuant to section 706-603.</p> <p>HAW. REV. STAT. ANN. [§ 707-733.6] (West 2011). <u>Continuous sexual assault of a minor under the age of fourteen years</u></p> <p>(1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:</p> <p>(a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and</p> <p>(b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.</p> <p>(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.</p> <p>(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the period of the offense charged under this section, or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, unless more than one victim is involved, in which case a separate count may be charged for each victim.</p> <p>(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony.</p>
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<p>Statute Cont' (Hawaii)</p>	<p>HAW. REV. STAT. ANN. § 707-750 (West 2011). <u>Promoting child abuse in the first degree</u></p> <p>(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person:</p> <p>(a) Produces or participates in the preparation of child pornography;</p> <p>(b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or</p> <p>(c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.</p> <p>(2) As used in this section:</p> <p>“Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:</p> <p>(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or</p> <p>(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.</p> <p>“Community standards” means the standards of the State.</p> <p>“Computer” shall have the same meaning as in section 708-890.</p> <p>“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.</p> <p>“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.</p> <p>“Minor” means any person less than eighteen years old.</p> <p>“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.</p> <p>“Pornographic” shall have the same meaning as in section 712-1210.</p> <p>“Produces” means to produce, direct, manufacture, issue, publish, or advertise.</p> <p>“Sodomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.</p> <p>“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.</p> <p>“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.</p>
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<p>Statute Cont' (Hawaii)</p>	<p>(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.</p> <p>(4) Promoting child abuse in the first degree is a class A felony.</p> <p>HAW. REV. STAT. ANN. § 707-751 (West 2011). <u>Promoting child abuse in the second degree</u></p> <p>(1) A person commits the offense of promoting child abuse in the second degree if, knowing or having reason to know its character and content, the person:</p> <p>(a) Disseminates child pornography;</p> <p>(b) Reproduces child pornography with intent to disseminate;</p> <p>(c) Disseminates any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or</p> <p>(d) Disseminates any pornographic material which employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.</p> <p>(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.</p> <p>(4) Promoting child abuse in the second degree is a class B felony.</p> <p>HAW. REV. STAT. ANN. [§ 707-752] (West 2011). <u>Promoting child abuse in the third degree</u></p> <p>(1) A person commits the offense of promoting child abuse in the third degree if, knowing or having reason to know its character and content, the person possesses:</p> <p>(a) Child pornography;</p> <p>(b) Any book, magazine, periodical, film, videotape, computer disk, electronically stored data, or any other material that contains an image of child pornography; or</p>
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<p>Statute Cont' (Hawaii)</p>	<p>(c) Any pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct. (3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material. The fact that the person who was employed, used, or otherwise contained in the pornographic material was, at that time, a minor is prima facie evidence that the defendant knew the person to be a minor. (4) Promoting child abuse in the third degree is a class C felony.</p> <p>HAW. REV. STAT. ANN. § 707-756 (West 2011). <u>Electronic enticement of a child in the first degree</u></p> <p>(1) Any person who, using a computer or any other electronic device: (a) Intentionally or knowingly communicates: (i) With a minor known by the person to be under the age of eighteen years; (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or (iii) With another person who represents that person to be under the age of eighteen years; (b) With the intent to promote or facilitate the commission of a felony: (i) That is a murder in the first or second degree; (ii) That is a class A felony; or (iii) That is another covered offense as defined in section 846E-1, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and (c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time, is guilty of electronic enticement of a child in the first degree. (2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, a person convicted of electronic enticement of a child in the first degree shall be sentenced to an indeterminate term of imprisonment as provided by law. HAW. REV. STAT. ANN. § 707-757 (West 2011). <u>Electronic enticement of a child in the second degree</u></p> <p>(1) Any person who, using a computer or any other electronic device: (a) Intentionally or knowingly communicates: (i) With a minor known by the person to be under the age of eighteen years; (ii) With another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under</p>
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Statute Cont' (Hawaii)	<p>the age of eighteen years; or</p> <p>(iii) With another person who represents that person to be under the age of eighteen years; and</p> <p>(b) With the intent to promote or facilitate the commission of a felony, agrees to meet with the minor, or with another person who represents that person to be a minor under the age of eighteen years; and</p> <p>(c) Intentionally or knowingly travels to the agreed upon meeting place at the agreed upon meeting time; is guilty of electronic enticement of a child in the second degree.</p> <p>(2) Electronic enticement of a child in the second degree is a class C felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.</p> <p>HAW. REV. STAT. ANN. [§ 707-759] (West 2011).  <u>Indecent electronic display to a child</u></p> <p>(1) Any person who intentionally masturbates or intentionally exposes the genitals in a lewd or lascivious manner live over a computer online service, internet service, or local bulletin board service and who knows or should know or has reason to believe that the transmission is viewed on a computer or other electronic device by:</p> <p>(a) A minor known by the person to be under the age of eighteen years;</p> <p>(b) Another person, in reckless disregard of the risk that the other person is under the age of eighteen years, and the other person is under the age of eighteen years; or</p> <p>(c) Another person who represents that person to be under the age of eighteen years, is guilty of indecent electronic display to a child.</p> <p>(2) Indecent electronic display to a child is a misdemeanor.</p>
Age of Consent ♦ (Hawaii)	16
Definitions (Hawaii)	<p>HAW. REV. STAT. ANN. § 707-750 (West 2011).  <u>Promoting child abuse in the first degree</u></p> <p>(2) As used in this section:  “Child pornography” means any pornographic visual representation, including any photograph, film, video, picture, or computer-</p>

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Definitions Cont' (Hawaii)	<p>generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:</p> <p>(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or</p> <p>(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.</p> <p>“Community standards” means the standards of the State.</p> <p>“Computer” shall have the same meaning as in section 708-890.</p> <p>“Lascivious” means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying contemporary community standards.</p> <p>“Material” means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.</p> <p>“Minor” means any person less than eighteen years old.</p> <p>“Performance” means any play, motion picture film, dance, or other exhibition performed before any audience.</p> <p>“Pornographic” shall have the same meaning as in section 712-1210.</p> <p>“Produces” means to produce, direct, manufacture, issue, publish, or advertise.</p> <p>“Sadomasochistic abuse” means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.</p> <p>“Sexual conduct” means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.</p> <p>“Visual representation” refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.</p>
Defenses (Hawaii)	<p>HAW. REV. STAT. ANN. [§ 707-753] (West 2011).</p> <p><u>Affirmative defense to promoting child abuse</u></p> <p>It shall be an affirmative defense to a charge of promoting child abuse in the third degree that the defendant:</p> <p>(a) Possessed less than three images of child pornography; and</p> <p>(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof:</p> <p>(i) Took reasonable steps to destroy each such image; or</p> <p>(ii) Reported the matter to a law enforcement agency and afforded that agency access to each such image.</p>
Penalty	HAW. REV. STAT. ANN. § 706-659 (West 2011).

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<p>(Hawaii)</p> <p>Penalty Cont' (Hawaii)</p>	<p><u>Sentence of imprisonment for class A felony</u></p> <p>Notwithstanding part II; sections 706-605, 706-606, 706-606.5, 706-660.1, 706-661, and 706-662; and any other law to the contrary, a person who has been convicted of a class A felony, except class A felonies defined in chapter 712, part IV, shall be sentenced to an indeterminate term of imprisonment of twenty years without the possibility of suspension of sentence or probation. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669. A person who has been convicted of a class A felony defined in chapter 712, part IV, may be sentenced to an indeterminate term of imprisonment, except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be twenty years. The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.</p> <p>HAW. REV. STAT. ANN. § 706-660 (West 2011). <u>Sentence of imprisonment for class B and C felonies; ordinary terms</u></p> <p>A person who has been convicted of a class B or class C felony may be sentenced to an indeterminate term of imprisonment except as provided for in section 706-660.1 relating to the use of firearms in certain felony offenses and section 706-606.5 relating to repeat offenders. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:</p> <ol style="list-style-type: none"> <li>(1) For a class B felony--10 years; and</li> <li>(2) For a class C felony--5 years.</li> </ol> <p>The minimum length of imprisonment shall be determined by the Hawaii paroling authority in accordance with section 706-669.</p> <p>HAW. REV. STAT. ANN. § 706-660.2 (West 2011). <u>Sentence of imprisonment for offenses against children, elder persons, or handicapped persons</u></p> <p>Notwithstanding section 706-669, a person who, in the course of committing or attempting to commit a felony, causes the death or inflicts serious or substantial bodily injury upon a person who is:</p> <ol style="list-style-type: none"> <li>(1) Sixty years of age or older;</li> <li>(2) Blind, a paraplegic, or a quadriplegic; or</li> <li>(3) Eight years of age or younger;</li> </ol> <p>and such disability is known or reasonably should be known to the defendant, shall, if not subjected to an extended term of imprisonment pursuant to section 706-662, be sentenced to a mandatory minimum term of imprisonment without possibility of parole as follows:</p>
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<p>Penalty Cont' (Hawaii)</p>	<p>(1) For murder in the second degree--fifteen years; (2) For a class A felony--six years, eight months; (3) For a class B felony--three years, four months; (4) For a class C felony--one year, eight months.</p> <p>HAW. REV. STAT. ANN. § 706-663 (West 2011). <u>Sentence of imprisonment for misdemeanor and petty misdemeanor</u></p> <p>After consideration of the factors set forth in sections 706-606 and 706-621, the court may sentence a person who has been convicted of a misdemeanor or a petty misdemeanor to imprisonment for a definite term to be fixed by the court and not to exceed one year in the case of a misdemeanor or thirty days in the case of a petty misdemeanor.</p> <p>HAW. REV. STAT. ANN. § 707-757 (West 2011). <u>Electronic enticement of a child in the second degree</u></p> <p>(2) Electronic enticement of a child in the second degree is a class C felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.</p>
<p style="text-align: center;"><b>Idaho<sup>24</sup></b></p>	
<p>Statute (Idaho)</p>	<p>IDAHO CODE ANN. § 18-1506 (West 2011). <u>Sexual abuse of a child under the age of sixteen years</u></p> <p>(1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to: (a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act; (b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508, Idaho Code; (c) Make any photographic or electronic recording of such minor child; or</p>

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<p>Statute Cont' (Idaho)</p>	<p>(d) Induce, cause or permit a minor child to witness an act of sexual conduct.</p> <p>IDAHO CODE ANN. § 18-1507 (West 2011). <u>Sexual exploitation of a child</u></p> <p>(3) A person commits sexual exploitation of a child if, for any commercial purpose, he knowingly: (a) Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct; or (b) Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes any sexually exploitative material. (4) The possession by any person of three (3) or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.</p> <p>IDAHO CODE ANN. § 18-1507A (West 2011). <u>Possession of sexually exploitative material for other than a commercial purpose – Penalty</u></p> <p>(2) Every person who knowingly and willfully has in his possession any sexually exploitative material as defined in section 18-1507, Idaho Code, for other than a commercial purpose, is guilty of a felony.</p> <p>IDAHO CODE ANN. § 18-1508 (West 2011). <u>Lewd conduct with minor child under sixteen</u></p> <p>Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507, Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party, shall be guilty of a felony.</p> <p>IDAHO CODE ANN. § 18-1508A (West 2011). <u>Sexual battery of a minor child sixteen or seventeen years of age--Penalty</u></p>
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<p>Statute Cont' (Idaho)</p>	<p>(1) It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:</p> <p>(a) Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in section 18-1507, Idaho Code; or</p> <p>(b) Solicit such minor child to participate in a sexual act; or</p> <p>(c) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or</p> <p>(d) Make any photographic or electronic recording of such minor child.</p> <p>(2) For the purpose of subsection (b) of this section, “solicit” means any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.</p> <p>(3) For the purpose of this section, “sexual contact” means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.</p> <p>IDAHO CODE ANN. § 18-6101 (West 2011).</p> <p><u>Rape defined</u></p> <p>Rape is defined as the penetration, however slight, of the oral, anal or vaginal opening with the perpetrator's penis accomplished with a female under any one (1) of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. Where the female is under the age of sixteen (16) years and the per-petrator is eighteen (18) years of age or older.</li> <li>2. Where the female is sixteen (16) or seventeen (17) years of age and the perpetrator is three (3) years or more older than the female.</li> <li>3. Where she is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental deficiency or developmental disability, whether temporary or permanent, of giving legal consent.</li> <li>4. Where she resists but her resistance is overcome by force or violence.</li> <li>5. Where she is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anaesthetic substance.</li> <li>6. Where she is at the time unconscious of the nature of the act. As used in this section, “unconscious of the nature of the act” means incapable of resisting because the victim meets one (1) of the following conditions: <ol style="list-style-type: none"> <li>(a) Was unconscious or asleep;</li> <li>(b) Was not aware, knowing, perceiving, or cognizant that the act occurred.</li> </ol> </li> </ol>
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<p>Statute Cont' (Idaho)</p>	<p>7. Where she submits under the belief that the person committing the act is her husband, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.</p> <p>8. Where she submits under the belief that the person committing the act is someone other than the accused, and the belief is induced by artifice, pretense or other concealment practiced by the accused, with the intent to induce such belief.</p> <p>9. Where she submits under the belief, instilled by the actor, that if she does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against her; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt or ridicule.</p> <p>The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the female, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the female.</p> <p>IDAHO CODE ANN. § 18-6108 (West 2011).</p> <p><u>Male rape</u></p> <p>Male rape is defined as the penetration, however slight, of the oral or anal opening of another male, with the perpetrator's penis, for the purpose of sexual arousal, gratification or abuse, under any of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. Where the victim is under the age of sixteen (16) years and the perpetrator is eighteen (18) years of age or older.</li> <li>2. Where the victim is sixteen (16) or seventeen (17) years of age and the perpetrators is three (3) years or more older than the victim.</li> <li>3. Where the victim is incapable, through any unsoundness of mind, whether temporary or permanent, of giving consent.</li> <li>4. Where the victim resists but his resistance is overcome by force or violence.</li> <li>5. Where the victim is prevented from resistance by threats of immediate and great bodily harm, accompanied by apparent power of execution.</li> <li>6. Where the victim is prevented from resistance by the use of any intoxicating, narcotic, or anaesthetic substance administered by or with the privity of the accused.</li> <li>7. Where the victim is at the time unconscious of the nature of the act, and this is known to the accused.</li> </ol> <p>The provisions of subsections (1) and (2) of this section shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of subsection (2) of this section, in determining whether the perpetrator is three (3) years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim.</p>
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American University, Washington College of Law

Current as of June 2011

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Statute Cont' (Idaho)	<p>IDAHO CODE ANN. § 18-6110 (West 2011).  <u>Sexual contact with a prisoner</u></p> <p>(1) It is a felony for any employee of the Idaho department of correction, Idaho department of juvenile corrections or any officer, employee or agent of a state, local or private correctional facility, as those terms are defined in section 18-101A, Idaho Code, to have sexual contact with a prisoner or juvenile offender, not their spouse, whether an in-state or out-of-state prisoner or juvenile offender, as those terms are defined in section 18-101A, Idaho Code.</p> <p>(2) It is a felony for any supervising officer, as that term is defined in section 18-101A, Idaho Code, to knowingly have sexual contact with any parolee or probationer, as those terms are defined in section 18-101A, Idaho Code, who is not the person's spouse.</p> <p>(3) For the purposes of this section “sexual contact” means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact or oral-anal contact, between persons of the same or opposite sex.</p>
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Definitions (Idaho)	<p>IDAHO CODE ANN. § 18-1506 (West 2011)  <u>Sexual abuse of a child under 16 years of age</u></p> <p>(2) For the purposes of this section “solicit” means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.</p> <p>(3) For the purposes of this section “sexual contact” means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact.</p> <p>(4) For the purposes of this section “sexual conduct” means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.</p> <p>IDAHO CODE ANN. § 18-1507 (West 2011).  <u>Sexual exploitation of a child</u></p> <p>(2) As used in this section, unless the context otherwise requires:</p>

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Definitions Cont' (Idaho)	<p>(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.</p> <p>(b) "Child" means a person who is less than eighteen (18) years of age.</p> <p>(c) "Commercial purpose" means the intention, objective, anticipation, or expectation of monetary gain or other material consideration, compensation, remuneration, or profit.</p> <p>(d) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.</p> <p>(e) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.</p> <p>(f) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.</p> <p>(g) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.</p> <p>(h) "Sadomasochism" means:</p> <p>(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or</p> <p>(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.</p> <p>(i) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.</p> <p>(j) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.</p> <p>(k) "Sexually exploitative material" means any photograph, motion picture, videotape, print, negative, slide, or other mechanically, electronically, or chemically reproduced visual material which depicts a child engaged in, participating in, observing, or being used for explicit sexual conduct</p>
Defenses	None.

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(Idaho)	
Penalty (Idaho)	<p>IDAHO CODE ANN. § 18-1506 (West 2011). <u>Sexual abuse of a child under 16 years of age</u></p> <p>(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.</p> <p>IDAHO CODE ANN. § 18-1507 (West 2011) <u>Sexual exploitation of a child</u></p> <p>(5) The sexual exploitation of a child is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$50,000) or by both such fine and imprisonment.</p> <p>IDAHO CODE ANN. § 18-1507A (West 2011). <u>Possession of sexually exploitative material for other than a commercial purpose – Penalty</u></p> <p>(2) Every person who [violates this section] shall be punished by imprisonment in the state prison or a period not to exceed ten (10) years and by a fine not to exceed ten thousand dollars (\$10,000).</p> <p>IDAHO CODE ANN. § 18-1508 (West 2011). <u>Lewd conduct with minor child under sixteen</u></p> <p>Any person who [violates this section] shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.</p> <p>IDAHO CODE ANN. § 18-1508A (West 2011). <u>Sexual battery of a minor child sixteen or seventeen years of age--Penalty</u></p> <p>(4) Any person guilty of a violation of the provisions of subsection (1)(a) of this section shall be imprisoned in the state prison for a period not to exceed life.</p> <p>(5) Any person guilty of a violation of the provisions of subsections (1)(b), (1)(c), or (1)(d) of this section shall be imprisoned in the state</p>

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<p>Penalty Cont' (Idaho)</p>	<p>prison for a period not to exceed twenty-five (25) years.</p> <p>IDAHO CODE ANN. § 18-6104 (West 2011) <u>Punishment for rape</u></p> <p>Rape is punishable by imprisonment in the state prison not less than one (1) year, and the imprisonment may be extended to life in the discretion of the District Judge, who shall pass sentence.</p> <p>IDAHO CODE ANN. § 18-6106 (West 2011) <u>Restitution to victim</u></p> <p>Persons convicted of offenses covered under this chapter may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.</p> <p>IDAHO CODE ANN. § 18-6109 (West 2011) <u>Punishment for male rape</u></p> <p>Male rape is punishable by imprisonment in the state prison for not less than one (1) year, and the imprisonment may be extended to life.</p> <p>IDAHO CODE ANN. § 18-6110 (West 2011). <u>Sexual contact with a prisoner</u></p> <p>(4) Any person found guilty of sexual contact with a prisoner or juvenile offender is punishable by imprisonment in the state prison for a term not to exceed life.</p>
<p style="text-align: center;"><b>Illinois</b></p>	
<p>Statute (Illinois)</p>	<p>720 ILL. COMP. STAT. §§ 11-1.20 (West 2011). <u>Criminal Sexual Assault.</u></p>

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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Illinois)</p>	<p>(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:</p> <ol style="list-style-type: none"> <li>(1) uses force or threat of force;</li> <li>(2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;</li> <li>(3) is a family member of the victim, and the victim is under 18 years of age; or</li> <li>(4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.</li> </ol> <p>720 ILL. COMP. STAT. § 11-1.30 (West 2011). <u>Aggravated Criminal Sexual Assault.</u></p> <p>(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:</p> <ol style="list-style-type: none"> <li>(1) the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;</li> <li>(2) the person causes bodily harm to the victim, except as provided in paragraph (10);</li> <li>(3) the person acts in a manner that threatens or endangers the life of the victim or any other person;</li> <li>(4) the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony;</li> <li>(5) the victim is 60 years of age or older;</li> <li>(6) the victim is a physically handicapped person;</li> <li>(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes;</li> <li>(8) the person is armed with a firearm;</li> <li>(9) the person personally discharges a firearm during the commission of the offense; or</li> <li>(10) the person personally discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.</li> </ol> <p>(b) A person commits aggravated criminal sexual assault if that person is under 17 years of age and: (i) commits an act of sexual penetration with a victim who is under 9 years of age; or (ii) commits an act of sexual penetration with a victim who is at least 9 years of age but under 13 years of age and the person uses force or threat of force to commit the act.</p> <p>(c) A person commits aggravated criminal sexual assault if that person commits an act of sexual penetration with a victim who is a severely or</p>
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<p>Statute Cont' (Illinois)</p>	<p>profoundly mentally retarded person.</p> <p>720 ILL. COMP. STAT. § 11-1.40 (West 2011). <u>Predatory criminal sexual assault of a child.</u></p> <p>(a) A person commits predatory criminal sexual assault of a child if that person commits an act of sexual penetration, is 17 years of age or older, and:</p> <p>(1) the victim is under 13 years of age; or</p> <p>(2) the victim is under 13 years of age and that person:</p> <p>(A) is armed with a firearm;</p> <p>(B) personally discharges a firearm during the commission of the offense;</p> <p>(C) causes great bodily harm to the victim that:</p> <p>(i) results in permanent disability; or</p> <p>(ii) is life threatening; or</p> <p>(D) delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception, for other than medical purposes.</p> <p>720 ILL. COMP. STAT. § 11-1.50 (West 2011). <u>Criminal sexual abuse.</u></p> <p>(a) A person commits criminal sexual abuse if that person:</p> <p>(1) commits an act of sexual conduct by the use of force or threat of force; or</p> <p>(2) commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent.</p> <p>(b) A person commits criminal sexual abuse if that person is under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who is at least 9 years of age but under 17 years of age.</p> <p>(c) A person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim.</p> <p>720 ILL. COMP. STAT. § 11-1.60 (West 2011). <u>Aggravated Criminal Sexual Abuse.</u></p>
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<p>Statute Cont' (Illinois)</p>	<p>(a) A person commits aggravated criminal sexual abuse if that person commits criminal sexual abuse and any of the following aggravating circumstances exist (i) during the commission of the offense or (ii) for purposes of paragraph (7), as part of the same course of conduct as the commission of the offense:</p> <ol style="list-style-type: none"> <li>(1) the person displays, threatens to use, or uses a dangerous weapon or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;</li> <li>(2) the person causes bodily harm to the victim;</li> <li>(3) the victim is 60 years of age or older;</li> <li>(4) the victim is a physically handicapped person;</li> <li>(5) the person acts in a manner that threatens or endangers the life of the victim or any other person;</li> <li>(6) the person commits the criminal sexual abuse during the course of committing or attempting to commit any other felony; or</li> <li>(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim for other than medical purposes without the victim's consent or by threat or deception.</li> </ol> <p>(b) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is under 18 years of age and the person is a family member.</p> <p>(c) A person commits aggravated criminal sexual abuse if:</p> <ol style="list-style-type: none"> <li>(1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person uses force or threat of force to commit the act; or</li> <li>(2) that person is under 17 years of age and: (i) commits an act of sexual conduct with a victim who is under 9 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 9 years of age but under 17 years of age and the person uses force or threat of force to commit the act.</li> </ol> <p>(d) A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim.</p> <p>(e) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is a severely or profoundly mentally retarded person.</p> <p>(f) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim.</p> <p>(g) Sentence. Aggravated criminal sexual abuse is a Class 2 felony.</p>
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<p>Statute Cont' (Illinois)</p>	<p>720 ILL. COMP. STAT. § 11-6 (West 2011). <u>Indecent solicitation of a child.</u></p> <p>(a) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person, with the intent that the offense of aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed, knowingly solicits a child or one whom he or she believes to be a child to perform an act of sexual penetration or sexual conduct as defined in Section 11-0.1 of this Code.</p> <p>(a-5) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person knowingly discusses an act of sexual conduct or sexual penetration with a child or with one whom he or she believes to be a child by means of the Internet with the intent that the offense of aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed.</p> <p>(a-6) It is not a defense to subsection (a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person.</p> <p>(b) Definitions. As used in this Section:</p> <p>“Solicit” means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.</p> <p>“Child” means a person under 17 years of age.</p> <p>“Internet” has the meaning set forth in Section 16J-5 of this Code.</p> <p>“Sexual penetration” or “sexual conduct” are defined in Section 11-0.1 of this Code.</p> <p>(c) Sentence. Indecent solicitation of a child under subsection (a) is:</p> <p>(1) a Class 1 felony when the act, if done, would be predatory criminal sexual assault of a child or aggravated criminal sexual assault;</p> <p>(2) a Class 2 felony when the act, if done, would be criminal sexual assault;</p> <p>(3) a Class 3 felony when the act, if done, would be aggravated criminal sexual abuse.</p> <p>Indecent solicitation of a child under subsection (a-5) is a Class 4 felony.</p> <p>720 ILL. COMP. STAT. § 11-6.5 (West 2011). <u>Indecent solicitation of an adult.</u></p> <p>(a) A person commits indecent solicitation of an adult if the person knowingly:</p> <p>(1) Arranges for a person 17 years of age or over to commit an act of sexual penetration as defined in Section 11-0.1 with a person:</p> <p>(i) Under the age of 13 years; or</p> <p>(ii) Thirteen years of age or over but under the age of 17 years; or</p>
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<p>Statute Cont' (Illinois)</p>	<p>(2) Arranges for a person 17 years of age or over to commit an act of sexual conduct as defined in Section 11-0.1 with a person:</p> <p>(i) Under the age of 13 years; or</p> <p>(ii) Thirteen years of age or older but under the age of 17 years.</p> <p>(b) Sentence.</p> <p>(1) Violation of paragraph (a)(1)(i) is a Class X felony.</p> <p>(2) Violation of paragraph (a)(1)(ii) is a Class 1 felony.</p> <p>(3) Violation of paragraph (a)(2)(i) is a Class 2 felony.</p> <p>(4) Violation of paragraph (a)(2)(ii) is a Class A misdemeanor.</p> <p>(c) For the purposes of this Section, “arranges” includes but is not limited to oral or written communication and communication by telephone, computer, or other electronic means. “Computer” has the meaning ascribed to it in Section 16D-2 of this Code.</p> <p>720 ILL. COMP. STAT. § 11-6.6 (West 2011).</p> <p><u>Solicitation to meet a child.</u></p> <p>(a) A person of the age of 18 or more years commits the offense of solicitation to meet a child if the person while using a computer, cellular telephone, or any other device, with the intent to meet a child or one whom he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of the child's parent or guardian and the meeting with the child is arranged for a purpose other than a lawful purpose under Illinois law.</p> <p>(b) Sentence. Solicitation to meet a child is a Class A misdemeanor. Solicitation to meet a child is a Class 4 felony when the solicitor believes he or she is 5 or more years older than the child.</p> <p>(c) For purposes of this Section, “child” means any person under 17 years of age; and “computer” has the meaning ascribed to it in Section 16D-2 of this Code.</p> <p>720 ILL. COMP. STAT. § 11-9.1 (West 2011).</p> <p><u>Sexual exploitation of a child.</u></p> <p>(a) A person commits sexual exploitation of a child if in the presence or virtual presence, or both, of a child and with knowledge that a child or one whom he or she believes to be a child would view his or her acts, that person:</p> <p>(1) engages in a sexual act; or</p> <p>(2) exposes his or her sex organs, anus or breast for the purpose of sexual arousal or gratification of such person or the child or one whom he or she believes to be a child.</p> <p>(a-5) A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for</p>
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<p>Statute Cont' (Illinois)</p>	<p>the purpose of sexual arousal or gratification of the person or the child, or both.</p> <p>(c) Sentence.</p> <p>(1) Sexual exploitation of a child is a Class A misdemeanor. A second or subsequent violation of this Section or a substantially similar law of another state is a Class 4 felony.</p> <p>(2) Sexual exploitation of a child is a Class 4 felony if the person has been previously convicted of a sex offense.</p> <p>(3) Sexual exploitation of a child is a Class 4 felony if the victim was under 13 years of age at the time of the commission of the offense.</p> <p>(4) Sexual exploitation of a child is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.</p> <p>720 ILL. COMP. STAT. § 11-9.1A (West 2011). <u>Permitting sexual abuse of a child.</u></p> <p>(a) A person responsible for a child's welfare commits permitting sexual abuse of a child if the person has actual knowledge of and permits an act of sexual abuse upon the child, or permits the child to engage in prostitution as defined in Section 11-14 of the Criminal Code of 1961.</p> <p>(b) In this Section:</p> <p>“Actual knowledge” includes credible allegations made by the child.</p> <p>“Child” means a minor under the age of 17 years.</p> <p>“Person responsible for the child's welfare” means the child's parent, step-parent, legal guardian, or other person having custody of a child, who is responsible for the child's care at the time of the alleged sexual abuse.</p> <p>“Prostitution” means prostitution as defined in Section 11-14 of the Criminal Code of 1961.</p> <p>“Sexual abuse” includes criminal sexual abuse or criminal sexual assault as defined in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of the Criminal Code of 1961.</p> <p>(c) This Section does not apply to a person responsible for the child's welfare who, having reason to believe that sexual abuse has occurred, makes timely and reasonable efforts to stop the sexual abuse by reporting the sexual abuse in conformance with the Abused and Neglected Child Reporting Act or by reporting the sexual abuse, or causing a report to be made, to medical or law enforcement authorities or anyone who is a mandated reporter under Section 4 of the Abused and Neglected Child Reporting Act.</p> <p>(d) Whenever a law enforcement officer has reason to believe that the child or the person responsible for the child's welfare has been abused by a family or household member as defined by the Illinois Domestic Violence Act of 1986, the officer shall immediately use all reasonable means to prevent further abuse under Section 112A-30 of the Code of Criminal Procedure of 1963.</p> <p>(e) An order of protection under Section 111-8 of the Code of Criminal Procedure of 1963 shall be sought in all cases where there is reason to believe that a child has been sexually abused by a family or household member. In considering appropriate available remedies, it shall be</p>
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<p>Statute Cont' (Illinois)</p>	<p>presumed that awarding physical care or custody to the abuser is not in the child's best interest.</p> <p>(f) A person may not be charged with the offense of permitting sexual abuse of a child under this Section until the person who committed the offense is charged with criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, aggravated criminal sexual abuse, or prostitution.</p> <p>(g) A person convicted of permitting the sexual abuse of a child is guilty of a Class 1 felony. As a condition of any sentence of supervision, probation, conditional discharge, or mandatory supervised release, any person convicted under this Section shall be ordered to undergo child sexual abuse, domestic violence, or other appropriate counseling for a specified duration with a qualified social or mental health worker.</p> <p>720 ILL. COMP. STAT. § 11-9.2 (West 2011). <u>Custodial sexual misconduct.</u></p> <p>(a) A person commits custodial sexual misconduct when: (1) he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system or (2) he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a person who is in the custody of that treatment and detention facility.</p> <p>(b) A probation or supervising officer or surveillance agent commits 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>(c) Custodial sexual misconduct is a Class 3 felony.</p> <p>(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>(e) For purposes of this Section, the consent of the probationer, parolee, releasee, or inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act shall not be a defense to a prosecution under this Section. A person is deemed incapable of consent, for purposes of this Section, when he or she is a probationer, parolee, releasee, or inmate in custody of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act.</p> <p>(f) This Section does not apply to:</p> <p>(1) Any employee, probation or supervising officer, or surveillance agent who is lawfully married to a person in custody if the marriage occurred before the date of custody.</p> <p>(2) Any employee, probation or supervising officer, or surveillance agent who has no knowledge, and would have no reason to believe, that the person with whom he or she engaged in custodial sexual misconduct was a person in custody.</p>
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<p>Statute Cont' (Illinois)</p>	<p>720 ILL. COMP. STAT. § 11-14.4 (West 2011). <u>Promoting juvenile prostitution.</u></p> <p>(a) Any person who knowingly performs any of the following acts commits promoting juvenile prostitution:</p> <p>(1) advances prostitution as defined in Section 11-0.1, where the minor engaged in prostitution, or any person engaged in prostitution in the place, is under 18 years of age or is severely or profoundly mentally retarded at the time of the offense;</p> <p>(2) profits from prostitution by any means where the prostituted person is under 18 years of age or is severely or profoundly mentally retarded at the time of the offense;</p> <p>(3) profits from prostitution by any means where the prostituted person is under 13 years of age at the time of the offense;</p> <p>(4) confines a child under the age of 18 or a severely or profoundly mentally retarded person against his or her will by the infliction or threat of imminent infliction of great bodily harm or permanent disability or disfigurement or by administering to the child or severely or profoundly mentally retarded person, without his or her consent or by threat or deception and for other than medical purposes, any alcoholic intoxicant or a drug as defined in the Illinois Controlled Substances Act or the Cannabis Control Act or methamphetamine as defined in the Methamphetamine Control and Community Protection Act and:</p> <p>(A) compels the child or severely or profoundly mentally retarded person to engage in prostitution;</p> <p>(B) arranges a situation in which the child or severely or profoundly mentally retarded person may practice prostitution; or</p> <p>(C) profits from prostitution by the child or severely or profoundly mentally retarded person.</p> <p>(b) For purposes of this Section, administering drugs, as defined in subdivision (a)(4), or an alcoholic intoxicant to a child under the age of 13 or a severely or profoundly mentally retarded person shall be deemed to be without consent if the administering is done without the consent of the parents or legal guardian or if the administering is performed by the parents or legal guardian for other than medical purposes.</p> <p>(c) If the accused did not have a reasonable opportunity to observe the prostituted person, it is an affirmative defense to a charge of promoting juvenile prostitution, except for a charge under subdivision (a)(4), that the accused reasonably believed the person was of the age of 18 years or over or was not a severely or profoundly mentally retarded person at the time of the act giving rise to the charge.</p> <p>(f) For the purposes of this Section, “prostituted person” means any person who engages in, or agrees or offers to engage in, any act of sexual penetration as defined in Section 11-0.1 of this Code for any money, property, token, object, or article or anything of value, or any touching or fondling of the sex organs of one person by another person, for any money, property, token, object, or article or anything of value, for the purpose of sexual arousal or gratification.</p> <p>720 ILL. COMP. STAT. § 11-18.1 (West 2011). <u>Patronizing a minor engaged in prostitution.</u></p>
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<p>Statute Cont' (Illinois)</p>	<p>(a) Any person who engages in an act of sexual penetration as defined in Section 11-0.1 of this Code with a person engaged in prostitution who is under 18 years of age or is a severely or profoundly mentally retarded person commits patronizing a minor engaged in prostitution.</p> <p>(a-5) Any person who engages in any touching or fondling, with a person engaged in prostitution who either is under 18 years of age or is a severely or profoundly mentally retarded person, of the sex organs of one person by the other person, with the intent to achieve sexual arousal or gratification, commits patronizing a minor engaged in prostitution.</p> <p>720 ILL. COMP. STAT. § 11-20.1 (West 2011). <u>Child pornography.</u></p> <p>(a) A person commits child pornography who:</p> <p>(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 18 and at least 13 years of age or any severely or profoundly mentally retarded person where such child or severely or profoundly mentally retarded person is:</p> <p>(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or</p> <p>(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child or severely or profoundly mentally retarded person and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child or severely or profoundly mentally retarded person and the sex organs of another person or animal; or</p> <p>(iii) actually or by simulation engaged in any act of masturbation; or</p> <p>(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or</p> <p>(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or</p> <p>(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or</p> <p>(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or</p> <p>(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child or severely or profoundly mentally retarded person whom the person knows or reasonably should know to be under the age of 18 and at least 13 years of age or to be a severely or profoundly mentally retarded person, engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or</p> <p>(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual</p>
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<p>Statute Cont' (Illinois)</p>	<p>in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence.</p> <p>720 ILL. COMP. STAT. § 11-20.1B (West 2011). <u>Aggravated child pornography.</u></p> <p>(a) A person commits aggravated child pornography who:</p> <p>(1) films, videotapes, photographs, or otherwise depicts or portrays by means of any similar visual medium or reproduction or depicts by computer any child whom he or she knows or reasonably should know to be under the age of 13 years where such child is:</p> <p>(i) actually or by simulation engaged in any act of sexual penetration or sexual conduct with any person or animal; or</p> <p>(ii) actually or by simulation engaged in any act of sexual penetration or sexual conduct involving the sex organs of the child and the mouth, anus, or sex organs of another person or animal; or which involves the mouth, anus or sex organs of the child and the sex organs of another person or animal; or</p> <p>(iii) actually or by simulation engaged in any act of masturbation; or</p> <p>(iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal; or</p> <p>(v) actually or by simulation engaged in any act of excretion or urination within a sexual context; or</p> <p>(vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or</p> <p>(vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the child or other person; or</p> <p>(2) with the knowledge of the nature or content thereof, reproduces, disseminates, offers to disseminate, exhibits or possesses with intent to disseminate any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or</p> <p>(3) with knowledge of the subject matter or theme thereof, produces any stage play, live performance, film, videotape or other similar visual portrayal or depiction by computer which includes a child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or</p> <p>(4) solicits, uses, persuades, induces, entices, or coerces any child whom he or she knows or reasonably should know to be under the age of 13 to appear in any stage play, live presentation, film, videotape, photograph or other similar visual reproduction or depiction by computer in which the child or severely or profoundly mentally retarded person is or will be depicted, actually or by simulation, in any act, pose or setting</p>
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<p>Statute Cont' (Illinois)</p>	<p>described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or (5) is a parent, step-parent, legal guardian or other person having care or custody of a child whom the person knows or reasonably should know to be under the age of 13 and who knowingly permits, induces, promotes, or arranges for such child to appear in any stage play, live performance, film, videotape, photograph or other similar visual presentation, portrayal or simulation or depiction by computer of any act or activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or (6) with knowledge of the nature or content thereof, possesses any film, videotape, photograph or other similar visual reproduction or depiction by computer of any child whom the person knows or reasonably should know to be under the age of 13 engaged in any activity described in subparagraphs (i) through (vii) of paragraph (1) of this subsection; or (7) solicits, or knowingly uses, persuades, induces, entices, or coerces a person to provide a child under the age of 13 to appear in any videotape, photograph, film, stage play, live presentation, or other similar visual reproduction or depiction by computer in which the child will be depicted, actually or by simulation, in any act, pose, or setting described in subparagraphs (i) through (vii) of paragraph (1) of this subsection. (2) The charge of aggravated child pornography shall not apply to the performance of official duties by law enforcement or prosecuting officers or persons employed by law enforcement or prosecuting agencies, court personnel or attorneys, nor to bonafide treatment or professional education programs conducted by licensed physicians, psychologists or social workers. (3) If the defendant possessed more than 3 of the same film, videotape or visual reproduction or depiction by computer in which aggravated child pornography is depicted, then the trier of fact may infer that the defendant possessed such materials with the intent to disseminate them. (4) The charge of aggravated child pornography does not apply to a person who does not voluntarily possess a film, videotape, or visual reproduction or depiction by computer in which aggravated child pornography is depicted. Possession is voluntary if the defendant knowingly procures or receives a film, videotape, or visual reproduction or depiction for a sufficient time to be able to terminate his or her possession. (5) Any violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) that includes a child engaged in, solicited for, depicted in, or posed in any act of sexual penetration or bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in a sexual context shall be deemed a crime of violence. (g) When a charge of aggravated child pornography is brought, the age of the child is an element of the offense to be resolved by the trier of fact as either exceeding or not exceeding the age in question. The trier of fact can rely on its own everyday observations and common experiences in making this determination.</p>
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Definitions (Illinois)	<p>720 ILL. COMP. STAT. § 11-0.1 (West 2011).  <u>Definitions.</u></p> <p>In this Article, unless the context clearly requires otherwise, the following terms are defined as indicated:</p> <p>“Accused” means a person accused of an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code or a person for whose conduct the accused is legally responsible under Article 5 of this Code.</p> <p>“Adult obscenity or child pornography Internet site”. See Section 11-23.</p> <p>“Advance prostitution” means:</p> <p>(1) Soliciting for a prostitute by performing any of the following acts when acting other than as a prostitute or a patron of a prostitute:</p> <p>(A) Soliciting another for the purpose of prostitution.</p> <p>(B) Arranging or offering to arrange a meeting of persons for the purpose of prostitution.</p> <p>(C) Directing another to a place knowing the direction is for the purpose of prostitution.</p> <p>(2) Keeping a place of prostitution by controlling or exercising control over the use of any place that could offer seclusion or shelter for the practice of prostitution and performing any of the following acts when acting other than as a prostitute or a patron of a prostitute:</p> <p>(A) Knowingly granting or permitting the use of the place for the purpose of prostitution.</p> <p>(B) Granting or permitting the use of the place under circumstances from which he or she could reasonably know that the place is used or is to be used for purposes of prostitution.</p> <p>(C) Permitting the continued use of the place after becoming aware of facts or circumstances from which he or she should reasonably know that the place is being used for purposes of prostitution.</p> <p>“Bodily harm” means physical harm, and includes, but is not limited to, sexually transmitted disease, pregnancy, and impotence.</p> <p>“Family member” means a parent, grandparent, child, aunt, uncle, great-aunt, or great-uncle, whether by whole blood, half-blood, or adoption, and includes a step-grandparent, step-parent, or step-child. “Family member” also means, if the victim is a child under 18 years of age, an accused who has resided in the household with the child continuously for at least 6 months.</p> <p>“Force or threat of force” means the use of force or violence or the threat of force or violence, including, but not limited to, the following situations:</p> <p>(1) when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat; or</p> <p>(2) when the accused overcomes the victim by use of superior strength or size, physical restraint, or physical confinement.</p> <p>“Profit from prostitution” means, when acting other than as a prostitute, to receive anything of value for personally rendered prostitution</p>

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<p>Definitions Cont' (Illinois)</p>	<p>services or to receive anything of value from a prostitute, if the thing received is not for lawful consideration and the person knows it was earned in whole or in part from the practice of prostitution.</p> <p>“Sexual conduct” means any 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>“Sexual penetration” means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.</p> <p>“Victim” means a person alleging to have been subjected to an offense prohibited by Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code.</p> <p>720 ILL. COMP. STAT. § 11-9.1 (West 2011). <u>Sexual exploitation of a child.</u></p> <p>(b) Definitions. As used in this Section:</p> <p>“Sexual act” means masturbation, sexual conduct or sexual penetration as defined in Section 11-0.1 of this Code.</p> <p>“Sex offense” means any violation of Article 11 of this Code or Section 12-16.2 of this Code.</p> <p>“Child” means a person under 17 years of age.</p> <p>“Virtual presence” means an environment that is created with software and presented to the user and or receiver via the Internet, in such a way that the user appears in front of the receiver on the computer monitor or screen or hand held portable electronic device, usually through a web camming program. “Virtual presence” includes primarily experiencing through sight or sound, or both, a video image that can be explored interactively at a personal computer or hand held communication device, or both.</p> <p>“Webcam” means a video capturing device connected to a computer or computer network that is designed to take digital photographs or live or recorded video which allows for the live transmission to an end user over the Internet.</p> <p>720 ILL. COMP. STAT. § 11-9.2 (West 2011). <u>Custodial sexual misconduct.</u></p> <p>(g) In this Section:</p>
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<p>Definitions Cont' (Illinois)</p>	<p>(1) "Custody" means:</p> <ul style="list-style-type: none"> <li>(i) pretrial incarceration or detention;</li> <li>(ii) incarceration or detention under a sentence or commitment to a State or local penal institution;</li> <li>(iii) parole or mandatory supervised release;</li> <li>(iv) electronic home detention;</li> <li>(v) probation;</li> <li>(vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act.</li> </ul> <p>(2) "Penal system" means any system which includes institutions as defined in Section 2-14 of this Code or a county shelter care or detention home established under Section 1 of the County Shelter Care and Detention Home Act.</p> <p>(2.1) "Treatment and detention facility" means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act.</p> <p>(2.2) "Conditional release" means a program of treatment and services, vocational services, and alcohol or other drug abuse treatment provided to any person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act;</p> <p>(3) "Employee" means:</p> <ul style="list-style-type: none"> <li>(i) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act;</li> <li>(ii) a contractual employee of a penal system as defined in paragraph (g)(2) of this Section who works in a penal institution as defined in Section 2-14 of this Code;</li> <li>(iii) a contractual employee of a "treatment and detention facility" as defined in paragraph (g)(2.1) of this Code or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release as defined in paragraph (g)(2.2) of this Code.</li> </ul> <p>(4) "Sexual conduct" or "sexual penetration" means any act of sexual conduct or sexual penetration as defined in Section 11-0.1 of this Code.</p> <p>(5) "Probation officer" means any person employed in a probation or court services department as defined in Section 9b of the Probation and Probation Officers Act.</p> <p>(6) "Supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release with the duties described in Section 3-14-2 of the Unified Code of Corrections.</p> <p>(7) "Surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act.</p>
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<p>Definitions Cont' (Illinois)</p>	<p>720 ILL. COMP. STAT. §§ 11-20.1, 11-20.1B (West 2011). <u>Child pornography; Aggravated child pornography</u></p> <p>(f) Definitions. For the purposes of this Section:</p> <p>(1) “Disseminate” means (i) to sell, distribute, exchange or transfer possession, whether with or without consideration or (ii) to make a depiction by computer available for distribution or downloading through the facilities of any telecommunications network or through any other means of transferring computer programs or data to a computer.</p> <p>(2) “Produce” means to direct, promote, advertise, publish, manufacture, issue, present or show.</p> <p>(3) “Reproduce” means to make a duplication or copy.</p> <p>(4) “Depict by computer” means to generate or create, or cause to be created or generated, a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.</p> <p>(5) “Depiction by computer” means a computer program or data that, after being processed by a computer either alone or in conjunction with one or more computer programs, results in a visual depiction on a computer monitor, screen, or display.</p> <p>(6) “Computer”, “computer program”, and “data” have the meanings ascribed to them in Section 16D-2 of this Code.</p> <p>720 ILL. COMP. STAT. § 11-20.1 (West 2011). <u>Child pornography.</u></p> <p>(7) For the purposes of this Section, “child pornography” includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is, or appears to be, that of a person, either in part, or in total, under the age of 18 and at least 13 years of age or a severely or profoundly mentally retarded person, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such. “Child pornography” also includes a film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer that is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is of a person under the age of 18 and at least 13 years of age or a severely or profoundly mentally retarded person.</p> <p>720 ILL. COMP. STAT. § 11-20.1B (West 2011). <u>Aggravated child pornography</u></p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

Definitions Cont' (Illinois)	(f)(7) For the purposes of this Section, “child” means a person, either in part or in total, under the age of 13, regardless of the method by which the film, videotape, photograph, or other similar visual medium or reproduction or depiction by computer is created, adopted, or modified to appear as such.
Defenses (Illinois)	<p>720 ILL. COMP. STAT. § 11-9.1A (West 2011). <u>Permitting sexual abuse of a child.</u></p> <p>(h) It is an affirmative defense to a charge of permitting sexual abuse of a child under this Section that the person responsible for the child's welfare had a reasonable apprehension that timely action to stop the abuse or prostitution would result in the imminent infliction of death, great bodily harm, permanent disfigurement, or permanent disability to that person or another in retaliation for reporting.</p> <p>720 ILL. COMP. STAT. § 11-1.70 (West 2011). <u>Defenses with respect to offenses described in Sections 11-1.20 through 11-1.60.</u></p> <p>(a) It shall be a defense to any offense under Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code where force or threat of force is an element of the offense that the victim consented. “Consent” means a freely given agreement to the act of sexual penetration or sexual conduct in question. Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent. The manner of dress of the victim at the time of the offense shall not constitute consent.</p> <p>(b) It shall be a defense under subsection (b) and subsection (c) of Section 11-1.50 and subsection (d) of Section 11-1.60 of this Code that the accused reasonably believed the person to be 17 years of age or over.</p> <p>(c) A person who initially consents to sexual penetration or sexual conduct is not deemed to have consented to any sexual penetration or sexual conduct that occurs after he or she withdraws consent during the course of that sexual penetration or sexual conduct.</p> <p>720 ILL. COMP. STAT. § 11-18.1 (West 2011). <u>Patronizing a minor engaged in prostitution.</u></p> <p>(b) It is an affirmative defense to the charge of patronizing a minor engaged in prostitution that the accused reasonably believed that the person was of the age of 18 years or over or was not a severely or profoundly mentally retarded person at the time of the act giving rise to the</p>

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Defenses Cont' (Illinois)	<p>charge.</p> <p>720 ILL. COMP. STAT. § 11-20.1 (West 2011). <u>Child pornography.</u></p> <p>(b)(1) It shall be an affirmative defense to a charge of child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 18 years of age or older or that the person was not a severely or profoundly mentally retarded person but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 18 years of age or older or that the person was not a severely or profoundly mentally retarded person and his or her reliance upon the information so obtained was clearly reasonable.</p> <p>720 ILL. COMP. STAT. § 11-20.1B (West 2011). <u>Aggravated child pornography.</u></p> <p>(b)(1) It shall be an affirmative defense to a charge of aggravated child pornography that the defendant reasonably believed, under all of the circumstances, that the child was 13 years of age or older, but only where, prior to the act or acts giving rise to a prosecution under this Section, he or she took some affirmative action or made a bonafide inquiry designed to ascertain whether the child was 13 years of age or older and his or her reliance upon the information so obtained was clearly reasonable.</p>
Penalty (Illinois)	<p>720 ILL. COMP. STAT. §§ 11-1.20 (West 2011). <u>Criminal Sexual Assault.</u></p> <p>(b) Sentence.</p> <p>(1) Criminal sexual assault is a Class 1 felony, except that:</p> <p>(A) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of criminal sexual assault or the offense of exploitation of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault or to the offense of exploitation of a child, commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 30 years and not more than 60 years. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (A) to apply.</p> <p>(B) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been</p>

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<p>Penalty Cont' (Illinois)</p>	<p>(1) A person convicted of a violation of subsection (a)(1) commits a Class X felony, for which the person shall be sentenced to a term of imprisonment of not less than 6 years and not more than 60 years. A person convicted of a violation of subsection (a)(2)(A) commits a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A person convicted of a violation of subsection (a)(2)(B) commits a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A person convicted of a violation of subsection (a)(2)(C) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years or up to a term of natural life imprisonment.</p> <p>(1.1) A person convicted of a violation of subsection (a)(2)(D) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years and not more than 60 years.</p> <p>(1.2) A person convicted of predatory criminal sexual assault of a child committed against 2 or more persons regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts shall be sentenced to a term of natural life imprisonment.</p> <p>(2) A person who is convicted of a second or subsequent offense of predatory criminal sexual assault of a child, or who is convicted of the offense of predatory criminal sexual assault of a child after having previously been convicted of the offense of criminal sexual assault or the offense of aggravated criminal sexual assault, or who is convicted of the offense of predatory criminal sexual assault of a child after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of predatory criminal sexual assault of a child, the offense of aggravated criminal sexual assault or the offense of criminal sexual assault, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply.</p> <p>720 ILL. COMP. STAT. § 11-1.50 (West 2011). <u>Criminal sexual abuse.</u></p> <p>(d) Sentence. Criminal sexual abuse for a violation of subsection (b) or (c) of this Section is a Class A misdemeanor. Criminal sexual abuse for a violation of paragraph (1) or (2) of subsection (a) of this Section is a Class 4 felony. A second or subsequent conviction for a violation of subsection (a) of this Section is a Class 2 felony. For purposes of this Section it is a second or subsequent conviction if the accused has at any time been convicted under this Section or under any similar statute of this State or any other state for any offense involving sexual abuse or sexual assault that is substantially equivalent to or more serious than the sexual abuse prohibited under this Section.</p> <p>720 ILL. COMP. STAT. § 11-14.4 (West 2011). <u>Promoting juvenile prostitution.</u></p> <p>(d) Sentence. A violation of subdivision (a)(1) is a Class 1 felony, unless committed within 1,000 feet of real property comprising a school, in</p>
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<p>Penalty Cont' (Illinois)</p>	<p>which case it is a Class X felony. A violation of subdivision (a)(2) is a Class 1 felony. A violation of subdivision (a)(3) is a Class X felony. A violation of subdivision (a)(4) is a Class X felony, for which the person shall be sentenced to a term of imprisonment of not less than 6 years and not more than 60 years. A second or subsequent violation of subdivision (a)(1), (a)(2), or (a)(3), or any combination of convictions under subdivision (a)(1), (a)(2), or (a)(3) and Sections 11-14 (prostitution), 11-14.1 (solicitation of a sexual act), 11-14.3 (promoting prostitution), 11-15 (soliciting for a prostitute), 11-15.1 (soliciting for a juvenile prostitute), 11-16 (pandering), 11-17 (keeping a place of prostitution), 11-17.1 (keeping a place of juvenile prostitution), 11-18 (patronizing a prostitute), 11-18.1 (patronizing a juvenile prostitute), 11-19 (pimping), 11-19.1 (juvenile pimping or aggravated juvenile pimping), or 11-19.2 (exploitation of a child) of this Code, is a Class X felony.</p> <p>(e) Forfeiture. Any person convicted of a violation of this Section that involves promoting juvenile prostitution by keeping a place of juvenile prostitution or convicted of a violation of subdivision (a)(4) is subject to the property forfeiture provisions set forth in Article 124B of the Code of Criminal Procedure of 1963.</p> <p>720 ILL. COMP. STAT. § 11-18.1 (West 2011). <u>Patronizing a minor engaged in prostitution.</u></p> <p>(c) Sentence. A person who commits patronizing a juvenile prostitute is guilty of a Class 3 felony, unless committed within 1,000 feet of real property comprising a school, in which case it is a Class 2 felony. A person convicted of a second or subsequent violation of this Section, or of any combination of such number of convictions under this Section and Sections 11-14 (prostitution), 11-14.1 (solicitation of a sexual act), 11-14.3 (promoting prostitution), 11-14.4 (promoting juvenile prostitution), 11-15 (soliciting for a prostitute), 11-15.1 (soliciting for a juvenile prostitute), 11-16 (pandering), 11-17 (keeping a place of prostitution), 11-17.1 (keeping a place of juvenile prostitution), 11-18 (patronizing a prostitute), 11-19 (pimping), 11-19.1 (juvenile pimping or aggravated juvenile pimping), or 11-19.2 (exploitation of a child) of this Code, is guilty of a Class 2 felony. The fact of such conviction is not an element of the offense and may not be disclosed to the jury during trial unless otherwise permitted by issues properly raised during such trial.</p> <p>720 ILL. COMP. STAT. § 11-20.1 (West 2011). <u>Child pornography.</u></p> <p>(c) Violation of paragraph (1), (4), (5), or (7) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. Violation of paragraph (3) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$1500 and a maximum fine of \$100,000. Violation of paragraph (2) of subsection (a) is a Class 1 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. Violation of paragraph (6) of subsection (a) is a Class 3 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000.</p>
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<p>Penalty Cont' (Illinois)</p>	<p>(d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary. 720 ILL. COMP. STAT. § 11-20.1B (West 2011). <u>Aggravated child pornography.</u></p> <p>(c) Sentence: (1) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) is guilty of a Class X felony with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. (2) A person who commits a violation of paragraph (6) of subsection (a) is guilty of a Class 2 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. (3) A person who commits a violation of paragraph (1), (2), (3), (4), (5), or (7) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 9 years with a mandatory minimum fine of \$2,000 and a maximum fine of \$100,000. (4) A person who commits a violation of paragraph (6) of subsection (a) where the defendant has previously been convicted under the laws of this State or any other state of the offense of child pornography, aggravated child pornography, aggravated criminal sexual abuse, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or any of the offenses formerly known as rape, deviate sexual assault, indecent liberties with a child, or aggravated indecent liberties with a child where the victim was under the age of 18 years or an offense that is substantially equivalent to those offenses, is guilty of a Class 1 felony with a mandatory minimum fine of \$1000 and a maximum fine of \$100,000. (d) If a person is convicted of a second or subsequent violation of this Section within 10 years of a prior conviction, the court shall order a presentence psychiatric examination of the person. The examiner shall report to the court whether treatment of the person is necessary.</p>
<p style="text-align: center;"><b>Indiana<sup>25</sup></b></p>	
<p>Statute (Indiana)</p>	<p>IND. CODE ANN. § 35-42-4-1 (West 2008). <u>Rape</u></p>

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<p>Statute Cont' (Indiana)</p>	<p>Sec. 1. (a) Except as provided in subsection (b), a person who knowingly or intentionally has sexual intercourse with a member of the opposite sex or knowingly or intentionally causes another person to perform or submit to deviate sexual conduct when:</p> <ul style="list-style-type: none"> <li>(1) the other person is compelled by force or imminent threat of force;</li> <li>(2) the other person is unaware that the sexual intercourse or deviate sexual conduct is occurring; or</li> <li>(3) the other person is so mentally disabled or deficient that consent to sexual intercourse or deviate sexual conduct cannot be given;</li> </ul> <p>commits rape, a Class B felony.</p> <p>(b) An offense described in subsection (a) is a Class A felony if:</p> <ul style="list-style-type: none"> <li>(1) it is committed by using or threatening the use of deadly force;</li> <li>(2) it is committed while armed with a deadly weapon;</li> <li>(3) it results in serious bodily injury to a person other than a defendant; or</li> <li>(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.</li> </ul> <p>IND. CODE ANN. § 35-42-4-3 (West 2011). <u>Child molesting</u></p> <p>Sec. 3. (a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:</p> <ul style="list-style-type: none"> <li>(1) it is committed by a person at least twenty-one (21) years of age;</li> <li>(2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;</li> <li>(3) it results in serious bodily injury; or</li> <li>(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.</li> </ul> <p>(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense is a Class A felony if:</p> <ul style="list-style-type: none"> <li>(1) it is committed by using or threatening the use of deadly force;</li> <li>(2) it is committed while armed with a deadly weapon; or</li> <li>(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-</li> </ul>
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<p>Statute Cont' (Indiana)</p>	<p>sixteen (16) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.</p> <p>(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's employment when the possession of the listed materials is for legitimate scientific or educational purposes.</p> <p>(g) The defense to a prosecution described in subsection (f) does not apply if:</p> <p>(1) the person who receives the image disseminates it to a person other than the person:</p> <p>(A) who sent the image; or</p> <p>(B) who is depicted in the image;</p> <p>(2) the image is of a person other than the person who sent the image or received the image; or</p> <p>(3) the dissemination of the image violates:</p> <p>(A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);</p> <p>(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);</p> <p>(C) a workplace violence restraining order issued under IC 34-26-6;</p> <p>(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;</p> <p>(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;</p> <p>(F) a no contact order issued as a condition of probation;</p> <p>(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);</p> <p>(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;</p> <p>(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;</p> <p>(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);</p> <p>(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:</p> <p>(i) tribe;</p> <p>(ii) band;</p> <p>(iii) pueblo;</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Indiana)</p>	<p>(c) A person eighteen (18) years of age or older who knowingly or intentionally:</p> <ol style="list-style-type: none"> <li>(1) engages in sexual intercourse;</li> <li>(2) engages in deviate sexual conduct; or</li> <li>(3) touches or fondles the person's own body; in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Class D felony.</li> </ol> <p>IND. CODE ANN. § 35-42-4-6 (West 2011). <u>Child solicitation</u></p> <p>Sec. 6. (a) As used in this section, “solicit” means to command, authorize, urge, incite, request, or advise an individual:</p> <ol style="list-style-type: none"> <li>(1) in person;</li> <li>(2) by telephone;</li> <li>(3) in writing;</li> <li>(4) by using a computer network (as defined in IC 35-43-2-3(a));</li> <li>(5) by advertisement of any kind; or</li> <li>(6) by any other means; to perform an act described in subsection (b) or (c).</li> </ol> <p>(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child under fourteen (14) years of age, to engage in:</p> <ol style="list-style-type: none"> <li>(1) sexual intercourse;</li> <li>(2) deviate sexual conduct; or</li> <li>(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person; commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).</li> </ol> <p>(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:</p> <ol style="list-style-type: none"> <li>(1) sexual intercourse;</li> <li>(2) deviate sexual conduct; or</li> <li>(3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person; commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a)), and</li> </ol>
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<p>Statute Cont' (Indiana)</p>	<p>a Class B felony if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in IC 35-43-2-3(a)).</p> <p>(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.</p> <p>IND. CODE ANN. § 35-42-4-7 (West 2011). <u>Child seduction</u></p> <p>Sec. 7. (a) As used in this section, “adoptive parent” has the meaning set forth in IC 31-9-2-6. (b) As used in this section, “adoptive grandparent” means the parent of an adoptive parent. (c) As used in this section, “charter school” has the meaning set forth in IC 20-18-2-2.5. (d) As used in this section, “child care worker” means a person who: (1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility; (2) is employed by a: (A) school corporation; (B) charter school; (C) nonpublic school; or (D) special education cooperative; attended by a child who is the victim of a crime under this chapter; or (3) is: (A) affiliated with a: (i) school corporation; (ii) charter school; (iii) nonpublic school; or (iv) special education cooperative; attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated; (B) in a position of trust in relation to a child who attends the school or cooperative; (C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and (D) at least four (4) years older than the child who is the victim of a crime under this chapter. The term does not include a student who attends the school or cooperative. (e) As used in this section, “custodian” means any person who resides with a child and is responsible for the child's welfare. (f) As used in this section, “military recruiter” means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the</p>
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<p>Statute Cont' (Indiana)</p>	<p>Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.</p> <p>(g) As used in this section, “nonpublic school” has the meaning set forth in IC 20-18-2-12.</p> <p>(h) As used in this section, “school corporation” has the meaning set forth in IC 20-18-2-16.</p> <p>(i) As used in this section, “special education cooperative” has the meaning set forth in IC 20-35-5-1.</p> <p>(j) As used in this section, “stepparent” means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent.</p> <p>(k) If a person who:</p> <p>(1) is at least eighteen (18) years of age; and</p> <p>(2) is:</p> <p>(A) the:</p> <p>(i) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or</p> <p>(ii) child care worker for; or</p> <p>(B) a military recruiter who is attempting to enlist; a child at least sixteen (16) years of age but less than eighteen (18) years of age; engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-41-1-9), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction, a Class D felony.</p> <p>IND. CODE ANN. § 35-42-4-9 (West 2008). <u>Sexual Misconduct with a Minor</u></p> <p>Sec. 9. (a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:</p> <p>(1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and</p> <p>(2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.</p> <p>(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Indiana)	(1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and (2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.
Age of Consent ♦ (Indiana)	16
Definitions (Indiana)	IND. CODE ANN. § 35-42-4-4 (West 2008). <u>Child exploitation; possession of child pornography; violation classification; exemption; definitions</u>  Sec. 4. (a) As used in this section: “Disseminate” means to transfer possession for free or for a consideration. “Matter” has the same meaning as in IC 35-49-1-3. “Performance” has the same meaning as in IC 35-49-1-7. “Sexual conduct” means sexual intercourse, deviate sexual conduct, exhibition of the uncovered genitals intended to satisfy or arouse the sexual desires of any person, sadomasochistic abuse, sexual intercourse or deviate sexual conduct with an animal, or any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.
Defenses (Indiana)	IND. CODE ANN. § 35-42-4-4 (West 2011). <u>Child exploitation; possession of child pornography; violation classification; exemption; definitions</u>  (e) It is a defense to a prosecution under this section that: (1) the person is a school employee; and (2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee. (f) Except as provided in subsection (g), it is a defense to a prosecution under subsections (b)(1), (b)(2), and (c) if all the following apply: (1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.

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<p>Defenses Cont' (Indiana)</p>	<p>(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image. (3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship. (4) The crime was committed by a person less than twenty-two (22) years of age. (5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.</p> <p>IND. CODE ANN. § 35-42-4-9 (West 2011). <u>Sexual Misconduct with a Minor</u></p> <p>(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2). (d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2). (e) It is a defense to a prosecution under this section if all the following apply: (1) The person is not more than four (4) years older than the victim. (2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship. (3) The crime: (A) was not committed by a person who is at least twenty-one (21) years of age; (B) was not committed by using or threatening the use of deadly force; (C) was not committed while armed with a deadly weapon; (D) did not result in serious bodily injury; (E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and (F) was not committed by a person having a position of authority or substantial influence over the victim. (4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Penalty (Indiana)</p>	<p>IND. CODE ANN. § 35-50-2-4 (West 2011). <u>Class A felony</u></p> <p>Sec. 4. A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).</p> <p>IND. CODE ANN. § 35-50-2-5 (West 2011). <u>Class B felony</u></p> <p>Sec. 5. A person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000).</p> <p>IND. CODE ANN. § 35-50-2-6 (West 2011). <u>Class C felony; nonsupport of a child as Class D felony</u></p> <p>Sec. 6. (a) A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000). (b) Notwithstanding subsection (a), if a person has committed nonsupport of a child as a Class C felony under IC 35-46-1-5, upon motion of the prosecuting attorney, the court may enter judgment of conviction of a Class D felony under IC 35-46-1-5 and sentence the person accordingly. The court shall enter in the record detailed reasons for the court's action when the court enters a judgment of conviction of a Class D felony under this subsection.</p> <p>IND. CODE ANN. § 35-50-2-7 (West 2011). <u>Class D felony</u></p> <p>Sec. 7. (a) A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2 ) years. In addition, the person may be fined not more than ten thousand dollars (\$10,000). (b) Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if: (1) the court finds that:</p>

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Penalty Cont' (Indiana)	<p>(A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and</p> <p>(B) the prior felony was committed less than three (3) years before the second felony was committed;</p> <p>(2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or</p> <p>(3) the offense is possession of child pornography (IC 35-42-4-4(c)).</p> <p>The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.</p>
<b>Iowa</b>	
Statute (Iowa)	<p>IOWA CODE § 709.2 (West 2011). <u>Sexual abuse in the first degree</u></p> <p>A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury. Sexual abuse in the first degree is a class “A” felony.</p> <p>IOWA CODE § 709.3 (West 2011). <u>Sexual abuse in the second degree</u></p> <p>A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.</li> <li>2. The other person is under the age of twelve.</li> <li>3. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.</li> </ol> <p>Sexual abuse in the second degree is a class “B” felony.</p> <p>IOWA CODE § 709.4 (West 2011). <u>Sexual abuse in the third degree</u></p>

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<p>Statute Cont' (Iowa)</p>	<p>A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.</li> <li>2. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true: <ol style="list-style-type: none"> <li>a. The other person is suffering from a mental defect or incapacity which precludes giving consent.</li> <li>b. The other person is twelve or thirteen years of age.</li> <li>c. The other person is fourteen or fifteen years of age and any of the following are true: <ol style="list-style-type: none"> <li>(1) The person is a member of the same household as the other person.</li> <li>(2) The person is related to the other person by blood or affinity to the fourth degree.</li> <li>(3) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit.</li> <li>(4) The person is four or more years older than the other person.</li> </ol> </li> </ol> </li> <li>3. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true: <ol style="list-style-type: none"> <li>a. The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.</li> <li>b. The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.</li> </ol> </li> <li>4. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.</li> </ol> <p>Sexual abuse in the third degree is a class "C" felony.</p> <p>IOWA CODE § 709.8 (West 2011). <u>Lascivious acts with a child</u></p> <p>It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:</p> <ol style="list-style-type: none"> <li>1. Fondle or touch the pubes or genitals of a child.</li> <li>2. Permit or cause a child to fondle or touch the person's genitals or pubes.</li> <li>3. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.</li> <li>4. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.</li> </ol> <p>Any person who violates a provision of this section involving an act included in subsection 1 or 2 shall, upon conviction, be guilty of a class "C" felony. Any person who violates a provision of this section involving an act included in subsection 3 or 4 shall, upon conviction, be guilty of a class "D" felony.</p>
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<p>Statute Cont' (Iowa)</p>	<p>IOWA CODE § 709.9 (West 2011). <u>Indecent exposure</u></p> <p>A person who exposes the person's genitals or pubes to another not the person's spouse, or who commits a sex act in the presence of or view of a third person, commits a serious misdemeanor, if:</p> <ol style="list-style-type: none"> <li>1. The person does so to arouse or satisfy the sexual desires of either party; and</li> <li>2. The person knows or reasonably should know that the act is offensive to the viewer.</li> </ol> <p>IOWA CODE § 709.12 (West 2011). <u>Indecent Contact with a Child</u></p> <p>A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:</p> <ol style="list-style-type: none"> <li>1. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.</li> <li>2. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.</li> <li>3. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.</li> <li>4. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, 2, or 4.</li> </ol> <p>The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.</p> <p>IOWA CODE § 709.14 (West 2011). <u>Lascivious conduct with a minor</u></p> <p>It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.</p> <p>Lascivious conduct with a minor is a serious misdemeanor.</p> <p>IOWA CODE § 709.16 (West 2011). <u>Sexual Misconduct with offenders and juveniles</u></p>
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Age of Consent ♦ (Iowa)	16
Definitions (Iowa)	<p>IOWA CODE § 709.1 (West 2011). <u>Sexual abuse defined</u></p> <p>Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.</li> <li>2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.</li> <li>3. Such other person is a child.</li> </ol>

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<p>Definitions Cont' (Iowa)</p>	<p>IOWA CODE § 709.15 (West 2011). <u>Sexual exploitation by a counselor, therapist, or school employee</u></p> <p>1. As used in this section:</p> <p>a. "Counselor or therapist" means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.</p> <p>b. "Emotionally dependent" means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in subsection 2, by the counselor or therapist.</p> <p>For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.</p> <p>c. "Former patient or client" means a person who received mental health services from the counselor or therapist.</p> <p>d. "Mental health service" means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.</p> <p>e. "Patient or client" means a person who receives mental health services from the counselor or therapist.</p> <p>f. "School employee" means a practitioner as defined in section 272.1.</p> <p>g. "Student" means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.</p> <p>2. Sexual exploitation by a counselor or therapist occurs when any of the following are found:</p> <p>a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph "b" or "c".</p> <p>b. Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.</p> <p>c. Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.</p> <p>Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a</p>
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Definitions Cont' (Iowa)	<p>patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.</p> <p>3. Sexual exploitation by a school employee occurs when any of the following are found:</p> <p>a. A pattern or practice or scheme of conduct to engage in any of the conduct described in paragraph “b”.</p> <p>b. Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following: kissing; touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals; or a sex act as defined in section 702.17.</p> <p>Sexual exploitation by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.</p> <p>4. a. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “a”, commits a class “D” felony.</p> <p>b. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “b”, commits an aggravated misdemeanor.</p> <p>c. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “c”, commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph “b”, the offender may be required to attend a sexual abuser treatment program.</p> <p>5. a. A school employee who commits sexual exploitation in violation of subsection 3, paragraph “a”, commits a class “D” felony.</p> <p>b. A school employee who commits sexual exploitation in violation of subsection 3, paragraph “b”, commits an aggravated misdemeanor.</p>
Defenses (Iowa)	None.
Penalty (Iowa)	<p>IOWA CODE § 902.9 (West 2011).</p> <p><u>Maximum sentence for felons</u></p> <p>The maximum sentence for any person convicted of a felony shall be that prescribed by statute or, if not prescribed by statute, if other than a class “A” felony shall be determined as follows:</p> <p>1. A felon sentenced for a first conviction for a violation of section 124.401D, shall be confined for no more than ninety-nine years.</p> <p>2. A class “B” felon shall be confined for no more than twenty-five years.</p> <p>3. An habitual offender shall be confined for no more than fifteen years.</p> <p>4. A class “C” felon, not an habitual offender, shall be confined for no more than ten years, and in addition shall be sentenced to a fine of at least one thousand dollars but not more than ten thousand dollars.</p> <p>5. A class “D” felon, not an habitual offender, shall be confined for no more than five years, and in addition shall be sentenced to a fine of at</p>

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<p>Penalty Cont' (Iowa)</p>	<p>least seven hundred fifty dollars but not more than seven thousand five hundred dollars. The surcharges required by sections 911.1, 911.2, and 911.3 shall be added to a fine imposed on a class “C” or class “D” felon, as provided by those sections, and are not a part of or subject to the maximums set in this section.</p> <p>IOWA CODE § 903.1 (West 2011). <u>Maximum sentence for misdemeanants</u></p> <p>1. If a person eighteen years of age or older is convicted of a simple or serious misdemeanor and a specific penalty is not provided for or if a person under eighteen years of age has been waived to adult court pursuant to section 232.45 on a felony charge and is subsequently convicted of a simple, serious, or aggravated misdemeanor, the court shall determine the sentence, and shall fix the period of confinement or the amount of fine, which fine shall not be suspended by the court, within the following limits: a. For a simple misdemeanor, there shall be a fine of at least sixty-five dollars but not to exceed six hundred twenty-five dollars. The court may order imprisonment not to exceed thirty days in lieu of a fine or in addition to a fine. b. For a serious misdemeanor, there shall be a fine of at least three hundred fifteen dollars but not to exceed one thousand eight hundred seventy-five dollars. In addition, the court may also order imprisonment not to exceed one year.</p> <p>2. When a person is convicted of an aggravated misdemeanor, and a specific penalty is not provided for, the maximum penalty shall be imprisonment not to exceed two years. There shall be a fine of at least six hundred twenty-five dollars but not to exceed six thousand two hundred fifty dollars. When a judgment of conviction of an aggravated misdemeanor is entered against any person and the court imposes a sentence of confinement for a period of more than one year the term shall be an indeterminate term.</p> <p>3. A person under eighteen years of age convicted of a simple misdemeanor under chapter 321, 321G, 321I, 453A, 461A, 461B, 462A, 481A, 481B, 483A, 484A, or 484B, or a violation of a county or municipal curfew or traffic ordinance, except for an offense subject to section 805.8, may be required to pay a fine, not to exceed one hundred dollars, as fixed by the court, or may be required to perform community service as ordered by the court.</p> <p>4. The surcharges required by sections 911.1, 911.2, 911.3, and 911.4 shall be added to a fine imposed on a misdemeanor as provided in those sections, and are not a part of or subject to the maximums set in this section.</p> <p>IOWA CODE § 903B.1 (West 2011). <u>Special sentence--class “B” or class “C” felonies</u></p> <p>A person convicted of a class “C” felony or greater offense under chapter 709, or a class “C” felony under section 728.12, shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of</p>
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<p>Penalty Cont' (Iowa)</p>	<p>the Iowa department of corrections for the rest of the person's life, with eligibility for parole as provided in chapter 906. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and chapter 908, and rules adopted under those chapters for persons on parole or work release. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under section 903A.2.</p> <p>IOWA CODE § 903B.2 (West 2011). <u>Special sentence--class "D" felonies or misdemeanors</u></p> <p>A person convicted of a misdemeanor or a class "D" felony offense under chapter 709, section 726.2, or section 728.12 shall also be sentenced, in addition to any other punishment provided by law, to a special sentence committing the person into the custody of the director of the Iowa department of corrections for a period of ten years, with eligibility for parole as provided in chapter 906. The board of parole shall determine whether the person should be released on parole or placed in a work release program. The special sentence imposed under this section shall commence upon completion of the sentence imposed under any applicable criminal sentencing provisions for the underlying criminal offense and the person shall begin the sentence under supervision as if on parole or work release. The person shall be placed on the corrections continuum in chapter 901B, and the terms and conditions of the special sentence, including violations, shall be subject to the same set of procedures set out in chapters 901B, 905, 906, and 908, and rules adopted under those chapters for persons on parole or work release. The revocation of release shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation. A special sentence shall be considered a category "A" sentence for purposes of calculating earned time under section 903A.2.</p>
<p style="text-align: center;"><b>Kansas</b></p>	
<p>Statute (Kansas)</p>	<p>KAN. STAT. ANN. § 21-5503 (West 2011). <u>Rape</u></p>

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<p>Statute Cont' (<i>Kansas</i>)</p>	<p>(a) Rape is:            (1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:            (A) When the victim is overcome by force or fear; or            (B) when the victim is unconscious or physically powerless.            (2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;            (3) sexual intercourse with a child who is under 14 years of age;            (4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or            (5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.            (b) Rape as defined in:            (1) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;            (2) subsection (a)(3) is a:            (A) Severity level 1, person felony, except as provided in subsection (b)(2)(B); and            (B) off-grid person felony, when the offender is 18 years of age or older; and            (3) subsection (a)(4) or (a)(5) is a severity level 2, person felony.            (d) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.</p> <p>KAN. STAT. ANN. § 21-5504 (West 2011).  <u>Criminal sodomy; aggravated criminal sodomy</u></p> <p>(a) Criminal sodomy is:            (1) Sodomy between persons who are 16 or more years of age and members of the same sex;            (2) sodomy between a person and an animal;            (3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or</p>
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<p>Statute Cont' (Kansas)</p>	<p>(4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.</p> <p>(b) Aggravated criminal sodomy is:</p> <p>(1) Sodomy with a child who is under 14 years of age;</p> <p>(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or</p> <p>(3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:</p> <p>(A) When the victim is overcome by force or fear;</p> <p>(B) when the victim is unconscious or physically powerless; or</p> <p>(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.</p> <p>(c)(1) Criminal sodomy as defined in:</p> <p>(A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and</p> <p>(B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.</p> <p>(2) Aggravated criminal sodomy as defined in:</p> <p>(A) subsection (b)(3) is a severity level 1, person felony; and</p> <p>(B) subsection (b)(1) or (b)(2) is a:</p> <p>(i) Severity level 1, person felony, except as provided in subsection (c)(2)(B)(ii); and</p> <p>(ii) off-grid person felony, when the offender is 18 years of age or older.</p> <p>(e) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.</p> <p>KAN. STAT. ANN. § 21-5505 (West 2011).</p> <p><u>Sexual battery; aggravated sexual battery</u></p> <p>(a) Sexual battery is the touching of a victim who is not the spouse of the offender, who is 16 or more years of age and who does not consent thereto, with the intent to arouse or satisfy the sexual desires of the offender or another.</p> <p>(b) Aggravated sexual battery is the touching of a victim who is 16 or more years of age and who does not consent thereto with the intent to arouse or satisfy the sexual desires of the offender or another and under any of the following circumstances:</p> <p>(1) When the victim is overcome by force or fear;</p> <p>(2) when the victim is unconscious or physically powerless; or</p>
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<p>Statute Cont' (Kansas)</p>	<p>(3) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.</p> <p>(c)(1) Sexual battery is a class A person misdemeanor.</p> <p>(2) Aggravated sexual battery is a severity level 5, person felony.</p> <p>(d) Except as provided in subsection (b)(3), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the battery, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.</p> <p>KAN. STAT. ANN. § 21-5506 (West 2011).</p> <p><u>Indecent liberties with a child; aggravated indecent liberties with a child</u></p> <p>(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 years of age but less than 16 years of age:</p> <p>(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or</p> <p>(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.</p> <p>(b) Aggravated indecent liberties with a child is:</p> <p>(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;</p> <p>(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:</p> <p>(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or</p> <p>(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or</p> <p>(3) engaging in any of the following acts with a child who is under 14 years of age:</p> <p>(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or</p> <p>(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.</p> <p>(c)(1) Indecent liberties with a child is a severity level 5, person felony.</p> <p>(2) Aggravated indecent liberties with a child as defined in:</p>
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<p>Statute Cont' (<i>Kansas</i>)</p>	<p>(A) Subsection (b)(1) is a severity level 3, person felony; (B) subsection (b)(2) is a severity level 4, person felony; and (C) subsection (b)(3) is a: (i) Severity level 3, person felony, except as provided in subsection (c)(2)(C)(ii); and (ii) off-grid person felony, when the offender is 18 years of age or older.</p> <p>KAN. STAT. ANN. § 21-5507 (West 2011). <u>Unlawful voluntary sexual relations</u></p> <p>(a) Unlawful voluntary sexual relations is: (1) Engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age: (A) Voluntary sexual intercourse; (B) voluntary sodomy; or (C) voluntary lewd fondling or touching; (2) when the offender is less than 19 years of age; (3) when the offender is less than four years of age older than the child; (4) when the child and the offender are the only parties involved; and (5) when the child and the offender are members of the opposite sex. (b) Unlawful voluntary sexual relations as defined in: (1) Subsection (a)(1)(A) is a severity level 8, person felony; (2) subsection (a)(1)(B) is a severity level 9, person felony; and (3) subsection (a)(1)(C) is a severity level 10, person felony.</p> <p>KAN. STAT. ANN. § 21-5508 (West 2011). <u>Indecent solicitation of a child; aggravated indecent solicitation of a child</u></p> <p>(a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to: (1) Commit or to submit to an unlawful sexual act; or (2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child. (b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age</p>
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<p>Statute Cont' (<i>Kansas</i>)</p>	<p>of 14 years to:</p> <p>(1) Commit or submit to an unlawful sexual act; or</p> <p>(2) enter any vehicle, building, room or secluded place with the intent to commit an unlawful sexual act upon or with the child.</p> <p>(c)(1) Indecent solicitation of a child is a severity level 6, person felony.</p> <p>(2) Aggravated indecent solicitation of a child is a severity level 5, person felony.</p> <p>(d) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.</p> <p>KAN. STAT. ANN. § 21-5509 (West 2011). <u>Electronic solicitation</u></p> <p>(a) Electronic solicitation is, by means of communication conducted through the telephone, internet or by other electronic means, enticing or soliciting a person, whom the offender believes to be a child, to commit or submit to an unlawful sexual act.</p> <p>(b) Electronic solicitation is a:</p> <p>(1) Severity level 3, person felony if the offender believes the person to be a child 14 or more years of age but less than 16 years of age; and</p> <p>(2) severity level 1, person felony if the offender believes the person to be a child under 14 years of age.</p> <p>(c) As used in this section, “communication conducted through the internet or by other electronic means” includes, but is not limited to, e-mail, chatroom chats and text messaging.</p> <p>KAN. STAT. ANN. § 21-5510 (West 2011). <u>Sexual exploitation of a child</u></p> <p>(a) Sexual exploitation of a child is:</p> <p>(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct with the intent to promote any performance;</p> <p>(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;</p> <p>(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2); or</p> <p>(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance.</p> <p>(b) Sexual exploitation of a child as defined in:</p>
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<p>Statute Cont' (<i>Kansas</i>)</p>	<p>(1) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and (2) subsection (a)(1) or (a)(4) is a: (A) Severity level 5, person felony, except as provided in subsection (b)(2)(B); and (B) off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.</p> <p>KAN. STAT. ANN. § 21-5512 (West 2011). <u>Unlawful sexual relations</u></p> <p>(a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if: (1) The offender is an employee or volunteer of the department of corrections, or the employee or volunteer of a contractor who is under contract to provide services for 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; (2) the offender is a parole officer, volunteer for the department of corrections or the employee or volunteer of a contractor who is under contract to provide supervision services for persons on parole, conditional release or postrelease supervision and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender; (3) the offender is a law enforcement officer, an employee of a jail, or the employee of a contractor who is under contract to provide services in a jail and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such jail; (4) the offender is a law enforcement officer, an employee of a juvenile detention facility or sanctions house, or the employee of a contractor who is under contract to provide services in such facility or sanctions house and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility or sanctions house; (5) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide services in a juvenile correctional facility and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is confined to such facility; (6) the offender is an employee of the juvenile justice authority or the employee of a contractor who is under contract to provide direct supervision and offender control services to the juvenile justice authority and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is 16 years of age or older and:</p>
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<p>Statute Cont' (<i>Kansas</i>)</p>	<p>(a) Promoting obscenity is recklessly:            (1) Manufacturing, mailing, transmitting, publishing, distributing, presenting, exhibiting or advertising any obscene material or obscene device;            (2) possessing any obscene material or obscene device with intent to mail, transmit, publish, distribute, present, exhibit or advertise such material or device;            (3) offering or agreeing to manufacture, mail, transmit, publish, distribute, present, exhibit or advertise any obscene material or obscene device; or            (4) producing, presenting or directing an obscene performance or participating in a portion thereof which is obscene or which contributes to its obscenity.            (b) Promoting obscenity to minors is promoting obscenity, as defined in subsection (a), where a recipient of the obscene material or obscene device or a member of the audience of an obscene performance is a child under the age of 18 years.            (c)(1) Promoting obscenity is a:            (A) Class A nonperson misdemeanor, except as provided in (c)(1)(B); and            (B) severity level 9, person felony upon a second or subsequent conviction.            (2) Promoting obscenity to minors is a:            (A) Class A nonperson misdemeanor, except as provided in (c)(2)(B); and            (B) severity level 8, person felony upon a second or subsequent conviction.            (3) Conviction of a violation of a municipal ordinance prohibiting acts which constitute promoting obscenity or promoting obscenity to minors shall be considered a conviction of promoting obscenity or promoting obscenity to minors for the purpose of determining the number of prior convictions and the classification of the crime under this section.            (e) Evidence that materials or devices were promoted to emphasize their prurient appeal shall be relevant in determining the question of the obscenity of such materials or devices. There shall be a rebuttable presumption that a person promoting obscene materials or obscene devices did so knowingly or recklessly if:            (1) The materials or devices were promoted to emphasize their prurient appeal; or            (2) the person is not a wholesaler and promotes the materials or devices in the course of the person's business.            (f) As used in this section:            (1) Any material or performance is "obscene" if:            (A) The average person applying contemporary community standards would find that the material or performance, taken as a whole, appeals to the prurient interest;            (B) the average person applying contemporary community standards would find that the material or performance has patently offensive</p>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' ( <i>Kansas</i> )	<p>representations or descriptions of:</p> <p>(i) Ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse or sodomy; or</p> <p>(ii) masturbation, excretory functions, sadomasochistic abuse or lewd exhibition of the genitals; and</p> <p>(C) taken as a whole, a reasonable person would find that the material or performance lacks serious literary, educational, artistic, political or scientific value;</p> <p>(2) “material” means any tangible thing which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or other manner;</p> <p>(3) “obscene device” means a device, including a dildo or artificial vagina, designed or marketed as useful primarily for the stimulation of human genital organs, except such devices disseminated or promoted for the purpose of medical or psychological therapy;</p> <p>(4) “performance” means any play, motion picture, dance or other exhibition performed before an audience;</p> <p>(5) “sexual intercourse” and “sodomy” mean the same as in section 65, and amendments thereto; and</p> <p>(6) “wholesaler” means a person who distributes or offers for distribution obscene materials or devices only for resale and not to the consumer and who does not manufacture, publish or produce such materials or devices.</p>
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Definitions ( <i>Kansas</i> )	<p>KAN. STAT. ANN. § 21-5501 (West 2011).</p> <p><u>Sex offenses; definitions</u></p> <p>The following definitions shall apply when the words and phrases defined are used in K.S.A. 21-5502 through 21-5513 and K.S.A. 21-6419, 21-6420 and 21-6421, and amendments thereto, except when a particular context clearly requires a different meaning:</p> <p>(a) “Sexual intercourse” means any penetration of the female sex organ by a finger, the male sex organ or any object. Any penetration, however slight, is sufficient to constitute sexual intercourse. “Sexual intercourse” does not include penetration of the female sex organ by a finger or object in the course of the performance of:</p> <p>(1) Generally recognized health care practices; or</p> <p>(2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.</p> <p>(b) “Sodomy” means oral contact or oral penetration of the female genitalia or oral contact of the male genitalia; anal penetration, however slight, of a male or female by any body part or object; or oral or anal copulation or sexual intercourse between a person and an animal.</p> <p>“Sodomy” does not include penetration of the anal opening by a finger or object in the course of the performance of:</p>

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American University, Washington College of Law

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<p>Definitions Cont' (<i>Kansas</i>)</p>	<p>(1) Generally recognized health care practices; or  (2) a body cavity search conducted in accordance with K.S.A. 22-2520 through 22-2524, and amendments thereto.  (c) “Spouse” means a lawful husband or wife, unless the couple is living apart in separate residences or either spouse has filed an action for annulment, separate maintenance or divorce or for relief under the protection from abuse act.  (d) “Unlawful sexual act” means any rape, indecent liberties with a child, aggravated indecent liberties with a child, criminal sodomy, aggravated criminal sodomy, lewd and lascivious behavior, sexual battery or aggravated sexual battery, as defined in this code.</p> <p>KAN. STAT. ANN. § 21-5510 (West 2011).  <u>Sexual exploitation of a child</u></p> <p>(c) As used in this section:  (1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;  (2) “promoting” means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:  (A) For pecuniary profit; or  (B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;  (3) “performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;  (4) “nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered;  (5) “visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.</p> <p>KAN. STAT. ANN. § 21-5512 (West 2011).  <u>Unlawful sexual relations</u></p> <p>(c) As used in this section:</p>
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Definitions Cont' (Kansas)	<p>(1) “Correctional institution” means the same as in K.S.A. 75-5202, and amendments thereto;</p> <p>(2) “inmate” means the same as in K.S.A. 75-5202, and amendments thereto;</p> <p>(3) “parole officer” means the same as in K.S.A. 75-5202, and amendments thereto;</p> <p>(4) “postrelease supervision” means the same as in K.S.A. 21-6803 and amendments thereto;</p> <p>(5) “juvenile detention facility” means the same as in K.S.A. 38-2302, and amendments thereto;</p> <p>(6) “juvenile correctional facility” means the same as in K.S.A. 38-2302, and amendments thereto;</p> <p>(7) “sanctions house” means the same as in K.S.A. 38-2302, and amendments thereto;</p> <p>(8) “institution” means the same as in K.S.A. 76-12a01, and amendments thereto;</p> <p>(9) “teacher” means and includes teachers, supervisors, principals, superintendents and any other professional employee in any public or private school offering any of grades kindergarten through 12;</p> <p>(10) “community corrections” means the entity responsible for supervising adults and juvenile offenders for confinement, detention, care or treatment, subject to conditions imposed by the court pursuant to the community corrections act, K.S.A. 75-5290, and amendments thereto, and the revised Kansas juvenile justice code, K.S.A. 38-2301 et seq., and amendments thereto;</p> <p>(11) “court services” means the entity appointed by the district court that is responsible for supervising adults and juveniles placed on probation and misdemeanants placed on parole by district courts of this state; and</p> <p>(12) “juvenile community supervision agency” means an entity that receives grants for the purpose of providing direct supervision to juveniles in the custody of the juvenile justice authority.</p>
Defenses (Kansas)	<p>KAN. STAT. ANN. § 21-5503 (West 2011). <u>Rape</u></p> <p>(c) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.</p> <p>KAN. STAT. ANN. § 21-5504 (West 2011). <u>Criminal sodomy; aggravated criminal sodomy</u></p> <p>(d) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.</p> <p>KAN. STAT. ANN. § 21-5506 (West 2011). <u>Indecent liberties with a child; aggravated indecent liberties with a child</u></p>

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<p>Defenses Cont' (Kansas)</p>	<p>(d) It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.</p> <p>KAN. STAT. ANN. § 21-6401 (West 2011). <u>Promoting obscenity; promoting obscenity to minors</u></p> <p>(g) It shall be a defense to a prosecution for promoting obscenity and promoting obscenity to minors that the:</p> <p>(1) Persons to whom the allegedly obscene material or obscene device was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational or governmental justification for possessing or viewing the same;</p> <p>(2) defendant is an officer, director, trustee or employee of a public library and the allegedly obscene material was acquired by such library and was disseminated in accordance with regular library policies approved by its governing body; or</p> <p>(3) allegedly obscene material or obscene device was purchased, leased or otherwise acquired by a public, private or parochial school, college or university, and that such material or device was either sold, leased, distributed or disseminated by a teacher, instructor, professor or other faculty member or administrator of such school as part of or incidental to an approved course or program of instruction at such school.</p> <p>(h) Notwithstanding the provisions of K.S.A. 21-5204, and amendments thereto, to the contrary, it shall be an affirmative defense to any prosecution for promoting obscenity to minors that:</p> <p>(1) The defendant had reasonable cause to believe that the minor involved was 18 years old or over, and such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 18 years old or more; or</p> <p>(2) an exhibition in a state of nudity is for a bona fide scientific or medical purpose, or for an educational or cultural purpose for a bona fide school, museum or library.</p> <p>(i) The provisions of this section and the provisions of ordinances of any city prescribing a criminal penalty for exhibit of any obscene motion picture shown in a commercial showing to the general public shall not apply to a projectionist, or assistant projectionist, if such projectionist or assistant projectionist has no financial interest in the show or in its place of presentation other than regular employment as a projectionist or assistant projectionist and no personal knowledge of the contents of the motion picture. The provisions of this section shall not exempt any projectionist or assistant projectionist from criminal liability for any act unrelated to projection of motion pictures in commercial showings to the general public.</p>
<p>Penalty</p>	<p>In Kansas, potential penalties for offenders can be determined by reference to a sentencing guideline grid (KAN. STAT. ANN. § 21-6804). The</p>

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<p>(Kansas)</p> <p>Penalty Cont' (Kansas)</p>	<p>grid is available at <a href="http://www.sedgwickcounty.org/da/pdf_files/sentgrid.pdf">http://www.sedgwickcounty.org/da/pdf_files/sentgrid.pdf</a>. Please see the description of the penalties for each offense below and refer to the grid for the potential punishment.</p> <p>KAN. STAT. ANN. § 21-6401 (West 2011). <u>Promoting obscenity; promoting obscenity to minors</u></p> <p>(d) Upon any conviction of promoting obscenity or promoting obscenity to minors, the court may require, in addition to any fine or imprisonment imposed, that the defendant enter into a reasonable recognizance with good and sufficient surety, in such sum as the court may direct, but not to exceed \$50,000, conditioned that, in the event the defendant is convicted of a subsequent offense of promoting obscenity within two years after such conviction, the defendant shall forfeit the recognizance.</p> <p>KAN. STAT. ANN. § 21-6602 (West 2011). <u>Classification of misdemeanors and terms of confinement; possible disposition</u></p> <p>(a) For the purpose of sentencing, the following classes of misdemeanors and the punishment and the terms of confinement authorized for each class are established:</p> <p>(1) Class A, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one year;</p> <p>(2) class B, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed six months;</p> <p>(3) class C, the sentence for which shall be a definite term of confinement in the county jail which shall be fixed by the court and shall not exceed one month; and</p> <p>(4) unclassified misdemeanors, which shall include all crimes declared to be misdemeanors without specification as to class, the sentence for which shall be in accordance with the sentence specified in the statute that defines the crime; if no penalty is provided in such law, the sentence shall be the same penalty as provided herein for a class C misdemeanor.</p> <p>(b) Upon conviction of a misdemeanor, a person may be punished by a fine, as provided in section 1, and amendments thereto, instead of or in addition to confinement, as provided in this section.</p> <p>(c) In addition to or in lieu of any other sentence authorized by law, whenever there is evidence that the act constituting the misdemeanor was substantially related to the possession, use or ingestion of cereal malt beverage or alcoholic liquor by such person, the court may order such person to attend and satisfactorily complete an alcohol or drug education or training program certified by the chief judge of the judicial district or licensed by the secretary of social and rehabilitation services.</p>
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Penalty Cont' ( <i>Kansas</i> )	<p>(d) Except as provided in subsection (e), in addition to or in lieu of any other sentence authorized by law, whenever a person is convicted of having committed, while under 21 years of age, a misdemeanor under K.S.A. 8-1599, 41-719 or 41-727 or K.S.A. 21-5701 through 21-5717, and amendments thereto, the court shall order such person to submit to and complete an alcohol and drug evaluation by a community-based alcohol and drug safety action program certified pursuant to K.S.A. 8-1008, and amendments thereto, and to pay a fee not to exceed the fee established by that statute for such evaluation. If the court finds that the person is indigent, the fee may be waived.</p> <p>(e) If the person is 18 or more years of age but less than 21 years of age and is convicted of a violation of K.S.A. 41-727, and amendments thereto, involving cereal malt beverage, the provisions of subsection (d) are permissive and not mandatory.</p>
<b>Kentucky</b>	
Statute ( <i>Kentucky</i> )	<p>KY. REV. STAT. ANN. § 510.020 (West 2011).  <u>Lack of Consent</u></p> <p>(1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.</p> <p>(2) Lack of consent results from:</p> <p>(a) Forcible compulsion;</p> <p>(b) Incapacity to consent; or</p> <p>(c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.</p> <p>(3) A person is deemed incapable of consent when he or she is:</p> <p>(a) Less than sixteen (16) years old;</p> <p>(b) Mentally retarded or suffers from a mental illness;</p> <p>(c) Mentally incapacitated;</p> <p>(d) Physically helpless; or</p> <p>(e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.</p> <p>(4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the parties.</p>

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<p>Statute Cont' (Kentucky)</p>	<p>KY. REV. STAT. ANN. § 510.040 (West 2011). <u>Rape in the First Degree</u></p> <p>(1) A person is guilty of rape in the first degree when:            (a) He engages in sexual intercourse with another person by forcible compulsion; or            (b) He engages in sexual intercourse with another person who is incapable of consent because he:                1. Is physically helpless; or                2. Is less than twelve (12) years old.            (2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.</p> <p>KY. REV. STAT. ANN. § 510.050 (West 2011). <u>Rape in the Second Degree</u></p> <p>(1) A person is guilty of rape in the second degree when:            (a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or            (b) He engages in sexual intercourse with another person who is mentally incapacitated.            (2) Rape in the second degree is a Class C felony.</p> <p>KY. REV. STAT. ANN. § 510.060 (West 2011). <u>Rape in the Third Degree</u></p> <p>(1) A person is guilty of rape in the third degree when:            (a) He engages in sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;            (b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;            (c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or            (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under sixteen (16) years old with whom he or she comes into contact as a result of that position.            (2) Rape in the third degree is a Class D felony.</p>
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<p>Statute Cont' (Kentucky)</p>	<p>KY. REV. STAT. ANN. § 510.070 (West 2011). <u>Sodomy in the First Degree</u></p> <p>(1) A person is guilty of sodomy in the first degree when:            (a) He engages in deviate sexual intercourse with another person by forcible compulsion; or            (b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:                1. Is physically helpless; or                2. Is less than twelve (12) years old.            (2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.</p> <p>KY. REV. STAT. ANN. § 510.080 (West 2011). <u>Sodomy in the Second Degree</u></p> <p>(1) A person is guilty of sodomy in the second degree when:            (a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; or            (b) He engages in deviate sexual intercourse with another person who is mentally incapacitated.            (2) Sodomy in the second degree is a Class C felony.</p> <p>KY. REV. STAT. ANN. § 510.090 (West 2011). <u>Sodomy in the Third Degree</u></p> <p>(1) A person is guilty of sodomy in the third degree when:            (a) He engages in deviate sexual intercourse with another person who is incapable of consent because he or she is mentally retarded;            (b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or            (c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020; or            (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than sixteen (16) years old with whom he or she comes into contact as a result of that position.            (2) Sodomy in the third degree is a Class D felony.</p>
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<p>Statute Cont' (Kentucky)</p>	<p>KY. REV. STAT. ANN. § 510.100 (West 2011). <u>Sodomy in the fourth degree</u></p> <p>(1) A person is guilty of sodomy in the fourth degree when he engages in deviate sexual intercourse with another person of the same sex. (2) Notwithstanding the provisions of KRS 510.020, consent of the other person shall not be a defense under this section, nor shall lack of consent of the other person be an element of this offense. (3) Sodomy in the fourth degree is a Class A misdemeanor</p> <p>KY. REV. STAT. ANN. § 510.110 (West 2011). <u>Sexual abuse in the first degree</u></p> <p>(1) A person is guilty of sexual abuse in the first degree when: (a) He or she subjects another person to sexual contact by forcible compulsion; or (b) He or she subjects another person to sexual contact who is incapable of consent because he or she: 1. Is physically helpless; 2. Is less than twelve (12) years old; or 3. Is mentally incapacitated; or (c) Being twenty-one (21) years old or more, he or she: 1. Subjects another person who is less than sixteen (16) years old to sexual contact; 2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or 3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or (d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate. (2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.</p>
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<p>Statute Cont' (Kentucky)</p>	<p>KY. REV. STAT. ANN. § 510.120 (West 2011). <u>Sexual abuse in the second degree</u></p> <p>1) A person is guilty of sexual abuse in the second degree when:</p> <ul style="list-style-type: none"> <li>(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is mentally retarded;</li> <li>(b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or</li> <li>(c) Being an employee, contractor, vendor, or volunteer of the Department of Corrections, or a detention facility as defined in KRS 520.010, or of an entity under contract with either the department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects an offender who is incarcerated, supervised, evaluated, or treated by the Department of Corrections, the detention facility, or the contracting entity, to sexual contact. In any prosecution under this paragraph, the defendant may prove in exculpation that, at the time he or she engaged in the conduct constituting the offense, he or she and the offender were married to each other.</li> </ul> <p>(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:</p> <ul style="list-style-type: none"> <li>(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and</li> <li>(b) The other person was at least fourteen (14) years old; and</li> <li>(c) The actor was less than five (5) years older than the other person.</li> </ul> <p>(3) Sexual abuse in the second degree is a Class A misdemeanor.</p> <p>KY. REV. STAT. ANN. § 510.130 (West 2011). <u>Sexual abuse in the third degree</u></p> <p>(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.</p> <p>(2) In any prosecution under this section, it is a defense that:</p> <ul style="list-style-type: none"> <li>(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and</li> <li>(b) The other person was at least fourteen (14) years old; and</li> <li>(c) The actor was less than eighteen (18) years old.</li> </ul> <p>(3) Sexual abuse in the third degree is a Class B misdemeanor.</p> <p>KY. REV. STAT. ANN. § 510.140 (West 2011). <u>Sexual misconduct</u></p>
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<p>Statute Cont' (Kentucky)</p>	<p>(1) A person is guilty of sexual misconduct when he engages in sexual intercourse or deviate sexual intercourse with another person without the latter's consent. (2) Sexual misconduct is a Class A misdemeanor.</p> <p>KY. REV. STAT. ANN. § 510.148(West 2011). <u>Indecent exposure in the first degree</u></p> <p>(1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years. (2) Indecent exposure in the first degree is a: (a) Class B misdemeanor for the first offense; (b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction; (c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and (d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.</p> <p>KY. REV. STAT. ANN. § 510.155 (West 2011). <u>Unlawful use of electronic means originating or received within the Commonwealth to induce a minor to engage in sexual or other prohibited activities; prohibition of multiple convictions arising from single course of conduct; solicitation as evidence of intent</u></p> <p>(1) It shall be unlawful for any person to knowingly use a communications system, including computers, computer networks, computer bulletin boards, cellular telephones, or any other electronic means, for the purpose of procuring or promoting the use of a minor, or a peace officer posing as a minor if the person believes that the peace officer is a minor or is wanton or reckless in that belief, for any activity in violation of KRS 510.040, 510.050, 510.060, 510.070, 510.080, 510.090, 510.110, 529.100 where that offense involves commercial sexual activity, or 530.064(1)(a), or KRS Chapter 531. (2) No person shall be convicted of this offense and an offense specified in KRS 506.010, 506.030, 506.040, or 506.080 for a single course of conduct intended to consummate in the commission of the same offense with the same minor or peace officer. (3) The solicitation of a minor through electronic communication under subsection (1) of this section shall be prima facie evidence of the person's intent to commit the offense even if the meeting did not occur. (4) This section shall apply to electronic communications originating within or received within the Commonwealth. (5) A violation of this section is punishable as a Class D felony.</p>
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Definitions (Kentucky)	<p>KY. REV. STAT. ANN. § 510.010 (West 2011).  <u>Definitions</u></p> <p>The following definitions apply in this chapter unless the context otherwise requires:</p> <p>(1) “Deviate sexual intercourse” means any act of sexual gratification involving the sex organs of one person and the mouth or anus of another; or penetration of the anus of one person by a foreign object manipulated by another person. “Deviate sexual intercourse” does not include penetration of the anus by a foreign object in the course of the performance of generally recognized health-care practices;</p> <p>(2) “Forcible compulsion” means physical force or threat of physical force, express or implied, which places a person in fear of immediate death, physical injury to self or another person, fear of the immediate kidnap of self or another person, or fear of any offense under this chapter. Physical resistance on the part of the victim shall not be necessary to meet this definition;</p> <p>(3) “Mental illness” means a diagnostic term that covers many clinical categories, typically including behavioral or psychological symptoms, or both, along with impairment of personal and social function, and specifically defined and clinically interpreted through reference to criteria contained in the Diagnostic and Statistical Manual of Mental Disorders (Third Edition) and any subsequent revision thereto, of the American Psychiatric Association;</p> <p>(4) “Mentally retarded person” means a person with significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, as defined in KRS Chapter 202B;</p> <p>(5) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his conduct as a result of the influence of an intoxicating substance administered to him without his consent or as a result of any other act committed upon him without his consent;</p> <p>(6) “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act. “Physically helpless” also includes a person who has been rendered unconscious or for any other reason is physically unable to communicate an unwillingness to an act as a result of the influence of a controlled substance or legend drug;</p> <p>(7) “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>(8) “Sexual intercourse” means sexual intercourse in its ordinary sense and includes penetration of the sex organs of one person by a foreign</p>

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Definitions Cont' (Kentucky)	object manipulated by another person. Sexual intercourse occurs upon any penetration, however slight; emission is not required. "Sexual intercourse" does not include penetration of the sex organ by a foreign object in the course of the performance of generally recognized health-care practices; and (9) "Foreign object" means anything used in commission of a sexual act other than the person of the actor.
Defenses (Kentucky)	KY. REV. STAT. ANN. § 510.030 (West 2011) <u>Defenses</u>  In any prosecution under this chapter in which the victim's lack of consent is based solely on his incapacity to consent because he was less than sixteen (16) years old, mentally retarded, mentally incapacitated or physically helpless, the defendant may prove in exculpation that at the time he engaged in the conduct constituting the offense he did not know of the facts or conditions responsible for such incapacity to consent.  KY. REV. STAT. ANN. § 510.035 (West 2011) <u>No offense committed if parties married to each other</u>  A person who engages in sexual intercourse or deviate sexual intercourse with another person to whom the person is married, or subjects another person to whom the person is married to sexual contact, does not commit an offense under this chapter regardless of the person's age solely because the other person is less than sixteen (16) years old or mentally retarded.
Penalty (Kentucky)	KY. REV. STAT. ANN. § 532.020 (West 2011). <u>Designation of offenses</u>  (1) Any offense defined outside this code for which a law outside this code provides a sentence to a term of imprisonment in the state for: (a) At least one (1) but not more than five (5) years shall be deemed a Class D felony; (b) At least five (5) but not more than ten (10) years shall be deemed a Class C felony; (c) At least ten (10) but not more than twenty (20) years shall be deemed a Class B felony; (d) For at least twenty (20) but not more than fifty (50) years or for life shall be deemed a Class A felony. (2) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a maximum which falls between ninety (90) days and twelve (12) months shall be deemed a Class A misdemeanor. (3) Any offense defined outside this code for which a law outside this code provides a sentence to a definite term of imprisonment with a

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Penalty Cont' (Kentucky)	<p>maximum of less than ninety (90) days shall be deemed a Class B misdemeanor.</p> <p>(4) Any offense defined outside this code for which a law outside this code provides a sentence to a fine only or to any other punishment, whether in combination with a fine or not, other than death or imprisonment shall be deemed a violation.</p>
<b>Louisiana</b>	
Statute (Louisiana)	<p>LA. REV. STAT. ANN. § 14:42<sup>26</sup> (West 2008).  <u>Aggravated rape</u></p> <p>A. Aggravated rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:</p> <ol style="list-style-type: none"> <li>(1) When the victim resists the act to the utmost, but whose resistance is overcome by force.</li> <li>(2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.</li> <li>(3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.</li> <li>(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.</li> <li>(5) When two or more offenders participated in the act.</li> <li>(6) When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance.</li> </ol> <p>B. For purposes of Paragraph (5), "participate" shall mean:</p> <ol style="list-style-type: none"> <li>(1) Commit the act of rape.</li> <li>(2) Physically assist in the commission of such act.</li> </ol> <p>C. For purposes of this Section, the following words have the following meanings:</p> <ol style="list-style-type: none"> <li>(1) "Physical infirmity" means a person who is a quadriplegic or paraplegic.</li> <li>(2) "Mental infirmity" means a person with an intelligence quotient of seventy or lower.</li> </ol> <p>D. (1) Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.<sup>27</sup></p> <p>(2) However, if the victim was under the age of thirteen years, as provided by Paragraph A(4) of this Section:</p>

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<p>Statute Cont' (Louisiana)</p>	<p>(a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment may be capital shall apply.</p> <p>(b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.</p> <p>LA. REV. STAT. ANN. § 14:42.1 (West 2011). <u>Forcible rape</u></p> <p>A. Forcible rape is rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of the victim because it is committed under any one or more of the following circumstances:</p> <p>(1) When the victim is prevented from resisting the act by force or threats of physical violence under circumstances where the victim reasonably believes that such resistance would not prevent the rape.</p> <p>(2) When the victim is incapable of resisting or of understanding the nature of the act by reason of stupor or abnormal condition of the mind produced by a narcotic or anesthetic agent or other controlled dangerous substance administered by the offender and without the knowledge of the victim.</p> <p>LA. REV. STAT. ANN. § 14:43 (West 2011). <u>Simple rape</u></p> <p>A. Simple rape is a rape committed when the anal, oral, or vaginal sexual intercourse is deemed to be without the lawful consent of a victim because it is committed under any one or more of the following circumstances:</p> <p>(1) When the victim is incapable of resisting or of understanding the nature of the act by reason of a stupor or abnormal condition of mind produced by an intoxicating agent or any cause and the offender knew or should have known of the victim's incapacity.</p> <p>(2) When the victim, through unsoundness of mind, is temporarily or permanently incapable of understanding the nature of the act and the offender knew or should have known of the victim's incapacity.</p> <p>(3) When the female victim submits under the belief that the person committing the act is her husband and such belief is intentionally induced by any artifice, pretense, or concealment practiced by the offender.</p> <p>LA. REV. STAT. ANN. § 14:43.1 (West 2011).<sup>28</sup></p>
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<p>Statute Cont' (Louisiana)</p>	<p><u>Sexual battery</u></p> <p>A. Sexual battery is the intentional engaging in any of the following acts with another person where the offender acts without the consent of the victim, or where the act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender:</p> <p>(1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or</p> <p>(2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.</p> <p>B. Lack of knowledge of the victim's age shall not be a defense. However, where the victim is under seventeen, normal medical treatment or normal sanitary care of an infant shall not be construed as an offense under the provisions of this Section.</p> <p>LA. REV. STAT. ANN. § 14:43.2 (West 2011).</p> <p><u>Second degree sexual battery</u></p> <p>A. Second degree sexual battery is the intentional engaging in any of the following acts with another person when the offender intentionally inflicts serious bodily injury on the victim:</p> <p>(1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or</p> <p>(2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.</p> <p>B. For the purposes of this Section, serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.</p> <p>C. (1) Whoever commits the crime of second degree sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than fifteen years.</p> <p>(2) Whoever commits the crime of second degree sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.</p> <p>(3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p> <p>LA. REV. STAT. ANN. § 14:43.3 (West 2011).</p> <p><u>Oral sexual battery</u></p>
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<p>Statute Cont' (Louisiana)</p>	<p>A. Oral sexual battery is the intentional engaging in any of the following acts with another person, who is not the spouse of the offender when the other person has not yet attained fifteen years of age and is at least three years younger than the offender:            (1) The touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender; or            (2) The touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim.            B. Lack of knowledge of the victim's age shall not be a defense.</p> <p>LA. REV. STAT. ANN. § 14:80 (West 2011).  <u>Felony carnal knowledge of a juvenile</u></p> <p>A. Felony carnal knowledge of a juvenile is committed when:            (1) A person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or            (2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 commits a first offense of misdemeanor carnal knowledge of a juvenile.            B. As used in this Section, “sexual intercourse” means anal, oral, or vaginal sexual intercourse.            C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.</p> <p>LA. REV. STAT. ANN. § 14:80.1 (West 2011).  <u>Misdemeanor carnal knowledge of a juvenile</u></p> <p>A. Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.            B. As used in this Section, “sexual intercourse” means anal, oral, or vaginal sexual intercourse.            C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.</p>
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<p>Statute Cont' (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 14:81 (West 2011). <u>Indecent behavior with juveniles</u></p> <p>A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:  (1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or  (2) The transmission of an electronic textual communication or an electronic visual communication depicting lewd or lascivious conduct, text, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. It shall not be a defense that the person who actually receives the transmission is not under the age of seventeen.</p> <p>B. The trial judge shall have the authority to issue any necessary orders to protect the safety of the child during the pendency of the criminal action and beyond its conclusion.</p> <p>C. For purposes of this Section, the following words have the following meanings:  (1) "Electronic textual communication" means a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.  (2) "Electronic visual communication" means the communication of a visual image made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.</p> <p>D. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, free over-the-air television broadcast station, an Internet provider, or commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.</p> <p>E. An offense committed under this Section and based upon the transmission and receipt of electronic textual or visual communications may be deemed to have been committed where the electronic communication was originally sent, originally received, or originally viewed by any person.</p> <p>F. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.</p> <p>G. Any evidence resulting from the commission of a crime under this Section shall constitute contraband.</p> <p>LA. REV. STAT. ANN. § 14:81.1 (West 2011). <u>Pornography involving juveniles</u></p>
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<p>Statute Cont' (Louisiana)</p>	<p>It shall be unlawful for a person to produce, distribute, possess, or possess with the intent to distribute pornography involving juveniles. (2) It shall also be a violation of the provision of this Section for a parent, legal guardian, or custodian of a child to consent to the participation of the child in pornography involving juveniles. C. (1) Possession of three or more of the same photographs, images, films, videotapes, or other visual reproductions shall be prima facie evidence of intent to sell or distribute. (2) Possession of three or more photographs, images, films, videotapes, or other visual reproductions and possession of any type of file sharing technology or software shall be prima facie evidence of intent to sell or distribute. D. Lack of knowledge of the juvenile's age shall not be a defense.</p> <p>LA. REV. STAT. ANN. § 14:81.2 (West 2011). <u>Molestation of a juvenile</u></p> <p>A. Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense. B. Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than ten years, or both; the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893. C. Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, and when the offender has control or supervision over the juvenile, shall be fined not more than ten thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than twenty years, or both the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with Code of Criminal Procedure Article 893. D. (1) Whoever commits the crime of molestation of a juvenile when the incidents of molestation recur during a period of more than one year shall, on first conviction, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both.</p> <p>LA. REV. STAT. ANN. § 14:81.3 (West 2011).</p>
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<p>Statute Cont' (Louisiana)</p>	<p><u>Computer-aided solicitation of a minor</u></p> <p>A. Computer-aided solicitation of a minor is committed when a person seventeen years of age or older knowingly contacts or communicates, through the use of electronic textual communication, with a person who has not yet attained the age of seventeen where there is an age difference of greater than two years, or a person reasonably believed to have not yet attained the age of seventeen and reasonably believed to be at least two years younger, for the purpose of or with the intent to persuade, induce, entice, or coerce the person to engage or participate in sexual conduct or a crime of violence as defined in R.S. 14:2(B), or with the intent to engage or participate in sexual conduct in the presence of the person who has not yet attained the age of seventeen, or person reasonably believed to have not yet attained the age of seventeen. It shall also be a violation of the provisions of this Section when the contact or communication is initially made through the use of electronic textual communication and subsequent communication is made through the use of any other form of communication.</p> <p>B. (1)(a) Whoever violates the provisions of this Section when the victim is thirteen years of age or more but has not attained the age of seventeen shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(b) Whoever violates the provisions of this Section when the victim is under thirteen years of age shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.</p> <p>(c) Whoever violates the provisions of this Section, when the victim is a person reasonably believed to have not yet attained the age of seventeen, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years nor more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(2) On a subsequent conviction, the offender shall be imprisoned for not less than ten years nor more than twenty years at hard labor without benefit of parole, probation, or suspension of sentence.</p> <p>E. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, an Internet provider, or commercial online service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial online services.</p> <p>F. An offense committed under this Section may be deemed to have been committed where the electronic textual communication was originally sent, originally received, or originally viewed by any person, or where any other element of the offense was committed.</p> <p>G. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.</p> <p>H. Any evidence resulting from the commission of computer-aided solicitation of a minor shall constitute contraband.</p> <p>I. A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541. Whoever commits the crime of computer-aided solicitation of a minor shall be required to register as a sex offender as provided for in Chapter 3-B of Title 15 of the</p>
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<p>Statute Cont' (Louisiana)</p>	<p>Louisiana Revised Statutes of 1950.</p> <p>LA. REV. STAT. ANN. § 14:81.4 (West 2011). <u>Prohibited sexual conduct between educator and student</u></p> <p>A. Prohibited sexual conduct between an educator and a student is committed when any of the following occur:            (1) An educator has sexual intercourse with a person who is seventeen years of age or older, but less than nineteen years of age, when the victim is not the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense.            (2) An educator commits any lewd or lascivious act upon a student or in the presence of a student who is seventeen years of age or older, but less than nineteen years of age, with the intention of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense.            (3) An educator intentionally engages in the touching of the anus or genitals of a student seventeen years of age or older, but less than nineteen years of age, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person seventeen years of age or older, but less than nineteen years of age, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.            C. The consent of a student, whether or not that student is seventeen years of age or older, shall not be a defense to any violation of this Section.            D. Lack of knowledge of the student's age shall not be a defense.            E. (1) Whoever commits the crime of prohibited sexual conduct between an educator and a student when the student is seventeen years of age or older, but less than nineteen years of age, shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.            (2) For a second or subsequent offense, an offender may be fined not more than five thousand dollars and shall be imprisoned, with or without hard labor, for not less than one year nor more than five years.            F. Notwithstanding any claim of privileged communication, any educator having cause to believe that prohibited sexual conduct between an educator and student shall immediately report such conduct to a local or state law enforcement agency.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions (Louisiana) Definitions Cont' (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 14:80.1 (West 2011). <u>Misdemeanor carnal knowledge of a juvenile</u></p> <p>B. As used in this Section, “sexual intercourse” means anal, oral, or vaginal sexual intercourse.</p> <p>LA. REV. STAT. ANN. § 14:81 (West 2011). <u>Indecent behavior with juveniles</u></p> <p>C. For purposes of this Section, “textual, visual, written, or oral communication” means any communication of any kind, whether electronic or otherwise, made through the use of the United States mail, any private carrier, personal courier, computer online service, Internet service, local bulletin board service, Internet chat room, electronic mail, online messaging service, or personal delivery or contact.</p> <p>LA. REV. STAT. ANN. § 14:81.1 (West 2011). <u>Pornography involving juveniles</u></p> <p>B. For purposes of this Section the following definitions shall apply:</p> <ol style="list-style-type: none"> <li>(1) “Sexual performance” means any performance or part thereof that includes sexual conduct involving a child under the age of seventeen.</li> <li>(2) “Performance” means any play, motion picture, photograph, dance, or other visual presentation.</li> <li>(3) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the genitals.</li> <li>(4) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, prevent, exhibit, or advertise, or to offer or agree to do the same.</li> </ol> <p>LA. REV. STAT. ANN. § 14:81.2 (West 2011). <u>Molestation of a juvenile</u></p> <p>(3) For purposes of this Subsection, a “qualified sex offender program” means one which includes both group and individual therapy and arousal reconditioning. Group therapy shall be conducted by two therapists, one male and one female, at least one of whom is licensed as a psychologist or is board certified as a psychiatrist or clinical social worker.</p> <p>(3) For purposes of this Subsection, a “qualified sex offender program” means one which includes both group and individual therapy and arousal reconditioning. Group therapy shall be conducted by two therapists, one male and one female, at least one of whom is licensed as a</p>
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<p>Definitions Cont' (Louisiana)</p>	<p>psychologist or medical psychologist or is board certified as a psychiatrist or clinical social worker.</p> <p>(2) For purposes of this Subsection, “educator” means any teacher or instructor, administrator, staff person, or employee of any public or private elementary, secondary, vocational-technical training, special, or post secondary school or institution, including any teacher aide, paraprofessional, school bus driver, food service worker, and other clerical, custodial, or maintenance personnel employed by a private, city, parish, or other local public school board.</p> <p>LA. REV. STAT. ANN. § 14:81.3 (West 2011). <u>Computer-aided solicitation of a minor</u></p> <p>D. For purposes of this Section, the following words have the following meanings:</p> <p>(1) “Electronic textual communication” means a textual communication made through the use of a computer on-line service, Internet service, or any other means of electronic communication, including but not limited to a local bulletin board service, Internet chat room, electronic mail, or on-line messaging service.</p> <p>(2) “Sexual conduct” means actual or simulated sexual intercourse, deviant sexual intercourse, sexual bestiality, masturbation, sadomasochistic abuse, lewd exhibition of the genitals, or any lewd or lascivious act.</p> <p>LA. REV. STAT. ANN. § 14:81.4 (West 2011). <u>Prohibited sexual conduct between educator and student</u></p> <p>B. As used in this Section:</p> <p>(1) “Educator” means any administrator, coach, instructor, paraprofessional, student aide, teacher, or teacher aide at any public or private school, assigned, employed, or working at the school or school system where the victim is enrolled as a student on a full-time, part-time, or temporary basis.</p> <p>(2) “School” means a public or nonpublic elementary or secondary school or learning institution which shall not include universities and colleges.</p> <p>(3) “Sexual intercourse” means anal, oral, or vaginal sexual intercourse. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.</p> <p>(4) “Student” includes students enrolled in a school who are seventeen years of age or older, but less than twenty-one years of age.</p>
<p>Defenses</p>	<p>None.</p>

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(Louisiana)	
<p>Penalty (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 15:537 (West 2011). <u>Sentencing of sexual offenders; serial sexual offenders</u></p> <p>A. If a person is convicted of or pleads guilty to, or where adjudication has been deferred or withheld for a violation of R.S. 14:78 (incest), R.S. 14:78.1 (aggravated incest), R.S. 14:80 (felony carnal knowledge of a juvenile), R.S. 14:81 (indecent behavior with juveniles), R.S. 14:81.1 (pornography involving juveniles), R.S. 14:81.2 (molestation of a juvenile), R.S. 14:81.3 (computer-aided solicitation of a minor), R.S. 14:89(A)(1) (crime against nature), R.S. 14:89.1 (aggravated crime against nature), R.S. 14:93.5 (sexual battery of the infirm), or any provision of Subpart C of Part II of Chapter 1 of Title 14 of the Louisiana Revised Statutes of 1950, and is sentenced to imprisonment for a stated number of years or months, the person shall not be eligible for diminution of sentence for good behavior.</p> <p>B. The court shall sentence a person who has on two or more occasions previously pleaded guilty, nolo contendere, or has been found guilty of violating R.S. 14:42, 42.1, 43, 43.1, 43.2, 43.3, 43.4, 43.5, 78, 78.1, 80, 81, 81.1, 81.2, 89.1, or 107.1(C)(2) to life imprisonment without the benefit of parole, probation, or suspension of sentence.</p> <p>LA. REV. STAT. ANN. § 14:42 (West 2011). <u>Aggravated rape</u></p> <p>D. (1) Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. (2) However, if the victim was under the age of thirteen years, as provided by Paragraph A(4) of this Section: (a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment may be capital shall apply. (b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.</p> <p>LA. REV. STAT. ANN. § 14:42.1 (West 2011). <u>Forcible rape</u></p>

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<p>Penalty Cont' (Louisiana)</p>	<p>B. Whoever commits the crime of forcible rape shall be imprisoned at hard labor for not less than five nor more than forty years. At least two years of the sentence imposed shall be without benefit of probation, parole, or suspension of sentence. LA. REV. STAT. ANN. § 14:43 (West 2011). <u>Simple rape</u></p> <p>B. Whoever commits the crime of simple rape shall be imprisoned, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than twenty-five years.  LA. REV. STAT. ANN. § 14:43.1(West 2011). <u>Sexual battery</u></p> <p>C. (1) Whoever commits the crime of sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years. (2) Whoever commits the crime of sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. (3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p> <p>LA. REV. STAT. ANN. § 14:43.2 (West 2011). <u>Second degree sexual battery</u></p> <p>C. (1) Whoever commits the crime of second degree sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than fifteen years. (2) Whoever commits the crime of second degree sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. (3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p>
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<p>Penalty Cont' (Louisiana)</p>	<p>LA. REV. STAT. ANN. § 14:43.3(West 2011). <u>Oral sexual battery</u></p> <p>C. (1) Whoever commits the crime of oral sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years. (2) Whoever commits the crime of oral sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence. (3) Upon completion of the term of imprisonment imposed in accordance with Paragraph (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p> <p>LA. REV. STAT. ANN. § 14:80 (West 2011). <u>Felony carnal knowledge of a juvenile</u></p> <p>D. Whoever commits the crime of felony carnal knowledge of a juvenile shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not more than ten years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.</p> <p>LA. REV. STAT. ANN. § 14:80.1 (West 2011). <u>Misdemeanor carnal knowledge of a juvenile</u></p> <p>D. Whoever commits the crime of misdemeanor carnal knowledge of a juvenile shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.</p> <p>LA. REV. STAT. ANN. § 14:81 (West 2011). <u>Indecent behavior with juveniles</u></p> <p>H. (1) Whoever commits the crime of indecent behavior with juveniles shall be fined not more than five thousand dollars, or imprisoned with</p>
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<p>Penalty Cont' (Louisiana)</p>	<p>or without hard labor for not more than seven years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.</p> <p>(2) Whoever commits the crime of indecent behavior with juveniles on a victim under the age of thirteen when the offender is seventeen years of age or older, shall be punished by imprisonment at hard labor for not less than two nor more than twenty-five years. At least two years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.</p> <p>LA. REV. STAT. ANN. § 14:81.1 (West 2011). <u>Pornography involving juveniles</u></p> <p>E. (1) Whoever intentionally possesses pornography involving juveniles shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years or more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(2) Whoever distributes or possesses with the intent to distribute pornography involving juveniles shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years or more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(3) Any parent, legal guardian, or custodian of a child who consents to the participation of the child in pornography involving juveniles shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than five years or more than twenty years, without benefit of probation, parole, or suspension of sentence.</p> <p>(4) Whoever engages in the production of pornography involving juveniles shall be fined not more than fifteen thousand dollars and be imprisoned at hard labor for not less than ten years or more than twenty years, without benefit of probation, parole, or suspension of sentence.</p> <p>(5)(a) Whoever commits the crime of pornography involving juveniles punishable by the provisions of Paragraphs (1), (2), or (3) of this Subsection when the victim is under the age of thirteen years and the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than one-half the longest term nor more than twice the longest term of imprisonment provided in Paragraphs (1), (2), and (3) of this Subsection. The sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.</p> <p>(b) Whoever commits the crime of pornography involving juveniles punishable by the provisions of Paragraph (4) of this Subsection when the victim is under the age of thirteen years, and the offender is seventeen years of age or older, shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.</p> <p>(c) Upon completion of the term of imprisonment imposed in accordance with Subparagraphs (5)(a) and (5)(b) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p>
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<p>Penalty Cont' (Louisiana)</p>	<p>F. (1) Any evidence of pornography involving a child under the age of seventeen shall be contraband. Such contraband shall be seized in accordance with law and shall be disposed of in accordance with R.S. 46:1845.</p> <p>G. In prosecutions for violations of this Section, the trier of fact may determine, utilizing the following factors, whether or not the person displayed or depicted in any photograph, videotape, film, or other video reproduction introduced in evidence was under the age of seventeen years at the time of filming or recording:</p> <ol style="list-style-type: none"> <li>(1) The general body growth, bone structure, and bone development of the person.</li> <li>(2) The development of pubic or body hair on the person.</li> <li>(3) The development of the person's sexual organs.</li> <li>(4) The context in which the person is placed or the age attributed to the person in any accompanying video, printed, or text material.</li> <li>(5) Available expert testimony and opinion as to the chronological age or degree of physical or mental maturity or development of the person.</li> <li>(6) Such other information, factors, and evidence available to the trier of fact which the court determines is probative and reasonably reliable.</li> </ol> <p>H. The provisions of this Section shall not apply to a provider of an interactive computer service, provider of a telecommunications service, or a cable operator as defined by the provisions of this Section.</p> <p>LA. REV. STAT. ANN. § 14:81.2 (West 2011). <u>Molestation of a juvenile</u></p> <p>B. Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than ten years, or both; the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.</p> <p>C. Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, and when the offender has control or supervision over the juvenile, shall be fined not more than ten thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than twenty years, or both the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with Code of Criminal Procedure Article 893.</p> <p>D. (1) Whoever commits the crime of molestation of a juvenile when the incidents of molestation recur during a period of more than one year shall, on first conviction, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both. At least five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence. After five years of the sentence have been served, the offender, who is otherwise eligible, may be eligible for parole if a licensed psychologist, or a licensed clinical social worker or a board-certified psychiatrist, after psychological examination, including testing, approves.</p> <p>D. (1) Whoever commits the crime of molestation of a juvenile when the incidents of molestation recur during a period of more than one year</p>
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<p>Penalty Cont' (Louisiana)</p>	<p>shall, on first conviction, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both. At least five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence. After five years of the sentence have been served, the offender, who is otherwise eligible, may be eligible for parole if a licensed psychologist, medical psychologist, or a licensed clinical social worker or a board-certified psychiatrist, after psychological examination, including testing, approves.</p> <p>(2) Conditions of parole shall include treatment in a qualified sex offender program for a minimum of five years, or until expiration of sentence, whichever comes first. The state shall be responsible for the cost of testing but the offender shall be responsible for the cost of the treatment program. It shall also be a condition of parole that the offender be prohibited from being alone with a child without the supervision of another adult.</p> <p>E. (1) Whoever commits the crime of molestation of a juvenile when the victim is under the age of thirteen years shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.</p> <p>(2) Upon completion of the term of imprisonment imposed in accordance with Paragraph (1) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.</p> <p>F. (1) Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, and when the offender is an educator of the juvenile, shall be fined not more than ten thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both. At least five years of the sentence imposed shall be without the benefit of parole, probation, or suspension of sentence and the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with Code of Criminal Procedure Article 893.</p> <p>LA. REV. STAT. ANN. § 14:81.3 (West 2011). <u>Computer-aided solicitation of a minor</u></p> <p>B. (1)(a) Whoever violates the provisions of this Section when the victim is thirteen years of age or more but has not attained the age of seventeen shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than five years nor more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(b) Whoever violates the provisions of this Section when the victim is under thirteen years of age shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than ten years nor more than twenty years, without benefit of parole, probation, or suspension of sentence.</p> <p>(c) Whoever violates the provisions of this Section, when the victim is a person reasonably believed to have not yet attained the age of</p>
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<p>Penalty Cont' (Louisiana)</p>	<p>seventeen, shall be fined not more than ten thousand dollars and shall be imprisoned at hard labor for not less than two years nor more than ten years, without benefit of parole, probation, or suspension of sentence.</p> <p>(2) On a subsequent conviction, the offender shall be imprisoned for not less than ten years nor more than twenty years at hard labor without benefit of parole, probation, or suspension of sentence.</p> <p>(3) In addition to the penalties imposed in either Paragraph (1) or (2) of this Subsection, the court may impose, as an additional penalty on the violator, the limitation or restriction of access to the Internet when the Internet was used in the commission of the crime.</p> <p>LA. REV. STAT. ANN. § 14:81.4 (West 2011). <u>Prohibited sexual conduct between educator and student</u></p> <p>E. (1) Whoever violates the provisions of this Section shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.</p> <p>(2) For a second or subsequent offense, an offender may be fined not more than five thousand dollars and shall be imprisoned, with or without hard labor, for not less than one year nor more than five years.</p> <p>defendant who filed the false report knew the report was false or that the report was filed with reckless disregard for the truth of the report. A plaintiff who fails to meet the burden of proof set forth in this Subsection shall pay all court costs and attorney fees of the defendant.</p>
<p style="text-align: center;"><b>Maine</b></p>	
<p>Statute (Maine)</p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2011). <u>Gross sexual assault</u></p> <p>1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime;</p> <p>B. The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or</p> <p>C. The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.</p> <p>2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:</p> <p>A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, as defined</p>

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<p>Statute Cont' (Maine)</p>	<p>in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime;</p> <p>B. The actor compels or induces the other person to engage in the sexual act by any threat. Violation of this paragraph is a Class B crime;</p> <p>C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent. Violation of this paragraph is a Class B crime;</p> <p>D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. Violation of this paragraph is a Class B crime;</p> <p>E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime;</p> <p>F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class C crime;</p> <p>G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, day care facility, residential child care facility, drug treatment center, camp or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;</p> <p>H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime;</p> <p>I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a patient or client for mental health therapy of the actor. As used in this paragraph, "mental health therapy" means psychotherapy or other treatment modalities intended to change behavior, emotions or attitudes, which therapy is based upon an intimate relationship involving trust and dependency with a substantial potential for vulnerability and abuse. Violation of this paragraph is a Class C crime; or</p> <p>J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes the other person as a person with mental retardation. It is an affirmative defense to prosecution under this paragraph that the actor receives services for mental retardation or is a person with mental retardation as defined in Title 34-B, section 5001, subsection 3. Violation of this paragraph is a Class C crime.</p> <p>3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the</p>
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<p>Statute Cont' (Maine)</p>	<p>substance with knowledge of its nature, except that it is no defense when:</p> <p>A. The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or</p> <p>B. The other person is in fact 14 or 15 years of age.</p> <p>4. Repealed. Laws 2001, c. 383, § 18, eff. Jan. 31, 2003.</p> <p>5. Repealed. Laws 2001, c. 383, § 19, eff. Jan. 31, 2003.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 254 (West 2011).</p> <p><u>Sexual abuse of minors</u></p> <p>1. A person is guilty of sexual abuse of a minor if:</p> <p>A. The person engages in a sexual act with another person, not the actor's spouse, who is either 14 or 15 years of age and the actor is at least 5 years older than the other person. Violation of this paragraph is a Class D crime;</p> <p>A-1. The person violates paragraph A and the actor knows that the other person is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class C crime;</p> <p>A-2. The person violates paragraph A and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class C crime;</p> <p>B. Deleted. Laws 1989, c. 401, § A, 3.</p> <p>C. The person is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;</p> <p>D. The person violates paragraph C and the actor knows that the student is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class D crime;</p> <p>E. The person violates paragraph C and the actor is at least 10 years older than the student. Violation of this paragraph is a Class D crime; or</p> <p>F. The person intentionally subjects another person, not the actor's spouse, who is either 14 or 15 years of age to any sexual contact and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime.</p> <p>2. It is a defense to a prosecution under subsection 1, paragraphs A, A-1, A-2 and F, that the actor reasonably believed the other person is at least 16 years of age.</p> <p>3. Deleted. Laws 2001, c. 383, § 21.</p> <p>4. As used in this section, "related to the actor within the 2nd degree of consanguinity" has the meaning set forth in section 556.</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (Maine)</p>	<p>ME. REV. STAT. ANN. tit. 17-A, § 255-A (West 2011). <u>Unlawful sexual contact</u></p> <p>1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:</p> <p>A. The other person has not expressly or impliedly acquiesced in the sexual contact. Violation of this paragraph is a Class D crime;</p> <p>B. The other person has not expressly or impliedly acquiesced in the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;</p> <p>C. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. Violation of this paragraph is a Class D crime;</p> <p>D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;</p> <p>E. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class C crime;</p> <p>E-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class B crime;</p> <p>F. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;</p> <p>F-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class A crime;</p> <p>G. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime;</p> <p>H. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;</p> <p>I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime;</p> <p>J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or</p>
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<p>Statute Cont' (Maine)</p>	<p>surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person, not the actor's spouse and not having in fact attained 12 years of age, under circumstances in which a reasonable person would expect to be safe from such visual surveillance. Violation of this paragraph is a Class C crime.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 258 (West 2011). <u>Sexual misconduct with a child under 14 years of age</u></p> <p>1. A person is guilty of sexual misconduct with a child under 14 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained the age of 14 years, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class D crime.</p> <p>1-A. A person is guilty of sexual misconduct with a child under 12 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained 12 years of age, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class C crime.</p> <p>2. As used in this section, "sexually explicit materials" means any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts a person, minor or adult, engaging in sexually explicit conduct, as that term is defined in section 281.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 259 (West 2011) <u>Solicitation of child by computer to commit a prohibited act</u></p> <p>1. Repealed. Laws 2001, c. 383, § 24, eff. Jan. 31, 2003.</p> <p>1-A. A person is guilty of soliciting a child by a computer to commit a prohibited act if:</p> <p>A. The actor:</p> <ul style="list-style-type: none"> <li>(1) Uses a computer knowingly to solicit, entice, persuade or compel another person to meet with the actor;</li> <li>(2) Is at least 16 years of age;</li> <li>(3) Knows or believes that the other person is less than 14 years of age; and</li> <li>(4) Is at least 3 years older than the expressed age of the other person; and</li> </ul> <p>B. The actor has the intent to engage in any one of the following prohibited acts with the other person:</p> <ul style="list-style-type: none"> <li>(1) A sexual act;</li> <li>(2) Sexual contact; or</li> <li>(3) Sexual exploitation of a minor pursuant to section 282.</li> </ul>
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<p>Statute Cont' (Maine)</p>	<p>Violation of this subsection is a Class D crime.</p> <p>1-B. A person is guilty of soliciting a child by a computer to commit a prohibited act if:</p> <p>A. The actor:</p> <ol style="list-style-type: none"> <li>(1) Uses a computer knowingly to solicit, entice, persuade or compel another person to meet with the actor;</li> <li>(2) Is at least 16 years of age;</li> <li>(3) Knows or believes that the other person is less than 12 years of age; and</li> <li>(4) Is at least 3 years older than the expressed age of the other person; and</li> </ol> <p>B. The actor has the intent to engage in any one of the following prohibited acts with the other person:</p> <ol style="list-style-type: none"> <li>(1) A sexual act;</li> <li>(2) Sexual contact; or</li> <li>(3) Sexual exploitation of a minor pursuant to section 282.</li> </ol> <p>Violation of this subsection is a Class C crime.</p> <p>2. As used in this section, the term “computer” has the same meaning as in section 431, subsection 2.</p> <p>3. Repealed. Laws 2003, c. 711, § B-11.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 260 (West 2011).</p> <p><u>Unlawful sexual touching</u></p> <p>1. Unlawful sexual touching. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:</p> <ol style="list-style-type: none"> <li>A. The other person has not expressly or impliedly acquiesced in the sexual touching. Violation of this paragraph is a Class D crime;</li> <li>B. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. Violation of this paragraph is a Class D crime;</li> <li>C. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. Violation of this paragraph is a Class D crime;</li> <li>D. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime;</li> <li>E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime;</li> </ol>
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Definitions (Maine)	ME. REV. STAT. ANN. tit. 17-A, § 251 (West 2011). <u>Definitions and general provisions</u>

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<p>Definitions Cont' (Maine)</p>	<p>1. In this chapter the following definitions apply.</p> <p>A. "Spouse" means a person legally married to the actor, but does not include a legally married person living apart from the actor under a defacto separation.</p> <p>B. Repealed. Laws 1989, c. 401, § A, 2.</p> <p>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 the genitals of the other;</p> <p>(2) Any act between a person 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>(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.</p> <p>A sexual act may be proved without allegation or proof of penetration.</p> <p>D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.</p> <p>E. "Compulsion" means the use of physical force, a threat to use physical force or a combination thereof that makes a person unable to physically repel the actor or produces in that person a reasonable fear that death, serious bodily injury or kidnapping might be imminently inflicted upon that person or another human being.</p> <p>"Compulsion" as defined in this paragraph places no duty upon the victim to resist the actor.</p> <p>F. "Safe children zone" means on or within 1,000 feet of the real property comprising a public or private elementary or secondary school or on or within 1,000 feet of the real property comprising a day care center licensed pursuant to Title 22, section 8301-A.</p> <p>G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 281 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.</p> <p>1. "Disseminate" means to manufacture, publish, send, promulgate, distribute, exhibit, issue, furnish, sell or transfer or to offer or agree to do any of these acts.</p>
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Definitions Cont' (Maine)	<p>2. "Minor" means a person who has not attained 18 years of age.</p> <p>3. "Photograph" means to make, capture, generate or save a print, negative, slide, motion picture, computer data file, videotape or other mechanically, electronically or chemically reproduced visual image or material.</p> <p>4. "Sexually explicit conduct" means any of the following acts:</p> <p>A. A sexual act;</p> <p>B. Bestiality;</p> <p>C. Masturbation;</p> <p>D. Sadomasochistic abuse for the purpose of sexual stimulation;</p> <p>E. Lewd exhibition of the genitals, anus or pubic area of a person. An exhibition is considered lewd if the exhibition is designed for the purpose of eliciting or attempting to elicit a sexual response in the intended viewer; or</p> <p>F. Conduct that creates the appearance of the acts in paragraphs A to D and also exhibits any uncovered or covered portions of the genitals, anus or pubic area.</p>
Defenses (Maine)	<p>ME. REV. STAT. ANN. tit. 17-A, § 254 (West 2011).</p> <p><u>Sexual abuse of minors</u></p> <p>2. It is a defense to a prosecution under subsection 1, paragraphs A, A-1, A-2 and F, that the actor reasonably believed the other person is at least 16 years of age.</p>
Penalty (Maine)	<p>ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2011).</p> <p><u>Gross sexual assault</u></p> <p>6. In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the 2nd step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor.</p> <p>A. When the sentencing class for a prior conviction under this section is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.</p> <p>B. When the sentencing class for a prior conviction under this section is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.</p> <p>C. When the sentencing class for a prior conviction under this section is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.</p>

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<p>Penalty Cont' (Maine)</p>	<p>In arriving at the final sentence as the 3rd step in the sentencing process, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.</p> <p>7. If the State pleads and proves that a violation of subsection 1 or subsection 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 282 (West 2011). <u>Sexual exploitation of minor</u></p> <p>2. The following mandatory minimum terms of imprisonment apply to sexual exploitation of a minor.</p> <p>A. A court shall impose upon a person convicted under subsection 1, paragraph A or D a sentencing alternative involving a term of imprisonment of at least 5 years.</p> <p>B. A court shall impose upon a person convicted under subsection 1, paragraph B or E a sentencing alternative involving a term of imprisonment of at least 10 years.</p> <p>The court may not suspend a minimum term of imprisonment imposed under this section unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor and the history and character of the defendant and may only suspend the minimum term if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence. Section 9-A governs the use of prior convictions when determining a sentence.</p> <p>ME. REV. STAT. ANN. tit. 17-A, § 1252 (West 2011). <u>Imprisonment for crimes other than murder</u></p> <p>1. In the case of a person convicted of a crime other than murder, the court may sentence to imprisonment for a definite term as provided for in this section, unless the statute which the person is convicted of violating expressly provides that the fine and imprisonment penalties it authorizes may not be suspended, in which case the convicted person shall be sentenced to imprisonment and required to pay the fine authorized therein. Except as provided in subsection 7, the place of imprisonment must be as follows.</p> <p>A. For a Class D or Class E crime the court must specify a county jail as the place of imprisonment.</p> <p>B. For a Class A, Class B or Class C crime the court must:</p> <p>(1) Specify a county jail as the place of imprisonment if the term of imprisonment is 9 months or less; or</p> <p>(2) Commit the person to the Department of Corrections if the term of imprisonment is more than 9 months.</p> <p>C. Repealed. Laws 1995, c. 425, § 2.</p>
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<p>Penalty Cont' (Maine)</p>	<p>2. The court shall set the term of imprisonment as follows:</p> <p>A. In the case of a Class A crime, the court shall set a definite period not to exceed 30 years;</p> <p>B. In the case of a Class B crime, the court shall set a definite period not to exceed 10 years;</p> <p>C. In the case of a Class C crime, the court shall set a definite period not to exceed 5 years;</p> <p>D. In the case of a Class D crime, the court shall set a definite period of less than one year; or</p> <p>E. In the case of a Class E crime, the court shall set a definite period not to exceed 6 months.</p> <p>2-A. Repealed. Laws 1977, c. 510, § 76.</p> <p>3. The court may add to the sentence of imprisonment a restitution order as is provided for in chapter 49, section 1204, subsection 2-A, paragraph B. In such cases, it shall be the responsibility of the Department of Corrections to determine whether the order has been complied with and consideration shall be given in the department's administrative decisions concerning the imprisoned person as to whether the order has been complied with.</p> <p>3-A. At the request of or with the consent of a convicted person, a sentence of imprisonment under this chapter in a county jail or a sentence of probation involving imprisonment in a county jail under chapter 49 may be ordered to be served intermittently.</p> <p>4. If the State pleads and proves that a Class B, C, D or E crime was committed with the use of a dangerous weapon then the sentencing class for such crime is one class higher than it would otherwise be. In the case of a Class A crime committed with the use of a dangerous weapon, such use should be given serious consideration by the court in exercising its sentencing discretion. This subsection does not apply to a violation or an attempted violation of section 208, to any other offenses to which use of a dangerous weapon serves as an element or to any offense for which the sentencing class is otherwise increased because the actor or an accomplice to that actor's or accomplice's knowledge is armed with a firearm or other dangerous weapon.</p> <p>4-A. If the State pleads and proves that, at the time any crime, excluding murder, under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C was committed, the defendant had 2 or more prior convictions under chapter 9, 11, 13 or 27; section 402-A, subsection 1, paragraph A; or section 752-A or 752-C or for engaging in substantially similar conduct in another jurisdiction, the sentencing class for the crime is one class higher than it would otherwise be. In the case of a Class A crime, the sentencing class is not increased, but the prior record must be given serious consideration by the court when imposing a sentence. Section 9-A governs the use of prior convictions when determining a sentence, except that, for the purposes of this subsection, for violations under chapter 11, the dates of prior convictions may have occurred at any time. This subsection does not apply to section 210-A if the prior convictions have already served to enhance the sentencing class under section 210-A, subsection 1, paragraph C or any other offense in which prior convictions have already served to enhance the sentencing class.</p> <p>4-B. If the State pleads and proves that the defendant is a repeat sexual assault offender, the court, notwithstanding subsection 2, may set a definite period of imprisonment for any term of years.</p> <p>A. As used in this section, "repeat sexual assault offender" means a person who commits a new gross sexual assault after having been</p>
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<p>Penalty Cont' (Maine)</p>	<p>convicted previously and sentenced for any of the following:</p> <ul style="list-style-type: none"> <li>(1) Gross sexual assault, formerly denominated as gross sexual misconduct;</li> <li>(2) Rape;</li> <li>(3) Attempted murder accompanied by sexual assault;</li> <li>(4) Murder accompanied by sexual assault; or</li> <li>(5) Conduct substantially similar to a crime listed in subparagraph (1), (2), (3) or (4) that is a crime under the laws of another jurisdiction.</li> </ul> <p>The date of sentencing is the date of the oral pronouncement of the sentence by the trial court, even if an appeal is taken.</p> <p>B. "Accompanied by sexual assault" as used with respect to attempted murder, murder and crimes involving substantially similar conduct in another jurisdiction is satisfied if it was definitionally an element of the crime or was pleaded and proved beyond a reasonable doubt at trial by the State or another jurisdiction.</p> <p>4-E. If the State pleads and proves that a crime under section 253 was committed against a person who had not yet attained 12 years of age, the court, notwithstanding subsection 2, shall impose a definite term of imprisonment for any term of years. In determining the basic term of imprisonment as the first step in the sentencing process, the court shall select a term of at least 20 years.</p> <p>5. Notwithstanding any other provision of this code, except as provided in this subsection, if the State pleads and proves that a Class A, B or C crime was committed with the use of a firearm against a person, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class for the crime is Class A, the minimum term of imprisonment is 4 years; when the sentencing class for the crime is Class B, the minimum term of imprisonment is 2 years; and when the sentencing class for the crime is Class C, the minimum term of imprisonment is one year. For purposes of this subsection, the applicable sentencing class is determined in accordance with subsection 4. This subsection does not apply if the State pleads and proves criminal threatening or attempted criminal threatening, as defined in section 209, or terrorizing or attempted terrorizing, as defined in section 210, subsection 1, paragraph A.</p> <p>5-A. Notwithstanding any other provision of this Code, for a person convicted of violating section 1105-A, 1105-B, 1105-C or 1105-D:</p> <p>A. Except as otherwise provided in paragraphs B and C, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 4 years; when the sentencing class is Class B, the minimum term of imprisonment is 2 years; and, with the exception of a conviction under section 1105-A, 1105-B, 1105-C or 1105-D when the drug that is the basis for the charge is marijuana, when the sentencing class is Class C, the minimum term of imprisonment is one year;</p> <p>B. The court may impose a sentence other than a minimum unsuspended term of imprisonment set forth in paragraph A, if:</p> <ul style="list-style-type: none"> <li>(1) The court finds by substantial evidence that: <ul style="list-style-type: none"> <li>(a) Imposition of a minimum unsuspended term of imprisonment under paragraph A will result in substantial injustice to the defendant. In making this determination, the court shall consider, among other considerations, whether the defendant did not know and reasonably should not have known that the victim was less than 18 years of age;</li> <li>(b) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not have an adverse effect on public safety; and</li> </ul> </li> </ul>
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<p>Penalty Cont' (Maine)</p>	<p>(c) Failure to impose a minimum unsuspended term of imprisonment under paragraph A will not appreciably impair the effect of paragraph A in deterring others from violating section 1105-A, 1105-B, 1105-C or 1105-D; and</p> <p>(2) The court finds that:</p> <p>(a) Deleted. Laws 2003, c. 232, § 1.</p> <p>(b) The defendant is an appropriate candidate for an intensive supervision program, but would be ineligible to participate under a sentence imposed under paragraph A; or</p> <p>(c) The defendant's background, attitude and prospects for rehabilitation and the nature of the victim and the offense indicate that imposition of a sentence under paragraph A would frustrate the general purposes of sentencing set forth in section 1151.</p> <p>If the court imposes a sentence under this paragraph, the court shall state in writing its reasons for its findings and for imposing a sentence under this paragraph rather than under paragraph A; and</p> <p>C. If the court imposes a sentence under paragraph B, the minimum sentence of imprisonment, which may not be suspended, is as follows: When the sentencing class is Class A, the minimum term of imprisonment is 9 months; when the sentencing is Class B, the minimum term of imprisonment is 6 months; and, with the exception of trafficking or furnishing marijuana under section 1105-A or 1105-C, when the sentencing class is Class C, the minimum term of imprisonment is 3 months.</p> <p>5-B. In using a sentencing alternative involving a term of imprisonment for a person convicted of the attempted murder, manslaughter, elevated aggravated assault or aggravated assault of a child who had not in fact attained the age of 6 years at the time the crime was committed, a court shall assign special weight to this objective fact in determining the basic term of imprisonment as the first step in the sentencing process. The court shall assign special weight to any subjective victim impact in determining the maximum period of incarceration in the 2nd step in the sentencing process. The court may not suspend that portion of the maximum term of imprisonment based on objective or subjective victim impact in arriving at the final sentence as the 3rd step in the sentencing process. Nothing in this subsection may be construed to restrict a court in setting a sentence from considering the age of the victim in other circumstances when relevant.</p> <p>5-D. In using a sentencing alternative involving a term of imprisonment for a person convicted of a Class C or higher crime, the victim of which was at the time of the commission of the crime in fact being stalked by that person, a court shall assign special weight to this objective fact in determining the basic sentence in the first step of the sentencing process. The court shall assign special weight to any subjective victim impact caused by the stalking in determining the maximum period of incarceration in the 2nd step in the sentencing process.</p> <p>6. Repealed. Laws 1989, c. 693, § 6.</p> <p>7. If a sentence to a term of imprisonment in a county jail is consecutive to or is to be followed by a sentence to a term of imprisonment in the custody of the Department of Corrections, the court imposing either sentence may order that both be served in the custody of the Department of Corrections. If a court imposes consecutive terms of imprisonment for Class D or Class E crimes and the aggregate length of the terms imposed is one year or more, the court may order that they be served in the custody of the Department of Corrections.</p> <p>8. Repealed.</p>
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	9. Subsections in this section that make the sentencing class for a crime one class higher than it would otherwise be when pled and proved may be applied successively if the subsections to be applied successively contain different class enhancement factors.
<b>Maryland</b>	
Statute ( <i>Maryland</i> )	<p>MD. CODE ANN., CRIM. LAW § 3-303 (West 2011).  <u>Rape in the first degree</u></p> <p>Prohibited--In general            (a) A person may not:            (1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and            (2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;            (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;            (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;            (iv) commit the crime while aided and abetted by another; or            (v) commit the crime in connection with a burglary in the first, second, or third degree.</p> <p>Prohibited--Child kidnapping            (b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.</p> <p>Prohibited--Children under age 13            (c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-304 (West 2011).  <u>Rape in the second degree</u></p> <p>Prohibited--In general            (a) A person may not engage in vaginal intercourse with another:            (1) by force, or the threat of force, without the consent of the other;            (2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person</p>

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<p>Statute Cont' (Maryland)</p>	<p>performing the act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual; or  (3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.  Prohibited--Children under age 13  (b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-305 (West 2011).  <u>Sexual offense in the first degree</u></p> <p>Prohibited--In general  (a) A person may not:  (1) engage in a sexual act with another by force, or the threat of force, without the consent of the other; and  (2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;  (ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;  (iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;  (iv) commit the crime while aided and abetted by another; or  (v) commit the crime in connection with a burglary in the first, second, or third degree.  Prohibited--Child kidnapping  (b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.  Prohibited--Children under age 13  (c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-306 (West 2011).  <u>Sexual offense in the second degree</u></p> <p>Prohibited--In general  (a) A person may not engage in a sexual act with another:  (1) by force, or the threat of force, without the consent of the other;  (2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person</p>
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<p>Statute Cont' (Maryland)</p>	<p>MD. CODE ANN., CRIM. LAW § 3-311 (West 2011). <u>Attempted sexual offense in the first degree</u></p> <p>Prohibited (a) A person may not attempt to commit a sexual offense in the first degree.</p> <p>MD. CODE ANN., CRIM. LAW § 3-312 (West 2011). <u>Attempted sexual offense in the second degree</u></p> <p>Prohibited (a) A person may not attempt to commit a sexual offense in the second degree.</p> <p>MD. CODE ANN., CRIM. LAW § 3-314 (West 2011). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child</u></p> <p>Definitions (a)(1) In this section the following words have the meanings indicated. (2)(i) “Correctional employee” means a: 1. correctional officer, as defined in § 8-201 of the Correctional Services Article; or 2. managing official or deputy managing official of a correctional facility. (ii) “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. Prohibited--Correctional employee with inmate (b)(1) This subsection applies to: (i) a correctional employee; (ii) any other employee of the Department of Public Safety and Correctional Services or a correctional facility; (iii) an employee of a contractor providing goods or services to the Department of Public Safety and Correctional Services or a correctional facility; and (iv) any other individual working in a correctional facility, whether on a paid or volunteer basis.</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Maryland)</p>	<p>(2) A person described in paragraph (1) of this subsection may not engage in sexual contact, vaginal intercourse, or a sexual act with an inmate. Prohibited--Juvenile Services employee with confined child</p> <p>(c) A person may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual confined in a child care institution licensed by the Department, a detention center for juveniles, or a facility for juveniles listed in § 9-226(b) of the Human Services Article.</p> <p>MD. CODE ANN., CRIM. LAW § 3-315 (West 2011). <u>Continuing course of conduct against child</u></p> <p>In general</p> <p>(a) A person may not engage in a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct.</p> <p>Required number of acts</p> <p>(c) In determining whether the required number of acts occurred in violation of this section, the trier of fact:</p> <p>(1) must determine only that the required number of acts occurred; and</p> <p>(2) need not determine which acts constitute the required number of acts.</p> <p>Merger of offenses</p> <p>(d)(1) A person may not be charged with a violation of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle involving the same victim in the same proceeding as a violation of this section unless the other violation charged occurred outside the time period charged under this section.</p> <p>(2) A person may not be charged with a violation of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle involving the same victim unless the violation charged occurred outside the time period charged under this section.</p> <p>MD. CODE ANN., CRIM. LAW § 3-324 (West 2011). <u>Sexual solicitation of minors</u></p> <p>Definitions</p> <p>(a) In this section, “solicit” means to command, authorize, urge, entice, request, or advise a person by any means, including:</p> <p>(1) in person;</p> <p>(2) through an agent or agency;</p>
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<p>Statute Cont' (Maryland)</p>	<p>(3) over the telephone; (4) through any print medium; (5) by mail; (6) by computer or Internet; or (7) by any other electronic means. Prohibited (b) A person may not, with the intent to commit a violation of § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article. Jurisdiction (c) A violation of this section is considered to be committed in the State for purposes of determining jurisdiction if the solicitation: (1) originated in the State; or (2) is received in the State.  MD. CODE ANN., CRIM. LAW § 3-602 (West 2011). <u>Sexual abuse of a minor</u>  www.gm Definitions (a)(1) In this section the following words have the meanings indicated. (2) “Family member” has the meaning stated in § 3-601 of this subtitle. (3) “Household member” has the meaning stated in § 3-601 of this subtitle. (4)(i) “Sexual abuse” means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not. (ii) “Sexual abuse” includes: 1. incest; 2. rape; 3. sexual offense in any degree; 4. sodomy; and 5. unnatural or perverted sexual practices. Prohibited (b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not</p>
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	<p>cause sexual abuse to the minor.</p> <p>(2) A household member or family member may not cause sexual abuse to a minor.</p>
<p>Age of Consent ♦ (Maryland)</p>	<p>16</p>
<p>Definitions (Maryland)</p>	<p>MD. CODE ANN., CRIM. LAW § 3-301 (West 2008). <u>Definitions</u></p> <p>In general</p> <p>(a) In this subtitle the following words have the meanings indicated.</p> <p>Mentally defective individual</p> <p>(b) “Mentally defective individual” means an individual who suffers from mental retardation or a mental disorder, either of which temporarily or permanently renders the individual substantially incapable of:</p> <p>(1) appraising the nature of the individual's conduct;</p> <p>(2) resisting vaginal intercourse, a sexual act, or sexual contact; or</p> <p>(3) communicating unwillingness to submit to vaginal intercourse, a sexual act, or sexual contact.</p> <p>Mentally incapacitated individual</p> <p>(c) “Mentally incapacitated individual” means an individual who, because of the influence of a drug, narcotic, or intoxicating substance, or because of an act committed on the individual without the individual's consent or awareness, is rendered substantially incapable of:</p> <p>(1) appraising the nature of the individual's conduct; or</p> <p>(2) resisting vaginal intercourse, a sexual act, or sexual contact.</p> <p>Physically helpless individual</p> <p>(d) “Physically helpless individual” means an individual who:</p> <p>(1) is unconscious; or</p> <p>(2)(i) does not consent to vaginal intercourse, a sexual act, or sexual contact; and</p> <p>(ii) is physically unable to resist, or communicate unwillingness to submit to, vaginal intercourse, a sexual act, or sexual contact.</p> <p>Sexual act</p> <p>(e)(1) “Sexual act” means any of the following acts, regardless of whether semen is emitted:</p> <p>(i) analingus;</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Definitions Cont' (Maryland)</p>	<p>(ii) cunnilingus; (iii) fellatio; (iv) anal intercourse, including penetration, however slight, of the anus; or (v) an act: 1. in which an object penetrates, however slightly, into another individual's genital opening or anus; and 2. that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party. (2) "Sexual act" does not include: (i) vaginal intercourse; or (ii) an act in which an object penetrates an individual's genital opening or anus for an accepted medical purpose. Sexual contact (f)(1) "Sexual contact", as used in §§ 3-307, 3-308, and 3-314 of this subtitle, means an intentional touching of the victim's or actor's genital, anal, or other intimate area for sexual arousal or gratification, or for the abuse of either party. (2) "Sexual contact" includes an act: (i) in which a part of an individual's body, except the penis, mouth, or tongue, penetrates, however slightly, into another individual's genital opening or anus; and (ii) that can reasonably be construed to be for sexual arousal or gratification, or for the abuse of either party. (3) "Sexual contact" does not include: (i) a common expression of familial or friendly affection; or (ii) an act for an accepted medical purpose. Vaginal intercourse (g)(1) "Vaginal intercourse" means genital copulation, whether or not semen is emitted. (2) "Vaginal intercourse" includes penetration, however slight, of the vagina.  MD. CODE ANN., CRIM. LAW § 3-314 (West 2011). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child</u>  Definitions (a)(1) In this section the following words have the meanings indicated. (2)(i) "Correctional employee" means a: 1. correctional officer, as defined in § 8-201 of the Correctional Services Article; or 2. managing official or deputy managing official of a correctional facility.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (Maryland)</p>	<p>(ii) "Correctional employee" includes a sheriff, warden, or other official who is appointed or employed to supervise a correctional facility.</p> <p>(3)(i) "Inmate" has the meaning stated in § 1-101 of this article.</p> <p>(ii) "Inmate" includes an individual confined in a community adult rehabilitation center.</p> <p>MD. CODE ANN., CRIM. LAW § 3-324 (West 2011). <u>Sexual solicitation of minors</u></p> <p>Definitions</p> <p>(a) In this section, "solicit" means to command, authorize, urge, entice, request, or advise a person by any means, including:</p> <ol style="list-style-type: none"> <li>(1) in person;</li> <li>(2) through an agent or agency;</li> <li>(3) over the telephone;</li> <li>(4) through any print medium;</li> <li>(5) by mail;</li> <li>(6) by computer or Internet; or</li> <li>(7) by any other electronic means.</li> </ol> <p>MD. CODE ANN., CRIM. LAW § 3-602 (West 2011). <u>Sexual abuse of a minor</u></p> <p>Definitions</p> <p>(a)(1) In this section the following words have the meanings indicated.</p> <p>(2) "Family member" has the meaning stated in § 3-601 of this subtitle.</p> <p>(3) "Household member" has the meaning stated in § 3-601 of this subtitle.</p> <p>(4)(i) "Sexual abuse" means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.</p> <p>(ii) "Sexual abuse" includes:</p> <ol style="list-style-type: none"> <li>1. incest;</li> <li>2. rape;</li> <li>3. sexual offense in any degree;</li> <li>4. sodomy; and</li> <li>5. unnatural or perverted sexual practices.</li> </ol>
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## NIC/WCL Project on Addressing Prison Rape

Definitions Cont' (Maryland)	<p>MD. CODE ANN., CRIM. LAW § 3-801 (West 2008).  <u>Juvenile Causes—Children in need of assistance</u></p> <p>(x)(1) "Sexual abuse" means an act that involves sexual molestation or sexual exploitation of a child by:</p> <ul style="list-style-type: none"> <li>(i) A parent or other individual who has permanent or temporary care or custody or responsibility for supervision of the child; or</li> <li>(ii) A household or family member.</li> </ul> <p>(2) "Sexual abuse" includes:</p> <ul style="list-style-type: none"> <li>(i) Incest;</li> <li>(ii) Rape;</li> <li>(iii) Sexual offense in any degree;</li> <li>(iv) Sodomy; and</li> <li>(v) Unnatural or perverted sexual practices</li> </ul>
Defenses (Maryland)	None.
Penalty (Maryland)	<p>MD. CODE ANN., CRIM. LAW § 3-303 (West 2011).  <u>Rape in the first degree</u></p> <p>Penalty</p> <p>(d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life.</p> <p>(2) A person who violates subsection (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.</p> <p>(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-305 of this subtitle.</p> <p>(4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.</p>

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<p>Penalty Cont' (Maryland)</p>	<p>(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years. (iii) The person is not eligible for parole during the mandatory minimum sentence. (iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.</p> <p>MD. CODE ANN., CRIM. LAW § 3-304 (West 2011). <u>Rape in the second degree</u></p> <p>Penalty (c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment not exceeding 20 years. (2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment for not less than 5 years and not exceeding 20 years. (ii) A court may not suspend any part of the mandatory minimum sentence of 5 years. (iii) The person is not eligible for parole during the mandatory minimum sentence. (iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum shall not apply.</p> <p>Required notice (d) If the State intends to seek a sentence of imprisonment for not less than 5 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.</p> <p>MD. CODE ANN., CRIM. LAW § 3-305 (West 2011). <u>Sexual offense in the first degree</u></p> <p>Penalty (d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life. (2) A person who violates subsection (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole. (3) A person who violates subsection (a) or (b) of this section is guilty of the felony of sexual offense in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-303 of this subtitle. (4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of</p>
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<p>Penalty Cont' (Maryland)</p>	<p>the felony of sexual offense in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.</p> <p>(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.</p> <p>(iii) The person is not eligible for parole during the mandatory minimum sentence.</p> <p>(iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.</p> <p>Required notice</p> <p>(e) If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.</p> <p>MD. CODE ANN., CRIM. LAW § 3-306 (West 2011). <u>Sexual offense in the second degree</u></p> <p>Penalty</p> <p>(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment not exceeding 20 years.</p> <p>(2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment for not less than 5 years and not exceeding 20 years.</p> <p>(ii) A court may not suspend any part of the mandatory minimum sentence of 5 years.</p> <p>(iii) The person is not eligible for parole during the mandatory minimum sentence.</p> <p>(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum shall not apply.</p> <p>Required notice</p> <p>(d) If the State intends to seek a sentence of imprisonment for not less than 5 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.</p> <p>MD. CODE ANN., CRIM. LAW § 3-307 (West 2011). <u>Sexual offense in the third degree</u></p> <p>Penalty</p> <p>(b) A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment</p>
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<p>Penalty Cont' (Maryland)</p>	<p>not exceeding 10 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-308 (West 2011). <u>Sexual offense in the fourth degree</u></p> <p>Penalty (d)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the misdemeanor of sexual offense in the fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both. (2)(i) On conviction of a violation of this section, a person who has been convicted on a prior occasion not arising from the same incident of a violation of §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both. (ii) If the State intends to proceed against a person under subparagraph (i) of this paragraph, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.</p> <p>MD. CODE ANN., CRIM. LAW § 3-309 (West 2011). <u>Attempted rape in the first degree</u></p> <p>Penalty (b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding life.</p> <p>MD. CODE ANN., CRIM. LAW § 3-310 (West 2011). <u>Attempted rape in the second degree</u></p> <p>Penalty (b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-311 (West 2011). <u>Attempted sexual offense in the first degree</u></p> <p>Penalty</p>
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<p>Penalty Cont' (Maryland)</p>	<p>(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding life.</p> <p>MD. CODE ANN., CRIM. LAW § 3-312 (West 2011). <u>Attempted sexual offense in the second degree</u></p> <p>Penalty</p> <p>(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.</p> <p>MD. CODE ANN., CRIM. LAW § 3-314 (West 2011). <u>Sexual conduct between correctional or juvenile justice employee and inmate or confined child</u></p> <p>Penalty</p> <p>(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.</p> <p>Sentencing</p> <p>(e) A sentence imposed for violation of this section may be separate from and consecutive to or concurrent with a sentence for another crime under §§ 3-303 through 3-312 of this subtitle.</p> <p>MD. CODE ANN., CRIM. LAW § 3-315 (West 2011). <u>Continuing course of conduct against child</u></p> <p>Penalty</p> <p>(b)(1) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 30 years. (2) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence under § 3-602 of this title.</p> <p>MD. CODE ANN., CRIM. LAW § 3-324 (West 2011). <u>Sexual solicitation of minors</u></p> <p>Penalty</p> <p>(d) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both.</p>
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Penalty Cont' (Maryland)	<p>MD. CODE ANN., CRIM. LAW § 3-602 (West 2011). <u>Sexual abuse of a minor</u></p> <p>Penalty (c) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.</p> <p>Sentencing (d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for: (1) any crime based on the act establishing the violation of this section; or (2) a violation of § 3-601 of this subtitle involving an act of abuse separate from sexual abuse under this section.</p>
<b>Massachusetts</b>	
Statute (Massachusetts)	<p>MASS. ANN. LAWS ch. 265, § 13B (West 2011). <u>Indecent assault and battery on child under age of 14; penalties</u></p> <p>In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.</p> <p>MASS. ANN. LAWS ch. 265, § 13B 1/2 (West 2011). <u>Commission of indecent assault and battery on a child under the age of 14 during commission of certain offenses or by mandated reporters; penalties</u></p> <p>Whoever commits an indecent assault and battery on a child under the age of 14 and: (a) the indecent assault and battery was committed during the commission or attempted commission of the following offenses:-- (1) armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous weapon or assault with a dangerous weapon, as set forth in sections 15A and 15B of said</p>

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<p>Statute Cont' (Massachusetts)</p>	<p>chapter 265; (10) home invasion as set forth in section 18C of said chapter 265; or (11) posing or exhibiting child in state of nudity or sexual conduct as set forth in section 29A of chapter 272; or</p> <p>(b) at the time of commission of said indecent assault and battery, the defendant was a mandated reporter as is defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.</p> <p>MASS. ANN. LAWS ch. 265, § 13L (West 2011). <u>Wanton or reckless behavior creating a risk of serious bodily injury or sexual abuse to a child; duty to act; penalty</u></p> <p>For the purposes of this section, the following words shall have the following meanings:--  “Child”, any person under 18 years of age.  “Serious bodily injury”, bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.  “Sexual abuse”, an indecent assault and battery on a child under 14 under section 13B of chapter 265; indecent assault and battery on a person age 14 or over under section 13H of said chapter 265; rape under section 22 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; assault with intent to commit rape under section 24 of said chapter 265; and assault of a child with intent to commit rape under section 24B of said chapter 265.  Whoever wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act shall be punished by imprisonment in the house of correction for not more than 2 1/2 years.  For the purposes of this section, such wanton or reckless behavior occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that his acts, or omissions where there is a duty to act, would result in serious bodily injury or sexual abuse to a child. The risk must be of such nature and degree that disregard of the risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.</p> <p>MASS. ANN. LAWS ch. 265, § 22 (West 2011). <u>Rape, generally; weapons; punishment; eligibility for furlough, education, training or employment programs</u></p> <p>(a) Whoever has sexual intercourse or unnatural sexual intercourse with a person, and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury and if either such sexual intercourse or unnatural sexual intercourse</p>
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<p>Statute Cont' (Massachusetts)</p>	<p>results in or is committed with acts resulting in serious bodily injury, or is committed by a joint enterprise, or is committed during the commission or attempted commission of an offense defined in section fifteen A, fifteen B, seventeen, nineteen or twenty-six of this chapter, section fourteen, fifteen, sixteen, seventeen or eighteen of chapter two hundred and sixty-six or section ten of chapter two hundred and sixty-nine shall be punished by imprisonment in the state prison for life or for any term of years.</p> <p>(b) Whoever has sexual intercourse or unnatural sexual intercourse with a person and compels such person to submit by force and against his will, or compels such person to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for not more than twenty years; and whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term or years.</p> <p>Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine-gun or assault weapon, shall be punished by imprisonment in the state prison for not less than ten years. Whoever commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.</p> <p>For the purposes of prosecution, the offense described in subsection (b) shall be a lesser included offense to that described in subsection (a).</p> <p>MASS. ANN. LAWS ch. 265, § 22A (West 2011).</p> <p><u>Rape of Child; punishment</u></p> <p>Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years.</p> <p>MASS. ANN. LAWS ch. 265, § 22B (West 2011).</p> <p><u>Rape of a child during commission of certain offenses or by use of force; penalties</u></p> <p>Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury and:</p> <p>(a) the sexual intercourse or unnatural sexual intercourse is committed during the commission or attempted commission of any of the following offenses: (1) armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous weapon or assault with a dangerous weapon as set forth in sections</p>
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<p>Statute Cont' (Massachusetts)</p>	<p>15A and 15B of said chapter 265; (10) home invasion as set forth in section 18C of said chapter 265; or (11) posing or exhibiting child in state of nudity or sexual conduct as set forth in section 29A of chapter 272;</p> <p>(b) the sexual intercourse or unnatural sexual intercourse results in, or is committed by means of an act or acts resulting in, substantial bodily injury as defined in section 13J;</p> <p>(c) the sexual intercourse or unnatural sexual intercourse is committed while the victim is tied, bound or gagged;</p> <p>(d) the sexual intercourse or unnatural sexual intercourse is committed after the defendant administered, or caused to be administered, alcohol or a controlled substance by injection, inhalation, ingestion, or any other means to the victim without the victim's consent;</p> <p>(e) the sexual intercourse or unnatural sexual intercourse is committed by a joint enterprise; or</p> <p>(f) the sexual intercourse or unnatural sexual intercourse was committed in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known he was a carrier, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.</p> <p>MASS. ANN. LAWS ch. 265, § 22C (West 2011). <u>Rape of a child through use of force by certain previously convicted offenders; penalties</u></p> <p>Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14 as set forth in section 13B; aggravated indecent assault and battery on a child under 14 as set forth in section 13B 1/2 ; indecent assault and battery on a person 14 or older as set forth in section 13H; assault of a child with intent to commit rape as set forth in section 24B; rape of a child with force as set forth in section 22A; aggravated rape of a child with force as set forth in section 22B; rape and abuse of a child as set forth in section 23; aggravated rape and abuse of a child as set forth in section 23A; rape as set forth in section 22; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years.</p> <p>MASS. ANN. LAWS ch. 265, §23 (West 2011). <u>Rape and abuse of child</u></p> <p>Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age, shall be punished by imprisonment in the state prison for life or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.</p>
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<p>Statute Cont' (Massachusetts)</p>	<p>more than \$1,000 or by both such fine and imprisonment.</p> <p>MASS. ANN. LAWS ch. 272, § 29A (West 2011). <u>Posing or exhibiting child in state of nudity or sexual conduct; punishment</u></p> <p>(a) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, and with lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.</p> <p>(b) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.</p> <p>(c) In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.</p> <p>(d) For the purposes of this section, the determination whether the person in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such person, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, or by expert medical testimony as to the age of the person based upon the person's physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.</p> <p>MASS. ANN. LAWS ch. 272, § 29B (West 2011). <u>Dissemination of visual material of child in state of nudity or sexual conduct; punishment</u></p> <p>(a) Whoever, with lascivious intent, disseminates any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity involving the use of a child who is under eighteen years of age, knowing the contents of such visual material or having sufficient facts in his possession to have knowledge of the contents thereof, or has in his possession any such visual material</p>
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<p>Statute Cont' (Massachusetts)</p>	<p>of the child and the sex organs of another person or animal;            (iii) actually or by simulation engaged in any act of masturbation;            (iv) actually or by simulation portrayed as being the object of, or otherwise engaged in, any act of lewd fondling, touching, or caressing involving another person or animal;            (v) actually or by simulation engaged in any act of excretion or urination within a sexual context;            (vi) actually or by simulation portrayed or depicted as bound, fettered, or subject to sadistic, masochistic, or sadomasochistic abuse in any sexual context; or            (vii) depicted or portrayed in any pose, posture or setting involving a lewd exhibition of the unclothed genitals, pubic area, buttocks or, if such person is female, a fully or partially developed breast of the child; with knowledge of the nature or content thereof shall be punished by imprisonment in the state prison for not more than five years or in a jail or house of correction for not more than two and one-half years or by a fine of not less than \$1,000 nor more than \$10,000, or by both such fine and imprisonment for the first offense, not less than five years in a state prison or by a fine of not less than \$5,000 nor more than \$20,000, or by both such fine and imprisonment for the second offense, not less than 10 years in a state prison or by a fine of not less than \$10,000 nor more than \$30,000, or by both such fine and imprisonment for the third and subsequent offenses.</p> <p>A prosecution commenced under this section shall not be continued without a finding nor placed on file.</p> <p>The provisions of this section shall not apply to a law enforcement officer, licensed physician, licensed psychologist, attorney or officer of the court who is in possession of such materials in the lawful performance of his official duty. Nor shall the provisions of this section apply to an employee of a bona fide enterprise, the purpose of which enterprise is to filter or otherwise restrict access to such materials, who possesses examples of computer depictions of such material for the purposes of furthering the legitimate goals of such enterprise.</p> <p>MASS. ANN. LAWS ch. 265, § 30D (West 2011).  <u>Dissemination of visual material of child in state of nudity or sexual conduct; injunction; jurisdiction</u></p> <p>The superior court shall also have jurisdiction to enjoin the dissemination of any visual material that contains a representation or reproduction of any posture or exhibition in a state of nudity or of any act that depicts, describes, or represents sexual conduct participated or engaged in by a child who is under eighteen years of age. The procedures for issuance of such injunction shall be the same as those provided in section thirty, and are in addition to other criminal proceedings initiated under any provisions of the General Laws, and not a condition precedent thereto.</p> <p>MASS. ANN. LAWS ch. 272, § 35A (West 2011).  <u>Unnatural and lascivious acts with child under 16</u></p>
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	Whoever commits any unnatural and lascivious act with a child under the age of sixteen shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years, and whoever over the age of eighteen commits a second or subsequent such offence shall be sentenced to imprisonment in the state prison for a term of not less than five years.
Age of Consent ♦ (Massachusetts)	16
Definitions (Massachusetts)	<p>MASS. ANN. LAWS ch. 272, § 31 (West 2011).  <u>Definitions</u></p> <p>As used in sections twenty-eight, twenty-eight C, twenty-eight D, twenty-eight E, twenty-nine, twenty-nine A, twenty-nine B, thirty and thirty D, the following words shall, unless the context requires otherwise, have the following meanings:--</p> <p>“Disseminate”, to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit or display.</p> <p>“Harmful to minors”, matter is harmful to minors if it is obscene or, if taken as a whole, it (1) describes or represents nudity, sexual conduct or sexual excitement, so as to appeal predominantly to the prurient interest of minors; (2) is patently contrary to prevailing standards of adults in the county where the offense was committed as to suitable material for such minors; and (3) lacks serious literary, artistic, political or scientific value for minors.</p> <p>“Knowing”, a general awareness of the character of the matter.</p> <p>“Lascivious intent”, a state of mind in which the sexual gratification or arousal of any person is an objective. For the purposes of prosecution under this chapter, proof of lascivious intent may include, but shall not be limited to, the following:</p> <p>(1) whether the circumstances include sexual behavior, sexual relations, infamous conduct of a lustful or obscene nature, deviation from accepted customs and manners, or sexually oriented displays;</p> <p>(2) whether the focal point of a visual depiction is the child's genitalia, pubic area, or breast area of a female child;</p> <p>(3) whether the setting or pose of a visual depiction is generally associated with sexual activity;</p> <p>(4) whether the child is depicted in an unnatural pose or inappropriate attire, considering the child's age;</p> <p>(5) whether the depiction denotes sexual suggestiveness or a willingness to engage in sexual activity;</p> <p>(6) whether the depiction is of a child engaging in or being engaged in sexual conduct, including, but not limited to, sexual intercourse,</p>

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Definitions Cont' (Massachusetts)	<p>unnatural sexual intercourse, bestiality, masturbation, sado-masochistic behavior, or lewd exhibition of the genitals.</p> <p>“Minor”, a person under eighteen years of age.</p> <p>“Nudity”, uncovered or less than opaquely covered human genitals, pubic areas, the human female breast below a point immediately above the top of the areola, or the covered male genitals in a discernibly turgid state. For purposes of this definition, a female breast is considered uncovered if the nipple or areola only are covered.</p> <p>“Matter”, any handwritten or printed material, visual representation, live performance or sound recording including but not limited to, books, magazines, motion picture films, pamphlets, phonographic records, pictures, photographs, figures, statues, plays, dances.</p> <p>“Performance”, any play, dance, exhibit, or such similar activity performed before one or more persons.</p> <p>“Obscene”, matter is obscene if taken as a whole it</p> <p>(1) appeals to the prurient interest of the average person applying the contemporary standards of the county where the offense was committed;</p> <p>(2) depicts or describes sexual conduct in a patently offensive way; and</p> <p>(3) lacks serious literary, artistic, political or scientific value.</p> <p>“Sexual conduct”, human masturbation, sexual intercourse, actual or simulated, normal or perverted, any lewd exhibitions of the genitals, flagellation or torture in the context of a sexual relationship, any lewd touching of the genitals, pubic areas, or buttocks of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals, and any depiction or representation of excretory functions in the context of a sexual relationship. Sexual intercourse is simulated when it depicts explicit sexual intercourse which gives the appearance of the consummation of sexual intercourse, normal or perverted.</p> <p>“Sexual excitement”, the condition of human male or female genitals or the breasts of the female while in a state of sexual stimulation or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.</p> <p>“Visual material”, any motion picture film, picture, photograph, videotape, book, magazine, pamphlet that contains pictures, photographs or similar visual representations or reproductions, or depiction by computer. Undeveloped photographs, pictures, motion picture films, videotapes and similar visual representations or reproductions may be visual materials notwithstanding that processing, development or similar acts may be required to make the contents thereof apparent.</p>
Defenses (Massachusetts)	None.
Penalty (Massachusetts)	<p>MASS. ANN. LAWS ch. 265, § 13B (West 2011).</p> <p><u>Indecent assault and battery on child under age of 14; penalties</u></p>

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<p>Penalty Cont' (Massachusetts)</p>	<p>MASS. ANN. LAWS ch. 265, § 22A (West 2011). <u>Rape of child; punishment</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.</p> <p>MASS. ANN. LAWS ch. 265, § 22B (West 2011). <u>Rape of a child during commission of certain offenses or by use of force; penalties</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.</p> <p>MASS. ANN. LAWS ch. 265, § 22C (West 2011). <u>Rape of a child through use of force by certain previously convicted offenders; penalties</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years. The sentence imposed on such person shall not be reduced to less than 20 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 20 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.</p> <p>MASS. ANN. LAWS ch. 265, § 23 (West 2011). <u>Rape and abuse of child</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (Massachusetts)</p>	<p>MASS. ANN. LAWS ch. 265, § 23A (West 2011). <u>Rape and abuse of child aggravated by age difference between defendant and victim or by when committed by mandated reporters; penalties</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.</p> <p>MASS. ANN. LAWS ch. 265, § 23B (West 2011). <u>Rape and abuse of child by certain previously convicted offenders; penalties</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.</p> <p>MASS. ANN. LAWS ch. 265, § 24B (West 2011). <u>Assault of child; intent to commit rape; weapons; punishment</u></p> <p>Whoever [violates this section] shall be punished by imprisonment in the state prison for life or for any term of years but not less than five years.</p> <p>Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than ten years. Whoever over the age of 18 commits a second or subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years.</p>
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Michigan	
Statute (Michigan)	<p>MICH. COMP. LAWS § 750.520b (West 2011).  <u>Criminal sexual conduct in first degree</u></p> <p>Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:</p> <ul style="list-style-type: none"> <li>(a) That other person is under 13 years of age.</li> <li>(b) That other person is at least 13 but less than 16 years of age and any of the following: <ul style="list-style-type: none"> <li>(i) The actor is a member of the same household as the victim.</li> <li>(ii) The actor is related to the victim by blood or affinity to the fourth degree.</li> <li>(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.</li> <li>(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.</li> <li>(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</li> </ul> </li> <li>(c) Sexual penetration occurs under circumstances involving the commission of any other felony.</li> <li>(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists: <ul style="list-style-type: none"> <li>(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.</li> <li>(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).</li> </ul> </li> <li>(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.</li> <li>(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances: <ul style="list-style-type: none"> <li>(i) When the actor overcomes the victim through the actual application of physical force or physical violence.</li> <li>(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.</li> </ul> </li> </ul>

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<p>Statute Cont' (Michigan)</p>	<p>(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.</p> <p>(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that 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> <p>(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:</p> <p>(i) The actor is related to the victim by blood or affinity to the fourth degree.</p> <p>(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.</p> <p>MICH. COMP. LAWS § 750.520c (West 2011). <u>Criminal sexual conduct in second degree</u></p> <p>Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:</p> <p>(a) That other person is under 13 years of age.</p> <p>(b) That other person is at least 13 but less than 16 years of age and any of the following:</p> <p>(i) The actor is a member of the same household as the victim.</p> <p>(ii) The actor is related by blood or affinity to the fourth degree to the victim.</p> <p>(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.</p> <p>(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.</p> <p>(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</p> <p>(c) Sexual contact occurs under circumstances involving the commission of any other felony.</p> <p>(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:</p>
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<p>Statute Cont' (Michigan)</p>	<p>(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.  (ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).  (e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.  (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 section 520b(1)(f).  (g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.  (h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:  (i) The actor is related to the victim by blood or affinity to the fourth degree.  (ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.  (i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.  (j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.  (k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.  (l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.</p> <p>MICH. COMP. LAWS § 750.520d (West 2011).  <u>Criminal sexual conduct in third degree</u></p> <p>Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:  (a) That other person is at least 13 years of age and under 16 years of age.  (b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances</p>
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<p>Statute Cont' (Michigan)</p>	<p>listed in section 520b(1)(f)(i) to (v).</p> <p>(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:</p> <p>(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</p> <p>(f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:</p> <p>(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</p> <p>MICH. COMP. LAWS § 750.520e (West 2011). <u>Criminal sexual conduct in fourth degree</u></p> <p>Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and</p>
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<p>Statute Cont' (Michigan)</p>	<p>if any of the following circumstances exist:</p> <p>(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.</p> <p>(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:</p> <p>(i) When the actor overcomes the victim through the actual application of physical force or physical violence.</p> <p>(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.</p> <p>(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.</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 achieves the sexual contact through concealment or by the element of surprise.</p> <p>(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.</p> <p>(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.</p> <p>(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:</p> <p>(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer</p>
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Statute Cont' (Michigan)	<p>status to gain access to, or to establish a relationship with, that other person.</p> <p>(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:</p> <p>(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.</p> <p>(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.</p> <p>MICH. COMP. LAWS § 750.520g (West 2011).  <u>Assault with intent to commit criminal sexual conduct</u></p> <p>Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.</p> <p>(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.</p>
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Definitions (Michigan)	<p>MICH. COMP. LAWS § 750.520a (West 2011).  <u>Definitions</u></p> <p>Sec. 520a. As used in this chapter:</p> <p>(a) “Actor” means a person accused of criminal sexual conduct.</p> <p>(b) “Developmental disability” means an impairment of general intellectual functioning or adaptive behavior which meets all of the following criteria:</p> <p>(i) It originated before the person became 18 years of age.</p>

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<p>Definitions Cont' (Michigan)</p>	<p>(ii) It has continued since its origination or can be expected to continue indefinitely.</p> <p>(iii) It constitutes a substantial burden to the impaired person's ability to perform in society.</p> <p>(iv) It is attributable to 1 or more of the following:</p> <p>(A) Mental retardation, cerebral palsy, epilepsy, or autism.</p> <p>(B) Any other condition of a person found to be closely related to mental retardation because it produces a similar impairment or requires treatment and services similar to those required for a person who is mentally retarded.</p> <p>(c) "Electronic monitoring" means that term as defined in section 85 of the corrections code of 1953, 1953 PA 232, MCL 791.285.</p> <p>(d) "Intermediate school district" means a corporate body established under part 7 of the revised school code, 1976 PA 451, MCL 380.601 to 380.705.</p> <p>(e) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.</p> <p>(f) "Mental health professional" means that term as defined in section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.</p> <p>(g) "Mental illness" means a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.</p> <p>(h) "Mentally disabled" means that a person has a mental illness, is mentally retarded, or has a developmental disability.</p> <p>(i) "Mentally incapable" means that a person suffers from a mental disease or defect that renders that person temporarily or permanently incapable of appraising the nature of his or her conduct.</p> <p>(j) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or due to any other act committed upon that person without his or her consent.</p> <p>(k) "Mentally retarded" means significantly subaverage general intellectual functioning that originates during the developmental period and is associated with impairment in adaptive behavior.</p> <p>(l) "Nonpublic school" means a private, denominational, or parochial elementary or secondary school.</p> <p>(m) "Physically helpless" means that a person is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>(n) "Personal injury" means bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.</p> <p>(o) "Public school" means a public elementary or secondary educational entity or agency that is established under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.</p> <p>(p) "School district" means a general powers school district organized under the revised school code, 1976 PA 451, MCL 380.1 to 380.1852.</p> <p>(q) "Sexual contact" includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the</p>
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Definitions Cont' (Michigan)	purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for: (i) Revenge. (ii) To inflict humiliation. (iii) Out of anger. (r) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required. (s) "Victim" means the person alleging to have been subjected to criminal sexual conduct.
Defenses (Michigan)	It is an affirmative defense to a prosecution under [MICH. COMP. LAWS §§ 750.520d and 750.520e] that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence.
Penalty (Michigan)	MICH. COMP. LAWS § 750.520b (West 2011). <u>Criminal sexual conduct in first degree</u>  (2) Criminal sexual conduct in the first degree is a felony punishable as follows: (a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years. (b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years. (c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g [FN1] committed against an individual less than 13 years of age. (d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n. (3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.  MICH. COMP. LAWS § 750.520c (West 2011). <u>Criminal sexual conduct in second degree</u>

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<p>Penalty Cont' (Michigan)</p>	<p>(2) Criminal sexual conduct in the second degree is a felony punishable as follows:  (a) By imprisonment for not more than 15 years.  (b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.</p> <p>MICH. COMP. LAWS § 750.520d (West 2008).  <u>Criminal sexual conduct in third degree</u></p> <p>(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.</p> <p>MICH. COMP. LAWS § 750.520e (West 2008).  <u>Criminal sexual conduct in fourth degree</u></p> <p>(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.</p> <p>MICH. COMP. LAWS § 750.520f (West 2011).  <u>Sentencing for second or subsequent offenses under §§ 750.520b, 750.520c, or 750.520d</u></p> <p>Sec. 520f. (1) If a person is convicted of a second or subsequent offense under section 520b, 520c, or 520d, [FN1] the sentence imposed under those sections for the second or subsequent offense shall provide for a mandatory minimum sentence of at least 5 years.  (2) For purposes of this section, an offense is considered a second or subsequent offense if, prior to conviction of the second or subsequent offense, the actor has at any time been convicted under section 520b, 520c, or 520d or under any similar statute of the United States or any state for a criminal sexual offense including rape, carnal knowledge, indecent liberties, gross indecency, or an attempt to commit such an offense.</p> <p>MICH. COMP. LAWS § 750.520g (West 2011).  <u>Assault with intent to commit criminal sexual conduct</u></p>
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Penalty Cont' (Michigan)	Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years. (2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.
<b>Minnesota</b>	
Statute (Minnesota)	<p>MINN. STAT. § 609.342 (West 2011).  <u>Criminal sexual conduct in the first degree</u></p> <p>Subdivision 1. Crime defined. A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:</p> <p>(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(b) the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;</p> <p>(d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;</p> <p>(e) the actor causes personal injury to the complainant, and either of the following circumstances exist:</p> <p>(i) the actor uses force or coercion to accomplish sexual penetration; or</p> <p>(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;</p> <p>(f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:</p> <p>(i) an accomplice uses force or coercion to cause the complainant to submit; or</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Minnesota)</p>	<p>(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit; (g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or (h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and: (i) the actor or an accomplice used force or coercion to accomplish the penetration; (ii) the complainant suffered personal injury; or (iii) the sexual abuse involved multiple acts committed over an extended period of time. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.</p> <p>MINN. STAT. § 609.343 (West 2011). <u>Criminal sexual conduct in the second degree</u></p> <p>Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists: (a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced; (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; (c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another; (d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit; (e) the actor causes personal injury to the complainant, and either of the following circumstances exist: (i) the actor uses force or coercion to accomplish the sexual contact; or (ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless; (f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Minnesota)</p>	<p>(i) an accomplice uses force or coercion to cause the complainant to submit; or  (ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;  (g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or  (h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual contact, and:  (i) the actor or an accomplice used force or coercion to accomplish the contact;  (ii) the complainant suffered personal injury; or  (iii) the sexual abuse involved multiple acts committed over an extended period of time.  Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.</p> <p>MINN. STAT. § 609.344 (West 2011).  <u>Criminal sexual conduct in the third degree</u></p> <p>Subdivision 1. Crime defined. 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 exists:  (a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;  (b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;  (c) the actor uses force or coercion to accomplish the penetration;  (d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;  (e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;  (f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of</p>
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<p>Statute Cont' (Minnesota)</p>	<p>the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:</p> <p>(i) the actor or an accomplice used force or coercion to accomplish the penetration;</p> <p>(ii) the complainant suffered personal injury; or</p> <p>(iii) the sexual abuse involved multiple acts committed over an extended period of time.</p> <p>Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:</p> <p>(i) during the psychotherapy session; or</p> <p>(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.</p> <p>Consent by the complainant is not a defense;</p> <p>(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;</p> <p>(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;</p> <p>(k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;</p> <p>(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:</p> <p>(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or</p> <p>(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;</p> <p>(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;</p> <p>(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or</p> <p>(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.</p>
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<p>Statute Cont' (Minnesota)</p>	<p>MINN. STAT. § 609.345 (West 2011). <u>Criminal sexual conduct in the fourth degree</u></p> <p>Subdivision 1. Crime defined. 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 exists:</p> <p>(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;</p> <p>(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older . In all other cases, mistake as to the complainant's age shall not be a defense;</p> <p>(c) the actor uses force or coercion to accomplish the sexual contact;</p> <p>(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;</p> <p>(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:</p> <p>(i) the actor or an accomplice used force or coercion to accomplish the contact;</p> <p>(ii) the complainant suffered personal injury; or</p> <p>(iii) the sexual abuse involved multiple acts committed over an extended period of time.</p> <p>Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;</p> <p>(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:</p> <p>(i) during the psychotherapy session; or</p> <p>(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;</p>
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<p>Statute Cont' (Minnesota)</p>	<p>(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;  (j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;  (k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense;  (l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:  (i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or  (ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;  (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. Consent by the complainant is not a defense;  (n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or  (o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.</p> <p>MINN. STAT. § 609.3451 (West 2011).  <u>Criminal sexual conduct in the fifth degree</u></p> <p>Subdivision 1. Crime defined. A person is guilty of criminal sexual conduct in the fifth degree:  (1) if the person engages in nonconsensual sexual contact; or  (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.  For purposes of this section, “sexual contact” has the meaning given in section 609.341, subdivision 11, paragraph (a), clauses (i) and (iv), but does not include the intentional touching of the clothing covering the immediate area of the buttocks. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant's intimate parts or undergarments, and the</p>
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Statute Cont' (Minnesota)	<p>nonconsensual touching by the complainant of the actor's intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.</p> <p>MINN. STAT. § 609.23 (West 2011). <u>Mistreatment of Persons Confined</u></p> <p>Whoever, being in charge of or employed in any institution, whether public or private, intentionally abuses or ill-treats any person confined therein who is mentally or physically disabled or who is involuntarily confined therein by order of court or other duly constituted authority may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$ 3,000, or both.</p>
Age of Consent ♦ (Minnesota)	16
Definitions (Minnesota)	<p>MINN. STAT. § 609.341 (West 2008). <u>Definitions</u></p> <p>Subdivision 1. Scope. For the purposes of sections 609.341 to 609.351, the terms in this section have the meanings given them.</p> <p>Subd. 2. Actor. "Actor" means a person accused of criminal sexual conduct.</p> <p>Subd. 3. Force. "Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.</p> <p>Subd. 4. Consent. (a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.</p> <p>(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.</p> <p>(c) Corroboration of the victim's testimony is not required to show lack of consent.</p> <p>Subd. 5. Intimate parts. "Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.</p> <p>Subd. 6. Mentally impaired. "Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual</p>

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<p>Definitions Cont' (Minnesota)</p>	<p>penetration.</p> <p>Subd. 7. Mentally incapacitated. "Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.</p> <p>Subd. 8. Personal injury. "Personal injury" means bodily harm as defined in section 609.02, subdivision 7, or severe mental anguish or pregnancy.</p> <p>Subd. 9. Physically helpless. "Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.</p> <p>Subd. 10. Position of authority. "Position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with any of a parent's rights, duties or responsibilities to a child, or a person who is charged with any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of the act. For the purposes of subdivision 11, "position of authority" includes a psychotherapist.</p> <p>Subd. 11. Sexual contact. (a) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (a) to (f), and 609.345, subdivision 1, clauses (a) to (e), and (h) to (o), 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> <ul style="list-style-type: none"> <li>(i) the intentional touching by the actor of the complainant's intimate parts, or</li> <li>(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or</li> <li>(iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a position of authority, or</li> <li>(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts.</li> </ul> <p>(b) "Sexual contact," for the purposes of sections 609.343, subdivision 1, clauses (g) and (h), and 609.345, subdivision 1, clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:</p> <ul style="list-style-type: none"> <li>(i) the intentional touching by the actor of the complainant's intimate parts;</li> <li>(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;</li> <li>(iii) the touching by another of the complainant's intimate parts; or</li> <li>(iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts.</li> </ul> <p>(c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.</p> <p>Subd. 12. Sexual penetration. "Sexual penetration" means any of the following acts committed without the complainant's consent,</p>
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<p>Definitions Cont' (Minnesota)</p>	<p>except in those cases where consent is not a defense, whether or not emission of semen occurs:</p> <p>(1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or</p> <p>(2) any intrusion however slight into the genital or anal openings:</p> <p>(i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;</p> <p>(ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or</p> <p>(iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.</p> <p>Subd. 13. Complainant. "Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.</p> <p>Subd. 14. Coercion. "Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.</p> <p>Subd. 15. Significant relationship. "Significant relationship" means a situation in which the actor is:</p> <p>(1) the complainant's parent, stepparent, or guardian;</p> <p>(2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or</p> <p>(3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.</p> <p>Subd. 16. Patient. "Patient" means a person who seeks or obtains psychotherapeutic services.</p> <p>Subd. 17. Psychotherapist. "Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.</p> <p>Subd. 18. Psychotherapy. "Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.</p> <p>Subd. 19. Emotionally dependent. "Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.</p>
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Definitions Cont' (Minnesota)	<p>Subd. 20. Therapeutic deception. "Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.</p> <p>Subd. 21. Special transportation. "Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.</p> <p>Subd. 22. Predatory crime. "Predatory crime" means a felony violation of section 609.185 (first-degree murder), 609.19 (second-degree murder), 609.195 (third-degree murder), 609.20 (first-degree manslaughter), 609.205 (second-degree manslaughter), 609.221 (first-degree assault), 609.222 (second-degree assault), 609.223 (third-degree assault), 609.24 (simple robbery), 609.245 (aggravated robbery), 609.25 (kidnapping), 609.255 (false imprisonment), 609.498 (tampering with a witness), 609.561 (first-degree arson), or 609.582, subdivision 1 (first-degree burglary).</p>
Defenses (Minnesota)	<p>MINN. STAT. § 609.342 (West 2008). <u>Criminal sexual conduct in the first degree</u></p> <p>Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.</p>
Penalty (Minnesota)	<p>MINN. STAT. § 609.342 (West 2011). <u>Criminal sexual conduct in the first degree</u></p> <p>Subd. 2. Penalty. (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$40,000, or both.</p> <p>(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section. Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.</p> <p>(c) A person convicted under this section is also subject to conditional release under section 609.3455.</p> <p>Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:</p> <p>(a) a stay is in the best interest of the complainant or the family unit; and</p> <p>(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.</p>

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<p>Penalty Cont' (Minnesota)</p>	<p>If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:</p> <ul style="list-style-type: none"> <li>(1) incarceration in a local jail or workhouse;</li> <li>(2) a requirement that the offender complete a treatment program; and</li> <li>(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.</li> </ul> <p>MINN. STAT. § 609.343 (West 2011). <u>Criminal sexual conduct in the second degree</u></p> <p>Subd. 2. Penalty. (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$35,000, or both.</p> <p>(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 90 months must be imposed on an offender convicted of violating subdivision 1, clause (c), (d), (e), (f), or (h). Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.</p> <p>(c) A person convicted under this section is also subject to conditional release under section 609.3455.</p> <p>Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:</p> <ul style="list-style-type: none"> <li>(a) a stay is in the best interest of the complainant or the family unit; and</li> <li>(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.</li> </ul> <p>If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:</p> <ul style="list-style-type: none"> <li>(1) incarceration in a local jail or workhouse;</li> <li>(2) a requirement that the offender complete a treatment program; and</li> <li>(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.</li> </ul> <p>MINN. STAT. § 609.344 (West 2011). <u>Criminal sexual conduct in the third degree</u></p> <p>Subd. 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to</p>
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<p>Penalty Cont' (Minnesota)</p>	<p>imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.</p> <p>Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:</p> <ul style="list-style-type: none"> <li>(a) a stay is in the best interest of the complainant or the family unit; and</li> <li>(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.</li> </ul> <p>If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:</p> <ul style="list-style-type: none"> <li>(1) incarceration in a local jail or workhouse;</li> <li>(2) a requirement that the offender complete a treatment program; and</li> <li>(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.</li> </ul> <p>MINN. STAT. § 609.345 (West 2011). <u>Criminal sexual conduct in the fourth degree</u></p> <p>Subd. 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.</p> <p>Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:</p> <ul style="list-style-type: none"> <li>(a) a stay is in the best interest of the complainant or the family unit; and</li> <li>(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.</li> </ul> <p>If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:</p> <ul style="list-style-type: none"> <li>(1) incarceration in a local jail or workhouse;</li> <li>(2) a requirement that the offender complete a treatment program; and</li> <li>(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.</li> </ul> <p>MINN. STAT. § 609.3451 (West 2011). <u>Criminal sexual conduct in the fifth degree</u></p>
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Penalty Cont' (Minnesota)	<p>Subd. 2. Penalty. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both.</p> <p>Subd. 3. Felony. A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1, clause (2), after having been previously convicted of or adjudicated delinquent for violating subdivision 1, clause (2); section 617.23, subdivision 2, clause (1); or a statute from another state in conformity with subdivision 1, clause (2), or section 617.23, subdivision 2, clause (1).</p> <p>MINN. STAT. § 609.23(West 2011). <u>Mistreatment of persons confined</u></p> <p>Whoever [violates this section] may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.</p>
<b>Mississippi<sup>30</sup></b>	
Statute (Mississippi)	<p>MISS. CODE ANN. § 97-3-65 (West 2011). <u>Statutory rape; drugging; spousal rape</u></p> <p>(1) The crime of statutory rape is committed when:</p> <p>(a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:</p> <p>(i) Is at least fourteen (14) but under sixteen (16) years of age;</p> <p>(ii) Is thirty-six (36) or more months younger than the person; and</p> <p>(iii) Is not the person's spouse; or</p> <p>(b) A person of any age has sexual intercourse with a child who:</p> <p>(i) Is under the age of fourteen (14) years;</p> <p>(ii) Is twenty-four (24) or more months younger than the person; and</p> <p>(iii) Is not the person's spouse.</p> <p>(2) Neither the victim's consent nor the victim's lack of chastity is a defense to a charge of statutory rape.</p> <p>(3) Upon conviction for statutory rape, the defendant shall be sentenced as follows:</p> <p>(a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under subsection (1)(a) of this section,</p>

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<p>Statute Cont' (Mississippi)</p>	<p>to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;</p> <p>(b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;</p> <p>(c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;</p> <p>(d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.</p> <p>(4)(a) Every person who shall have forcible sexual intercourse with any person, or who shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person's consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine.</p> <p>(b) This subsection (4) shall apply whether the perpetrator is married to the victim or not.</p> <p>(5) In all cases where a victim is under the age of sixteen (16) years, it shall not be necessary to prove penetration where it is shown the genitals, anus or perineum of the child have been lacerated or torn in the attempt to have sexual intercourse with the child.</p> <p>(6) For the purposes of this section, "sexual intercourse" shall mean a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female.</p> <p>MISS. CODE ANN. § 97-3-95 (West 2011).<sup>31</sup> <u>"Sexual battery" defined</u></p> <p>(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:</p> <p>(a) Another person without his or her consent;</p> <p>(b) A mentally defective, mentally incapacitated or physically helpless person;</p> <p>(c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or</p> <p>(d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.</p>
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<p>Statute Cont' (Mississippi)</p>	<p>(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of eighteen (18) years if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</p> <p>MISS. CODE ANN. § 97-3-104 (West 2011). <u>Sex between law-enforcement official and offender</u></p> <p>It is unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal or other officer to engage in any sexual penetration, as defined in Section 97-3-97, or have carnal knowledge of any offender, with the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility or who is serving on probation, parole, earned-release supervision, post-release supervision, earned probation or any other form of correctional supervision. Any person who violates this section is guilty of a felony.</p> <p>MISS. CODE ANN. § 97-5-5 (West 2011). <u>Enticing child under fourteen; punishment</u></p> <p>Every person who shall maliciously, wilfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen years, with intent to detain or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage, shall, on conviction, be imprisoned in the penitentiary not exceeding ten years, or imprisoned in the county jail not more than one year, or fined not more than one thousand dollars, or both.</p> <p>MISS. CODE ANN. § 97-5-7 (West 2011). <u>Enticing child under eighteen; punishment</u></p> <p>Any person who shall persuade, entice or decoy away from its father or mother with whom it resides any child under the age of eighteen (18) years, being unmarried, for the purpose of employing such child without the consent of its parents, or one of them, shall upon conviction be punished by a fine of not more than twenty dollars (\$20.00) or imprisoned in the county jail not more than thirty (30) days, or both.</p> <p>MISS. CODE ANN. § 97-5-23 (West 2011).</p>
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<p>Statute Cont' (Mississippi)</p>	<p><u>Fondling child; punishment</u></p> <p>(1) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child's consent, or a mentally defective, mentally incapacitated or physically helpless person as defined in Section 97-3-97, shall be guilty of a felony. (2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of eighteen (18) years who is not such person's spouse, with or without the child's consent, when the person occupies a position of trust or authority over the child shall be guilty of a felony. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</p> <p>MISS. CODE ANN. § 97-5-24 (West 2011).</p> <p><u>Sexual involvement of school employee with student, reporting requirement</u></p> <p>If any person eighteen (18) years or older who is employed by any public school district or private school in this state is accused of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, the Mississippi Department of Education and the Department of Human Services, provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true. Any superintendent, or his designee, who fails to make a report required by this section shall be subject to the penalties provided in Section 37-11-35. Any superintendent, principal, teacher or other school personnel participating in the making of a required report pursuant to this section or participating in any judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person reporting in good faith shall be immune from any civil liability that might otherwise be incurred or imposed.</p> <p>MISS. CODE ANN. § 97-5-27 (West 2011).</p> <p><u>Disseminating sexual material to children; computer luring</u></p> <p>(1) Any person who intentionally and knowingly disseminates sexually oriented material to any person under eighteen (18) years of age shall be guilty of a misdemeanor. A person disseminates sexually oriented material within the meaning of this section if he:</p>
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<p>Statute Cont' (Mississippi)</p>	<p>(a) Sells, delivers or provides, or offers or agrees to sell, deliver or provide, any sexually oriented writing, picture, record or other representation or embodiment that is sexually oriented; or</p> <p>(b) Presents or directs a sexually oriented play, dance or other performance or participates directly in that portion thereof which makes it sexually oriented; or</p> <p>(c) Exhibits, presents, rents, sells, delivers or provides, or offers or agrees to exhibit, present, rent or to provide any sexually oriented still or motion picture, film, filmstrip or projection slide, or sound recording, sound tape or sound track or any matter or material of whatever form which is a representation, embodiment, performance or publication that is sexually oriented.</p> <p>(2) For purposes of this section, any material is sexually oriented if the material contains representations or descriptions, actual or simulated, of masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.</p> <p>(3)(a) A person is guilty of computer luring when:</p> <p>(i) Knowing the character and content of any communication of sexually oriented material, he intentionally uses any computer communication system allowing the input, output, examination or transfer of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person under the age of eighteen (18); and</p> <p>(ii) By means of such communication he importunes, invites or induces a person under the age of eighteen (18) years to engage in sexual intercourse, deviant sexual intercourse or sexual contact with him, or to engage in a sexual performance, obscene sexual performance or sexual conduct for his benefit.</p> <p>(b) A person who engages in the conduct proscribed by this subsection (3) is presumed to do so with knowledge of the character and content of the material.</p> <p>(c) In any prosecution for computer luring, it shall be a defense that:</p> <p>(i) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or</p> <p>(ii) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to the materials prohibited, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or</p> <p>(iii) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or</p> <p>(iv) The defendant has in good faith established a mechanism such that the labeling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to</p>
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<p>Statute Cont' (Mississippi)</p>	<p>effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.</p> <p>(d) In any prosecution for computer luring:</p> <p>(i) No person shall be held to have violated this subsection (3) solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.</p> <p>(ii) No employer shall be held liable for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency or the employer, having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.</p> <p>(iii) The limitations provided by this paragraph (d) shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications, nor to a person who provides access or connection to a facility, system or network engaged in the violation of such provisions that is owned or controlled by such person.</p> <p>MISS. CODE ANN. § 97-5-29 (West 2011). <u>Publicly displaying sexually oriented materials</u></p> <p>(1) Any person who intentionally and knowingly places sexually oriented materials upon public display, or who knowingly and intentionally fails to take prompt action to remove such a display from property in his possession after learning of its existence shall be guilty of a misdemeanor</p> <p>(2) For purposes of this section any material is sexually oriented if the material consists of representations or descriptions of actual or simulated masturbation, sodomy, excretory functions, lewd exhibition of the genitals or female breasts, sadomasochistic abuse (for the purpose of sexual stimulation or gratification), homosexuality, lesbianism, bestiality, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or the breast or breasts of a female for the purpose of sexual stimulation, gratification or perversion.</p> <p>(3) A person places sexually oriented material upon public display within the meaning of this section if he places the material on or in a billboard, viewing screen, theater stage or marquee, newsstand, display rack, window, showcase, display case or other similar place, including a viewing screen in a vehicle, so that sexually oriented material is easily visible from a public street, public road or sidewalk or from areas of public businesses in which minors are normally business invitees.</p>
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<p>Statute Cont' (Mississippi)</p>	<p>MISS. CODE ANN. § 97-5-33 (West 2011). <u>Depicting child engaging in sexual conduct</u></p> <p>(1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.</p> <p>(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.</p> <p>(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.</p> <p>(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.</p> <p>(5) No person shall, by any means including computer, possess any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.</p> <p>(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.</p> <p>(7) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.</p> <p>(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.</p> <p>(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.</p> <p>MISS. CODE ANN. § 97-5-37 (West 2011). <u>Relation to other statutes</u></p> <p>The provisions of sections 97-5-31 to 97-5-37 are supplemental to any statute relating to child abuse or neglect, obscenity, enticement of children or contributing to delinquency of a minor and acquittal or conviction pursuant to any other statute shall not be a bar to prosecution under sections 97-5-31 to 97-5-37. Acquittal or conviction under sections 97-5-31 to 97-5-37 shall not be a bar to prosecution and conviction under other statutes defining crimes or misdemeanors, nor to any civil or administrative remedy otherwise</p>
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Statute Cont' (Mississippi)	<p>available.</p> <p>MISS. CODE ANN. § 97-5-41 (West 2011). <u>Carnal knowledge of certain children</u></p> <p>(1) Any person who shall have carnal knowledge of his or her unmarried stepchild or adopted child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age [violates this section].</p> <p>(2) Any person who shall have carnal knowledge of an unmarried child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, with whose parent he or she is cohabiting or living together as husband and wife [violates this section].</p>
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Definitions (Mississippi)	<p>MISS. CODE ANN. § 97-3-65 (West 2011). <u>Statutory Rape drugging spousal rape</u></p> <p>(6) For the purposes of this section, "sexual intercourse" shall mean a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female.</p> <p>MISS. CODE ANN. § 97-3-97 (West 2011). <u>Sexual battery, definitions</u></p> <p>For purposes of sections 97-3-95 through 97-3-103 the following words shall have the meaning ascribed herein unless the context otherwise requires:</p> <p>(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.</p> <p>(b) A "mentally defective person" is one who suffers from a mental disease, defect or condition which renders that person temporarily or permanently incapable of knowing the nature and quality of his or her conduct.</p> <p>(c) A "mentally incapacitated person" is one rendered incapable of knowing or controlling his or her conduct, or incapable of resisting an act due to the influence of any drug, narcotic, anesthetic, or other substance administered to that person without his or her consent.</p> <p>(d) A "physically helpless person" is one who is unconscious or one who for any other reason is physically incapable of communicating</p>

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Definitions Cont' (Mississippi)	<p>an unwillingness to engage in an act.</p> <p>MISS. CODE ANN. § 97-5-31 (West 2011).  <u>Definitions for sections 97-5-33 to 97-5-37</u></p> <p>As used in Sections 97-5-33 through 97-5-37, the following words and phrases shall have the meanings given to them in this section:</p> <p>(a) “Child” means any individual who has not attained the age of eighteen (18) years.</p> <p>(b) “Sexually explicit conduct” means actual or simulated:</p> <p>(i) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;</p> <p>(ii) Bestiality;</p> <p>(iii) Masturbation;</p> <p>(iv) Sadistic or masochistic abuse;</p> <p>(v) Lascivious exhibition of the genitals or pubic area of any person; or</p> <p>(vi) Fondling or other erotic touching of the genitals, pubic area, buttocks, anus or breast.</p> <p>(c) “Producing” means producing, directing, manufacturing, issuing, publishing or advertising.</p> <p>(d) “Visual depiction” includes without limitation developed or undeveloped film and video tape or other visual unaltered reproductions by computer.</p> <p>(e) “Computer” has the meaning given in Title 18, United States Code, Section 1030.</p> <p>(f) “Simulated” means any depicting of the genitals or rectal areas that gives the appearance of sexual conduct or incipient sexual conduct.</p>
Defenses (Mississippi)	<p>MISS. CODE ANN. § 97-3-99 (West 2011).  <u>Sexual battery, defense of marriage</u></p> <p>A person is not guilty of any offense under Sections 97-3-95 through 97-3-103 if the alleged victim is that person's legal spouse and at the time of the alleged offense such person and the alleged victim are not separated and living apart; provided, however, that the legal spouse of the alleged victim may be found guilty of sexual battery if the legal spouse engaged in forcible sexual penetration without the consent of the alleged victim.</p>
Penalty	MISS. CODE ANN. § 97-3-65 (West 2011).

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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>(Mississippi)</p> <p>Penalty Cont' (Mississippi)</p>	<p><u>Statutory rape; drugging; spousal rape</u></p> <p>(3) Upon conviction for statutory rape, the defendant shall be sentenced as follows:            (a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under subsection (1)(a) of this section, to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;            (b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;            (c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;            (d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.            (4)(a) Every person who shall have forcible sexual intercourse with any person, or who shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person's consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine.</p> <p>MISS. CODE ANN. § 97-3-104 (West 2011).  <u>Sex between law-enforcement official and offender</u></p> <p>Any person who violates this section is guilty of a felony and upon conviction shall be fined not more than Five Thousand Dollars (\$5,000.00) or imprisoned for a term not to exceed five (5) years, or both.</p> <p>MISS. CODE ANN. § 97-5-5 (West 2011).  <u>Enticing child under fourteen; punishment</u></p> <p>Every person who [violates this section] shall, on conviction, be imprisoned in the penitentiary not exceeding ten years, or imprisoned in the county jail not more than one year, or fined not more than one thousand dollars, or both.</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (Mississippi)</p>	<p>MISS. CODE ANN. § 97-5-7 (West 2011). <u>Enticing child under eighteen; punishment</u></p> <p>Any person [violates this section] shall upon conviction be punished by a fine of not more than twenty dollars (\$20.00) or imprisoned in the county jail not more than thirty (30) days, or both.</p> <p>MISS. CODE ANN. § 97-5-23 (West 2011). <u>Fondling child; punishment</u></p> <p>(1) Any person [who violates this section] shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court.</p> <p>(2) Any person [who violates this section] shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.</p> <p>(3) Upon a second conviction for an offense under this section, the person so convicted shall be punished by commitment to the State Department of Corrections for a term not to exceed twenty (20) years, however, upon conviction and sentencing, the offender shall serve at least one-half ( 1/2 ) of the sentence so imposed.</p> <p>MISS. CODE ANN. § 97-5-27 (West 2011). <u>Disseminating sexual material to children; computer luring</u></p> <p>(1) Any person who [violates this section] shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment.</p> <p>(e) Computer luring is a felony, and any person convicted thereof shall be punished by commitment to the custody of the Department of</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (Mississippi)</p>	<p>Corrections for a term not to exceed three (3) years and by a fine not to exceed Ten Thousand Dollars (\$10,000.00).</p> <p>MISS. CODE ANN. § 97-5-29 (West 2011). <u>Publicly displaying sexually oriented materials</u></p> <p>Any person who [violates this section] shall be guilty of a misdemeanor and upon conviction shall be fined for each offense not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00) or be imprisoned for not more than one (1) year in the county jail, or be punished by both such fine and imprisonment.</p> <p>MISS. CODE ANN. § 97-5-35 (West 2011). <u>Depicting child engaging in sexual conduct, punishment</u></p> <p>Any person who violates any provision of Section 97-5-33 shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$100,000.00) nor more than One Million Dollars (\$1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.</p> <p>MISS. CODE ANN. § 97-5-35 (West 2011). <u>Depicting child engaging in sexual conduct, punishment</u></p> <p>Any person who violates any provision of Section 97-5-33 shall be guilty of a felony and upon conviction shall be fined not less than Fifty Thousand Dollars (\$50,000.00) nor more than Five Hundred Thousand Dollars (\$500,000.00) and shall be imprisoned for not less than five (5) years nor more than forty (40) years. Any person convicted of a second or subsequent violation of Section 97-5-33 shall be fined not less than One Hundred Thousand Dollars (\$100,000.00) nor more than One Million Dollars (\$1,000,000.00) and shall be confined in the custody of the Department of Corrections for life or such lesser term as the court may determine, but not less than twenty (20) years.</p> <p>MISS. CODE ANN. § 97-3-101 (West 2011). <u>Sexual battery, punishment</u></p>
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## NIC/WCL Project on Addressing Prison Rape

Penalty Cont' (Mississippi)	<p>(1) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(a), (b), or (2) shall be imprisoned in the State Penitentiary for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the penitentiary for not more than forty (40) years.</p> <p>(2)(a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$5,000.00), or both;</p> <p>(b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.</p> <p>(3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.</p> <p>(4) Every person who shall be convicted of sexual battery who is thirteen (13) years of age or older but under eighteen (18) years of age shall be sentenced to such imprisonment, fine or other sentence as the court, in its discretion, may determine.</p> <p>MISS. CODE ANN. § 97-5-41 (West 2011). <u>Carnal knowledge of certain children</u></p> <p>(1) Any person who [violates this section] upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.</p> <p>(2) Any person who [violates this section] upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.</p>
<b>Missouri<sup>32</sup></b>	
Statute (Missouri)	MO. REV. STAT. § 566.030 (West 2011) <u>Rape</u>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Missouri)</p>	<p>1. A person commits the crime of forcible rape if such person has sexual intercourse with another person by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.</p> <p>2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:</p> <p>(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person. (2) The victim is a child less than twelve years of age.</p> <p>MO. REV. STAT. § 566.032 (West 2011). <u>Statutory rape in the first degree</u></p> <p>1. A person commits the crime of statutory rape in the first degree if he has sexual intercourse with another person who is less than fourteen years old.</p> <p>2. Statutory rape in the first degree or an attempt to commit statutory rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.</p> <p>MO. REV. STAT. § 566.034 (West 2011). <u>Statutory rape in the second degree</u></p> <p>1. A person commits the crime of statutory rape in the second degree if being twenty-one years of age or older, he has sexual intercourse with another person who is less than seventeen years of age.</p> <p>2. Statutory rape in the second degree is a class C felony.</p> <p>MO. REV. STAT. § 566.040 (West 2011). <u>Sexual assault</u></p> <p>1. A person commits the crime of sexual assault if he has sexual intercourse with another person knowing that he does so without that</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Missouri)</p>	<p>person's consent. 2. Sexual assault is a class C felony.</p> <p>MO. REV. STAT. § 566.062 (West 2011). <u>Statutory sodomy in the first degree</u></p> <p>1. A person commits the crime of statutory sodomy in the first degree if he has deviate sexual intercourse with another person who is less than fourteen years old. 2. Statutory sodomy in the first degree or an attempt to commit statutory sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.</p> <p>MO. REV. STAT. § 566.064 (West 2011). <u>Statutory sodomy in the second degree</u></p> <p>1. A person commits the crime of statutory sodomy in the second degree if being twenty-one years of age or older, he has deviate sexual intercourse with another person who is less than seventeen years of age. 2. Statutory sodomy in the second degree is a class C felony.</p> <p>MO. REV. STAT. § 566.067 (West 2011). <u>Child molestation in the first degree</u></p> <p>1. A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact. 2. Child molestation in the first degree is a class B felony unless: (1) The actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony; or (2) The victim is a child less than twelve years of age and:</p>
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<p>Statute Cont' (Missouri)</p>	<p>(a) The actor has previously been convicted of an offense under this chapter; or (b) In the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or if the offense is committed as part of a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his or her term of imprisonment without eligibility for probation or parole.</p> <p>MO. REV. STAT. § 566.068 (West 2011). <u>Child molestation in the second degree</u></p> <p>1. A person commits the crime of child molestation in the second degree if he or she subjects another person who is less than seventeen years of age to sexual contact. 2. Child molestation in the second degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.</p> <p>MO. REV. STAT. § 566.083 (West 2011). <u>Sexual misconduct involving a child, penalty--applicability of section--affirmative defense not allowed, when</u></p> <p>1. A person commits the crime of sexual misconduct involving a child if the person: (1) Knowingly exposes his or her genitals to a child less than fifteen years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child; (2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child; or (3) Knowingly coerces or induces a child less than fifteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child. 2. The provisions of this section shall apply regardless of whether the person violates the section in person or via the Internet or other electronic means. 3. It is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor. 4. Sexual misconduct involving a child or attempted sexual misconduct involving a child is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an offense pursuant to this chapter or the actor has previously pleaded guilty to or</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Missouri)</p>	<p>has been convicted of an offense against the laws of another state or jurisdiction which would constitute an offense under this chapter, in which case it is a class C felony.</p> <p>MO. REV. STAT. § 566.086 (West 2011). <u>Sexual contact with a student</u></p> <p>1. A person commits the crime of sexual contact with a student while on public school property if he or she has sexual contact with a student of the public school while on any public school property and is:          (1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104, RSMo;          (2) A student teacher;          (3) An employee of the school;          (4) A volunteer of the school or of an organization working with the school on a project or program; or          (5) A person employed by an entity that contracts with the public school district to provide services.          2. For the purposes of this section, “public school property” shall mean property of any public school in this state serving kindergarten through grade twelve or any school bus used by the public school district.          3. Sexual contact with a student while on public school property is a class D felony.</p> <p>MO. REV. STAT. § 566.090 (West 2011). <u>Sexual misconduct in the first degree</u></p> <p>1. A person commits the crime of sexual misconduct in the first degree if such person purposely subjects another person to sexual contact without that person's consent.          2. Sexual misconduct in the first degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or unless in the course thereof the actor displays a deadly weapon in a threatening manner or the offense is committed as a part of a ritual or ceremony, in which case it is a class D felony.</p> <p>MO. REV. STAT. § 566.093 (West 2011). <u>Sexual misconduct in the second degree</u></p> <p>1. A person commits the crime of sexual misconduct in the second degree if such person:          (1) Exposes his or her genitals under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm;</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Missouri)</p>	<p>(2) Has sexual contact in the presence of a third person or persons under circumstances in which he or she knows that such conduct is likely to cause affront or alarm; or (3) Has sexual intercourse or deviate sexual intercourse in a public place in the presence of a third person. 2. Sexual misconduct in the second degree is a class B misdemeanor unless the actor has previously been convicted of an offense under this chapter, in which case it is a class A misdemeanor.</p> <p>MO. REV. STAT. § 566.095 (West 2011). <u>Sexual misconduct in the third degree</u></p> <p>1. A person commits the crime of sexual misconduct in the third degree if he solicits or requests another person to engage in sexual conduct under circumstances in which he knows that his requests or solicitation is likely to cause affront or alarm. 2. Sexual misconduct in the third degree is a class C misdemeanor.</p> <p>MO. REV. STAT. § 566.100 (West 2011). <u>Sexual abuse</u></p> <p>1. A person commits the crime of sexual abuse if he subjects another person to sexual contact by the use of forcible compulsion. 2. Sexual abuse is a class C felony unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual contact with more than one person or the victim is less than fourteen years of age, in which case the crime is a class B felony.</p> <p>MO. REV. STAT. § 566.151 (West 2011). <u>Enticement of a child, crime</u></p> <p>1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct. 2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor. 3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years.</p>
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<p>Statute Cont' (Missouri)</p>	<p>MO. REV. STAT. § 566.153 (West 2011). <u>Age misrepresentation with intent to solicit a minor, crime</u></p> <ol style="list-style-type: none"> <li>1. A person commits the crime of age misrepresentation with intent to solicit a minor when he or she knowingly misrepresents his or her age with the intent to use the Internet to engage in criminal sexual conduct involving a minor.</li> <li>2. Age misrepresentation with intent to solicit a minor is a class D felony.</li> </ol> <p>MO. REV. STAT. § 566.212 (West 2011). <u>Sexual trafficking of a child</u></p> <ol style="list-style-type: none"> <li>1. A person commits the crime of sexual trafficking of a child if the individual knowingly: <ol style="list-style-type: none"> <li>(1) Recruits, entices, harbors, transports, provides, or obtains by any means a person under the age of eighteen to participate in a commercial sex act or benefits, financially or by receiving anything of value, from participation in such activities; or</li> <li>(2) Causes a person under the age of eighteen to engage in a commercial sex act.</li> </ol> </li> <li>2. It shall not be an affirmative defense that the defendant believed that the person was eighteen years of age or older.</li> <li>3. The crime of sexual trafficking of a child is a class A felony if the child is under the age of eighteen.</li> </ol> <p>MO. REV. STAT. § 566.213 (West 2011). <u>Sexual trafficking of a child--age of child—penalty</u></p> <ol style="list-style-type: none"> <li>1. A person commits the crime of sexual trafficking of a child under the age of twelve if the individual knowingly: <ol style="list-style-type: none"> <li>(1) Recruits, entices, harbors, transports, provides, or obtains by any means a person under the age of twelve to participate in a commercial sex act or benefits, financially or by receiving anything of value, from participation in such activities; or</li> <li>(2) Causes a person under the age of twelve to engage in a commercial sex act.</li> </ol> </li> <li>2. It shall not be an affirmative defense that the defendant believed that the person was twelve years of age or older.</li> <li>3. Sexual trafficking of a child less than twelve years of age shall be a felony.</li> </ol> <p>MO. REV. STAT. § 573.023 (West 2011). <u>Sexual exploitation of a minor, elements, penalty</u></p>
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<p>Statute Cont' (Missouri)</p>	<p>1. A person commits the crime of sexual exploitation of a minor if such person knowingly or recklessly photographs, films, videotapes, produces or otherwise creates obscene material with a minor or child pornography.</p> <p>2. Sexual exploitation of a minor is a class B felony unless the minor is a child, in which case it is a class A felony.</p> <p>MO. REV. STAT. § 573.025 (West 2011). <u>Promoting child pornography in the first degree</u></p> <p>1. A person commits the crime of promoting child pornography in the first degree if such person possesses with the intent to promote or promotes child pornography of a child less than fourteen years of age or obscene material portraying what appears to be a child less than fourteen years of age.</p> <p>2. Promoting child pornography in the first degree is a class B felony unless the person knowingly promotes such material to a minor, in which case it is a class A felony. No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.</p> <p>3. Nothing in this section shall be construed to require a provider of electronic communication services or remote computing services to monitor any user, subscriber or customer of the provider, or the content of any communication of any user, subscriber or customer of the provider.</p> <p>MO. REV. STAT. § 573.035 (West 2011). <u>Promoting child pornography in the second degree</u></p> <p>1. A person commits the crime of promoting child pornography in the second degree if such person possesses with the intent to promote or promotes child pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen.</p> <p>2. Promoting child pornography in the second degree is a class C felony unless the person knowingly promotes such material to a minor, in which case it is a class B felony. No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.</p> <p>MO. REV. STAT. § 573.037 (West 2011). <u>Possession of child pornography</u></p> <p>1. A person commits the crime of possession of child pornography if such person knowingly or recklessly possesses any child</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Missouri)</p>	<p>pornography of a minor under the age of eighteen or obscene material portraying what appears to be a minor under the age of eighteen. 2. Possession of child pornography is a class C felony unless the person possesses more than twenty still images of child pornography, possesses one motion picture, film, videotape, videotape production, or other moving image of child pornography, or has pleaded guilty to or has been found guilty of an offense under this section, in which case it is a class B felony.</p> <p>MO. REV. STAT. § 573.040 (West 2011). <u>Furnishing pornographic materials to minors</u></p> <p>1. A person commits the crime of furnishing pornographic material to minors if he or she: (1) Furnishes any material pornographic for minors, knowing that the person to whom it is furnished is a minor or acting in reckless disregard of the likelihood that such person is a minor; or (2) Produces, presents, directs or participates in any performance pornographic for minors that is furnished to a minor knowing that any person viewing such performance is a minor or acting in reckless disregard of the likelihood that a minor is viewing the performance; or (3) Furnishes, produces, presents, directs, participates in any performance or otherwise makes available material that is pornographic for minors via computer, electronic transfer, Internet or computer network if the person made the matter available to a specific individual known by the defendant to be a minor. 2. It is not an affirmative defense to a prosecution for a violation of this section that the person being furnished the pornographic material is a peace officer masquerading as a minor. 3. Furnishing pornographic material to minors or attempting to furnish pornographic material to minors is a class A misdemeanor unless the person has pleaded guilty to or has been found guilty of an offense committed at a different time pursuant to this chapter, chapter 566 or chapter 568, RSMo, in which case it is a class D felony.</p> <p>MO. REV. STAT. § 573.052 (West 2011). <u>Child pornography on Internet web site--investigation, removal</u></p> <p>Upon receipt of any information that child pornography as defined in section 573.010 is contained on a web site, the attorney general shall investigate such information. If the attorney general has probable cause to believe the web site contains child pornography, the attorney general shall notify a web site operator of any child pornography site residing on that web site operator's server, in writing. If the web site operator promptly, but in no event longer than five days after receiving notice, removes the alleged pornography from its server, and so long as the web site operator is not the purveyor of such child pornography, it shall be immune from civil liability. If the web site operator does not promptly remove the alleged pornography, the attorney general may seek an injunction pursuant to section</p>
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	573.070 to remove the child pornography site from the web site operator's server. This section shall not be construed to create any defense to any criminal charges brought pursuant to this chapter or chapter 568, RSMo.
Age of Consent ♦ (Missouri)	17
Definitions (Missouri)	<p>MO. REV. STAT. § 566.010 (West 2011). <u>Chapter Definitions</u></p> <p>The following terms mean:</p> <p>(1) "Deviate sexual intercourse", any act involving the genitals of one person and the hand, mouth, tongue, or anus of another person or a sexual act involving the penetration, however slight, of the male or female sex organ or the anus by a finger, instrument or object done for the purpose of arousing or gratifying the sexual desire of any person;</p> <p>(2) "Sexual conduct", sexual intercourse, deviate sexual intercourse or sexual contact;</p> <p>(3) "Sexual contact", any touching of another person with the genitals or any touching of the genitals or anus of another person, or the breast of a female person, or such touching through the clothing, for the purpose of arousing or gratifying sexual desire of any person;</p> <p>(4) "Sexual intercourse", any penetration, however slight, of the female sex organ by the male sex organ, whether or not an emission results.</p> <p>MO. REV. STAT. § 573.010 (West 2011). <u>Definitions</u></p> <p>As used in this chapter the following terms shall mean:</p> <p>(1) "Child", any person under the age of fourteen;</p> <p>(2) "Child pornography":</p> <p>(a) Any obscene material or performance depicting sexual conduct, sexual contact, or a sexual performance, as these terms are defined in section 556.061, RSMo, and which has as one of its participants or portrays as an observer of such conduct, contact, or performance a minor under the age of eighteen; or</p> <p>(b) Any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct where:</p> <p>a. The production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;</p>

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<p>Definitions Cont' (Missouri)</p>	<p>b. Such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or</p> <p>c. Such visual depiction has been created, adapted, or modified to show that an identifiable minor is engaging in sexually explicit conduct;</p> <p>(3) “Displays publicly”, exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway or public sidewalk, or from the property of others or from any portion of the person's store, or the exhibitor's store or property when items and material other than this material are offered for sale or rent to the public;</p> <p>(4) “Explicit sexual material”, any pictorial or three-dimensional material depicting human masturbation, deviate sexual intercourse, sexual intercourse, direct physical stimulation or unclothed genitals, sadomasochistic abuse, or emphasizing the depiction of postpubertal human genitals; provided, however, that works of art or of anthropological significance shall not be deemed to be within the foregoing definition;</p> <p>(5) “Furnish”, to issue, sell, give, provide, lend, mail, deliver, transfer, circulate, disseminate, present, exhibit or otherwise provide;</p> <p>(6) “Graphic”, when used with respect to a depiction of sexually explicit conduct, that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted;</p> <p>(7) “Identifiable minor”:</p> <p>(a) A person:</p> <p>a. (i) Who was a minor at the time the visual depiction was created, adapted, or modified; or</p> <p>(ii) Whose image as a minor was used in creating, adapting, or modifying the visual depiction; and</p> <p>b. Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and</p> <p>(b) The term shall not be construed to require proof of the actual identity of the identifiable minor;</p> <p>(8) “Indistinguishable”, when used with respect to a depiction, virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. Indistinguishable does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults;</p> <p>(9) “Material”, anything printed or written, or any picture, drawing, photograph, motion picture film, videotape or videotape production, or pictorial representation, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or stored computer data, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, stored computer data and other latent representational objects;</p> <p>(10) “Minor”, any person under the age of eighteen;</p> <p>(11) “Nudity”, the showing of postpubertal human genitals or pubic area, with less than a fully opaque covering;</p>
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<p>Definitions cont' (Missouri)</p>	<p>(12) "Obscene", any material or performance is obscene if, taken as a whole:</p> <ul style="list-style-type: none"> <li>(a) Applying contemporary community standards, its predominant appeal is to prurient interest in sex; and</li> <li>(b) The average person, applying contemporary community standards, would find the material depicts or describes sexual conduct in a patently offensive way; and</li> <li>(c) A reasonable person would find the material lacks serious literary, artistic, political or scientific value;</li> </ul> <p>(13) "Performance", any play, motion picture film, videotape, dance or exhibition performed before an audience of one or more;</p> <p>(14) "Pornographic for minors", any material or performance is pornographic for minors if the following apply:</p> <ul style="list-style-type: none"> <li>(a) The average person, applying contemporary community standards, would find that the material or performance, taken as a whole, has a tendency to cater or appeal to a prurient interest of minors; and</li> <li>(b) The material or performance depicts or describes nudity, sexual conduct, sexual excitement, or sadomasochistic abuse in a way which is patently offensive to the average person applying contemporary adult community standards with respect to what is suitable for minors; and</li> <li>(c) The material or performance, taken as a whole, lacks serious literary, artistic, political, or scientific value for minors;</li> </ul> <p>(15) "Promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise, or to offer or agree to do the same, by any means including a computer;</p> <p>(16) "Sadomasochistic abuse", flagellation or torture by or upon a person as an act of sexual stimulation or gratification;</p> <p>(17) "Sexual conduct", actual or simulated, normal or perverted acts of human masturbation; deviate sexual intercourse; sexual intercourse; or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or the breast of a female in an act of apparent sexual stimulation or gratification or any sadomasochistic abuse or acts including animals or any latent objects in an act of apparent sexual stimulation or gratification;</p> <p>(18) "Sexually explicit conduct", actual or simulated:</p> <ul style="list-style-type: none"> <li>(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;</li> <li>(b) Bestiality;</li> <li>(c) Masturbation;</li> <li>(d) Sadistic or masochistic abuse; or</li> <li>(e) Lascivious exhibition of the genitals or pubic area of any person;</li> </ul> <p>(19) "Sexual excitement", the condition of human male or female genitals when in a state of sexual stimulation or arousal;</p> <p>(20) "Visual depiction", includes undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image;</p> <p>(21) "Wholesale promote", to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate,</p>
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	disseminate, or to offer or agree to do the same for purposes of resale or redistribution.
Defenses (Missouri)	<p>MO. REV. STAT. § 566.023 (West 2011).  <u>Marriage as defense</u></p> <p>It shall be an affirmative defense to prosecutions pursuant to sections 566.032, 566.034, 566.062, 566.064, 566.068, and 566.090 that the defendant was married to the victim at the time of the offense.</p>
Penalty (Missouri)	<p>MO. REV. STAT. § 558.011 (West 2011).  <u>Sentence of imprisonment, terms--conditional release</u></p> <p>1. The authorized terms of imprisonment, including both prison and conditional release terms, are:  (1) For a class A felony, a term of years not less than ten years and not to exceed thirty years, or life imprisonment;  (2) For a class B felony, a term of years not less than five years and not to exceed fifteen years;  (3) For a class C felony, a term of years not to exceed seven years;  (4) For a class D felony, a term of years not to exceed four years;  (5) For a class A misdemeanor, a term not to exceed one year;  (6) For a class B misdemeanor, a term not to exceed six months;  (7) For a class C misdemeanor, a term not to exceed fifteen days.</p> <p>2. In cases of class C and D felonies, the court shall have discretion to imprison for a special term not to exceed one year in the county jail or other authorized penal institution, and the place of confinement shall be fixed by the court. If the court imposes a sentence of imprisonment for a term longer than one year upon a person convicted of a class C or D felony, it shall commit the person to the custody of the department of corrections for a term of years not less than two years and not exceeding the maximum authorized terms provided in subdivisions (3) and (4) of subsection 1 of this section.</p> <p>3. (1) When a regular sentence of imprisonment for a felony is imposed, the court shall commit the person to the custody of the department of corrections for the term imposed under section 557.036, RSMo, or until released under procedures established elsewhere by law.  (2) A sentence of imprisonment for a misdemeanor shall be for a definite term and the court shall commit the person to the county jail or other authorized penal institution for the term of his or her sentence or until released under procedure established elsewhere by law.</p>

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<p>Penalty Cont' (Missouri)</p>	<p>4. (1) A sentence of imprisonment for a term of years for felonies other than dangerous felonies as defined in section 556.061, RSMo, and other than sentences of imprisonment which involve the individual's fourth or subsequent remand to the department of corrections shall consist of a prison term and a conditional release term. The conditional release term of any term imposed under section 557.036, RSMo, shall be:</p> <p>(a) One-third for terms of nine years or less;</p> <p>(b) Three years for terms between nine and fifteen years;</p> <p>(c) Five years for terms more than fifteen years; and the prison term shall be the remainder of such term. The prison term may be extended by the board of probation and parole pursuant to subsection 5 of this section.</p> <p>(2) "Conditional release" means the conditional discharge of an offender by the board of probation and parole, subject to conditions of release that the board deems reasonable to assist the offender to lead a law-abiding life, and subject to the supervision under the state board of probation and parole. The conditions of release shall include avoidance by the offender of any other crime, federal or state, and other conditions that the board in its discretion deems reasonably necessary to assist the releasee in avoiding further violation of the law.</p> <p>5. The date of conditional release from the prison term may be extended up to a maximum of the entire sentence of imprisonment by the board of probation and parole. The director of any division of the department of corrections except the board of probation and parole may file with the board of probation and parole a petition to extend the conditional release date when an offender fails to follow the rules and regulations of the division or commits an act in violation of such rules. Within ten working days of receipt of the petition to extend the conditional release date, the board of probation and parole shall convene a hearing on the petition. The offender shall be present and may call witnesses in his or her behalf and cross-examine witnesses appearing against the offender. The hearing shall be conducted as provided in section 217.670, RSMo. If the violation occurs in close proximity to the conditional release date, the conditional release may be held for a maximum of fifteen working days to permit necessary time for the division director to file a petition for an extension with the board and for the board to conduct a hearing, provided some affirmative manifestation of an intent to extend the conditional release has occurred prior to the conditional release date. If at the end of a fifteen-working-day period a board decision has not been reached, the offender shall be released conditionally. The decision of the board shall be final.</p> <p>MO. REV. STAT. § 566.030 (West 2011) <u>Rape</u></p> <p>2. Forcible rape or an attempt to commit forcible rape is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:</p> <p>(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the</p>
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<p>Penalty Cont' (Missouri)</p>	<p>2. Child molestation in the first degree is a class B felony unless:</p> <p>(1) The actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony; or</p> <p>(2) The victim is a child less than twelve years of age and:</p> <p>(a) The actor has previously been convicted of an offense under this chapter; or</p> <p>(b) In the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or if the offense is committed as part of a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his or her term of imprisonment without eligibility for probation or parole.</p> <p>MO. REV. STAT. § 566.151 (West 2011). <u>Enticement of a child, crime</u></p> <p>3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.</p> <p>MO. REV. STAT. § 566.153 (West 2011).</p> <p>MO. REV. STAT. § 566.213 (West 2011). <u>Sexual trafficking of a child--age of child—penalty</u></p> <p>3. Sexual trafficking of a child less than twelve years of age shall be a felony for which the authorized term of imprisonment is life imprisonment without eligibility for probation or parole until the defendant has served not less than twenty-five years of such sentence. Subsection 4 of section 558.019, RSMo, shall not apply to the sentence of a person who has pleaded guilty to or been found guilty of sexual trafficking of a child less than twelve years of age, and “life imprisonment” shall mean imprisonment for the duration of a person's natural life for the purposes of this section.</p> <p>MO. REV. STAT. § 573.025 (West 2011). <u>Promoting child pornography in the first degree</u></p>
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Penalty Cont' (Missouri)	<p>2. No person who pleads guilty to or is found guilty of, or is convicted of, promoting child pornography in the first degree shall be eligible for probation, parole, or conditional release for a period of three calendar years.</p> <p>MO. REV. STAT. § 573.035 (West 2011). <u>Promoting child pornography in the second degree</u></p> <p>2. No person who is found guilty of, pleads guilty to, or is convicted of promoting child pornography in the second degree shall be eligible for probation.</p>
<b>Montana</b>	
Statute (Montana)	<p>MONT. CODE ANN. § 45-5-502 (West 2011). <u>Sexual assault</u></p> <p>(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.</p> <p>(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.</p> <p>(4) An act "in the course of committing sexual assault" includes an attempt to commit the offense or flight after the attempt or commission.</p> <p>(5) (a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:</p> <p>(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;</p> <p>(ii) less than 14 years old and the offender is 3 or more years older than the victim;</p> <p>(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:</p> <p>(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and</p>

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<p>Statute Cont' (Montana)</p>	<p>upon a person in the course of committing each offense, the offender shall be:</p> <p>(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or</p> <p>(ii) punished as provided in 46-18-219.</p> <p>(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p> <p>(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.</p> <p>MONT. CODE ANN. § 45-5-504 (West 2011). <u>Indecent exposure</u></p> <p>(1) A person commits the offense of indecent exposure if the person knowingly or purposely exposes the person's genitals under circumstances in which the person knows the conduct is likely to cause affront or alarm in order to:</p> <p>(a) abuse, humiliate, harass, or degrade another; or</p> <p>(b) arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.</p> <p>MONT. CODE ANN. § 45-5-505<sup>33</sup> (West 2011). <u>Deviate sexual conduct</u><sup>34</sup></p> <p>(1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct.</p> <p>MONT. CODE ANN. § 45-5-507 (West 2011). <u>Incest</u></p>
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<p>Statute Cont' (Montana)</p>	<p>(1) A person commits the offense of incest if the person knowingly marries, cohabits with, has sexual intercourse with, or has sexual contact, as defined in 45-2-101, with an ancestor, a descendant, a brother or sister of the whole or half blood, or any stepson or stepdaughter. The relationships referred to in this subsection include blood relationships without regard to legitimacy, relationships of parent and child by adoption, and relationships involving a stepson or stepdaughter.</p> <p>(2) Consent is a defense under this section to incest with or upon a stepson or stepdaughter, but consent is ineffective if the victim is less than 18 years old.</p> <p>(4) If the victim is under 16 years of age and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing incest, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000.</p> <p>(5) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p> <p>MONT. CODE ANN. § 45-5-625 (West 2011). <u>Sexual abuse of children</u></p> <p>(1) A person commits the offense of sexual abuse of children if the person:</p> <p>(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;</p> <p>(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;</p> <p>(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;</p> <p>(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;</p> <p>(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;</p>
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<p>Statute Cont' (Montana)</p>	<p>(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections; or</p> <p>(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated.</p> <p>(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.</p> <p>(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p> <p>definitions apply:</p> <p>(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.</p> <p>(b) "Sexual conduct" means:</p> <p>(i) actual or simulated:</p> <p>(A) sexual intercourse, whether between persons of the same or opposite sex;</p> <p>(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;</p> <p>(C) bestiality;</p> <p>(D) masturbation;</p> <p>(E) sadomasochistic abuse;</p> <p>(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or</p> <p>(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or</p> <p>(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.</p> <p>(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.</p> <p>(d) "Visual medium" means:</p>
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Statute Cont' (Montana)	(i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.
Age of Consent ♦ (Montana)	16
Definitions (Montana)	<p>MONT. CODE ANN. § 45-5-501 (West 2011).  <u>Definitions</u></p> <p>(1) (a) As used in 45-5-503, the term "without consent" means:            (i) the victim is compelled to submit by force against the victim or another; or            (ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:            (A) mentally defective or incapacitated;            (B) physically helpless;            (C) overcome by deception, coercion, or surprise;            (D) less than 16 years old;            (E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;            (F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:            (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and            (II) is an employee, contractor, or volunteer of the youth care facility; or            (G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:            (I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and            (II) is an employee, contractor, or volunteer of the facility or community-based service.            (b) Subsection (1)(a)(ii)(E) does not apply if the individuals are married to each other and one of the individuals involved is on probation or parole and the other individual is a probation or parole officer of a supervising authority.</p>

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Definitions Cont' (Montana)	<p>(c) Subsections (1)(a)(ii)(F) and (1)(a)(ii)(G) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.</p> <p>(2) As used in subsection (1), the term "force" means:</p> <p>(a) the infliction, attempted infliction, or threatened infliction of bodily injury or the commission of a forcible felony by the offender; or</p> <p>(b) the threat of substantial retaliatory action that causes the victim to reasonably believe that the offender has the ability to execute the threat.</p> <p>(3) As used in 45-5-502 and this section, the following definitions apply:</p> <p>(a) "Parole":</p> <p>(i) in the case of an adult offender, has the meaning provided in 46-1-202; and</p> <p>(ii) in the case of a juvenile offender, means supervision of a youth released from a state youth correctional facility, as defined in 41-5-103, to the supervision of the department of corrections.</p> <p>(b) "Probation" means:</p> <p>(i) in the case of an adult offender, release without imprisonment of a defendant found guilty of a crime and subject to the supervision of a supervising authority; and</p> <p>(ii) in the case of a juvenile offender, supervision of the juvenile by a youth court pursuant to Title 41, chapter 5.</p> <p>(c) "Supervising authority" includes a court, including a youth court, a county, or the department of corrections.</p>
Defenses (Montana)	<p>MONT. CODE ANN. § 45-5-511 (West 2011).</p> <p><u>Provisions generally applicable to sexual crimes</u></p> <p>(1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.</p>
Penalty (Montana)	<p>MONT. CODE ANN. § 45-5-502 (West 2011).</p> <p><u>Sexual assault</u></p> <p>(2)(a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.</p> <p>(b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.</p>

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<p>Penalty Cont' (<i>Montana</i>)</p>	<p>(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.</p> <p>(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.</p> <p>MONT. CODE ANN. § 45-5-503 (West 2011). <u>Sexual intercourse without consent</u></p> <p>(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.</p> <p>(3) (a) [T]he offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.</p> <p>(b) [E]ach offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.</p> <p>(4)(a)(i) [The offender] shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p> <p>(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23- 1010.</p> <p>(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.</p>
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<p>Penalty Cont' (<i>Montana</i>)</p>	<p>MONT. CODE ANN. § 45-5-504 (West 2011). <u>Indecent exposure</u></p> <p>(2) (a) A person convicted of the offense of indecent exposure shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term of not more than 6 months, or both. (b) On a second conviction, the person shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term of not more than 1 year, or both. (c) On a third or subsequent conviction, the person shall be punished by life imprisonment or by imprisonment in a state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$10,000.</p> <p>MONT. CODE ANN. § 45-5-505 (West 2011). <u>Deviate sexual conduct</u><sup>35</sup></p> <p>(2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to exceed \$50,000, or both.</p> <p>MONT. CODE ANN. § 45-5-507 (West 2011). <u>Incest</u></p> <p>(3) Except as provided in subsections (4) and (5), a person convicted of incest shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years or be fined an amount not to exceed \$50,000. (4) [T]he offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000. (5) (a) [T]he offender: (i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (5)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole. (ii) may be fined an amount not to exceed \$50,000; and</p> <p>MONT. CODE ANN. § 45-5-625 (West 2011). <u>Sexual abuse of children</u></p>
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Penalty Cont' (Montana)	<p>(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$10,000.</p> <p>(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$10,000.</p> <p>(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.</p> <p>(4) (a) [T]he offender:</p> <p>(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.</p> <p>(ii) may be fined an amount not to exceed \$50,000; and</p> <p>(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.</p>
<b>Nebraska</b>	
Statute (Nebraska)	<p>NEB. REV. STAT. ANN. § 28-319 (West 2011).  <u>Sexual assault; first degree; penalty</u></p> <p>(1) Any person who subjects another person to sexual penetration (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.</p> <p>(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.</p>

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<p>Statute Cont' (<i>Nebraska</i>)</p>	<p>NEB. REV. STAT. ANN. § 28-319.01 (West 2011). <u>Sexual assault of a child; first degree; penalty</u></p> <p>(1) A person commits sexual assault of a child in the first degree: (a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or (b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older. (2) Sexual assault of a child in the first degree is a Class IB felony. (4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.</p> <p>NEB. REV. STAT. ANN. § 28-320 (West 2011). <u>Sexual assault; second or third degree; penalty</u></p> <p>(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree. (2) Sexual assault shall be in the second degree and is a Class III felony if the actor shall have caused serious personal injury to the victim. (3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.</p> <p>NEB. REV. STAT. ANN. § 28-320.01 (West 2011). <u>Sexual assault of a child; second or third degree; penalties</u></p> <p>(1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older. (2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense. (3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a</p>
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<p>Statute Cont' (Nebraska)</p>	<p>child in the third degree is a Class IIIA felony for the first offense.</p> <p>NEB. REV. STAT. ANN. § 28-322.04 (West 2011). <u>Sexual abuse of a protected individual; penalties</u></p> <p>(1) For purposes of this section:            (a) Person means an individual employed by the Department of Health and Human Services and includes, but is not limited to, any individual working in central administration or regional service areas or facilities of the department and any individual to whom the department has authorized or delegated control over a protected individual or a protected individual's activities, whether by contract or otherwise; and            (b) Protected individual means an individual in the care or custody of the department.</p> <p>(2) A person commits the offense of sexual abuse of a protected individual if the person subjects a protected individual to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the protected individual consented to such sexual penetration or sexual contact.</p> <p>(3) Any person who subjects a protected individual to sexual penetration is guilty of sexual abuse of a protected individual in the first degree. Sexual abuse of a protected individual in the first degree is a Class III felony.</p> <p>(4) Any person who subjects a protected individual to sexual contact is guilty of sexual abuse of a protected individual in the second degree. Sexual abuse of a protected individual in the second degree is a Class IV felony.</p> <p>NEB. REV. STAT. ANN. § 28-805 (West 2011). <u>Debauching a minor; penalty</u></p> <p>(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by:            (a) Lewdly inducing such boy or girl carnally to know any other person; or            (b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or            (c) Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; or            (d) Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.</p>
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<p>Statute Cont' (Nebraska)</p>	<p>(2) Debauching a minor is a Class I misdemeanor.</p> <p>NEB. REV. STAT. ANN. § 28-808 (West 2011). <u>Obscene literature and material; sale to minor, unlawful; penalty</u></p> <p>(1) It shall be unlawful for a person knowingly to sell, deliver, distribute, display for sale, or provide to a minor or knowingly to possess with intent to sell, deliver, distribute, display for sale, or provide to a minor:</p> <p>(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body or any replica, article, or device having the appearance of either male or female genitals which predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, sexual excitement, or sadomasochistic abuse and which, taken as a whole, is harmful to minors; or</p> <p>(b) Any book, pamphlet, magazine, printed matter however produced, or sound recording which contains any matter enumerated in subdivision (1)(a) of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse of a predominantly prurient, shameful, or morbid nature and which, taken as a whole, is harmful to minors.</p> <p>(2) Any person who violates this section shall be guilty of a Class I misdemeanor.</p> <p>NEB. REV. STAT. ANN. § 28-809 (West 2011). <u>Obscene motion picture, show, or presentation; admit minor; unlawful; penalty</u></p> <p>(1) It shall be unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show, or other presentation which, in whole or in part, predominantly pruriently, shamefully, or morbidly depicts nudity, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.</p> <p>(2) Any person who violates this section shall be guilty of a Class I misdemeanor.</p> <p>NEB. REV. STAT. ANN. § 28-813.01 (West 2011). <u>Sexually explicit conduct; visual depiction; unlawful; penalty</u></p> <p>(1) It shall be unlawful for a person to knowingly possess any visual depiction of sexually explicit conduct, as defined in section 28-1463.02, which has a child, as defined in such section, as one of its participants or portrayed observers.</p> <p>(2)(a) Any person who is under nineteen years of age at the time he or she violates this section shall be guilty of a Class IV felony for</p>
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Statute Cont' (Nebraska)	<p>each offense.</p> <p>(b) Any person who is nineteen years of age or older at the time he or she violates this section shall be guilty of a Class III felony for each offense.</p> <p>(c) Any person who violates this section and has previously been convicted of a violation of this section or section 28-308, 28-309, 28-310, 28-311, 28-313, 28-314, 28-315, 28-319, 28-319.01, 28-320.01, 28-833, 28-1463.03, or 28-1463.05 or subsection (1) or (2) of section 28-320 shall be guilty of a Class IC felony for each offense.</p> <p>(3) It shall be an affirmative defense to a charge made pursuant to this section that:</p> <p>(a) The visual depiction portrays no person other than the defendant; or</p> <p>(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either create or send the visual depiction.</p>
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Definitions (Nebraska)	<p>NEB. REV. STAT. ANN. § 28-318 (West 2011).</p> <p><u>Terms, defined</u></p> <p>As used in sections 28-317 to 28-321, unless the context otherwise requires:</p> <p>(1) Actor means a person accused of sexual assault;</p> <p>(2) Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts;</p> <p>(3) Past sexual behavior means sexual behavior other than the sexual behavior upon which the sexual assault is alleged;</p> <p>(4) Serious personal injury means great bodily injury or disfigurement, extreme mental anguish or mental trauma, pregnancy, disease, or loss or impairment of a sexual or reproductive organ;</p> <p>(5) 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 intimate parts when such touching is intentionally caused by the actor. Sexual contact shall include only such conduct which can be reasonably construed as</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (<i>Nebraska</i>)</p>	<p>being for the purpose of sexual arousal or gratification of either party. Sexual contact shall also include the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual assault of a child under sections 28-319.01 and 28-320.01;</p> <p>(6) Sexual penetration means sexual intercourse in its ordinary meaning, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the actor's or victim's body or any object manipulated by the actor into the genital or anal openings of the victim's body which can be reasonably construed as being for nonmedical or nonhealth purposes. Sexual penetration shall not require emission of semen;</p> <p>(7) Victim means the person alleging to have been sexually assaulted;</p> <p>(8) Without consent means:</p> <p>(a)(i) The victim was compelled to submit due to the use of force or threat of force or coercion, or (ii) the victim expressed a lack of consent through words, or (iii) the victim expressed a lack of consent through conduct, or (iv) the consent, if any was actually given, was the result of the actor's deception as to the identity of the actor or the nature or purpose of the act on the part of the actor;</p> <p>(b) The victim need only resist, either verbally or physically, so as to make the victim's refusal to consent genuine and real and so as to reasonably make known to the actor the victim's refusal to consent; and</p> <p>(c) A victim need not resist verbally or physically where it would be useless or futile to do so; and</p> <p>(9) Force or threat of force means (a) the use of physical force which overcomes the victim's resistance or (b) the threat of physical force, express or implied, against the victim or a third person that places the victim in fear of death or in fear of serious personal injury to the victim or a third person where the victim reasonably believes that the actor has the present or future ability to execute the threat.</p> <p>NEB. REV. STAT. ANN. § 28-322 (West 2011). <u>Sexual abuse of an inmate or parolee; terms, defined</u></p> <p>For purposes of sections 28-322 to 28-322.03:</p> <p>(1) Inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or under parole supervision; and</p> <p>(2) Person means (a) an individual employed by the Department of Correctional Services or by the Office of Parole Administration, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail</p>
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<p>Definitions Cont' (Nebraska)</p>	<p>facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.</p> <p>NEB. REV. STAT. ANN. § 28-807 (West 2011). <u>Terms, defined</u></p> <p>As used in sections 28-807 to 28-829, unless the context otherwise requires:</p> <p>(1) Adult shall mean any married person or any unmarried person of the age of eighteen years or older;</p> <p>(2) Commercial film and photographic print processor shall mean any person who for compensation develops exposed photographic film into negatives, slides, or prints or who for compensation makes prints from negatives or slides. The term shall include, but not be limited to, any employee of such a person but shall not include employees of law enforcement agencies and prosecuting attorneys involved in the investigation and prosecution of criminal offenses or to persons involved in legitimate medical, scientific, or educational activities;</p> <p>(3) Distribute shall mean to transfer possession, whether with or without consideration, by any means;</p> <p>(4) Disseminate shall mean to manufacture, issue, publish, sell, lend, distribute, transmit, exhibit, or present materials or to offer in person or through an agent or by placing an advertisement for the same, whether with or without consideration, or agree to do the same;</p> <p>(5) Knowingly shall mean having general knowledge of, reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry of the character and content of any material, taken as a whole, described in this section, which is reasonably susceptible to examination by the defendant;</p> <p>(6) Harmful to minors shall mean that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it (a) predominantly appeals to the prurient, shameful, or morbid interest of minors, (b) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and (c) is lacking in serious literary, artistic, political, or scientific value for minors;</p> <p>(7) Material or work shall mean any book, magazine, newspaper, comic book, pamphlet, or other printed or written material or any picture, drawing, photograph, figure, image, motion picture, whether or not positive or negative exhibited or screened, play, nightclub, live performance, television production, other pictorial representation or electric reproduction, recording transcription, mechanical or otherwise, or other articles, equipment, machines, or materials;</p> <p>(8) Minor shall mean any unmarried person under the age of eighteen years;</p> <p>(9) Nudity shall mean the showing of the human, post-pubertal male or female genitals, pubic area, or buttocks with less than a full opaque covering, the depiction of covered male genitals in a discernibly turgid state, or the showing of the female breast with less than a</p>
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<p>Definitions Cont' (<i>Nebraska</i>)</p>	<p>full opaque covering of any portion thereof below the top of the nipple;</p> <p>(10) Obscene shall mean (a) that an average person applying contemporary community standards would find that the work, material, conduct, or live performance taken as a whole predominantly appeals to the prurient interest or a shameful or morbid interest in nudity, sex, or excretion, (b) the work, material, conduct, or live performance depicts or describes in a patently offensive way sexual conduct specifically set out in sections 28-807 to 28-829, and (c) the work, conduct, material, or live performance taken as a whole lacks serious literary, artistic, political, or scientific value;</p> <p>(11) Place shall mean any building, structure, or place or any separate part or portion thereof or the ground itself;</p> <p>(12) Person shall mean any individual, partnership, limited liability company, firm, association, corporation, trustee, lessee, agent, assignee, or other legal entity;</p> <p>(13) Performance, whether with or without consideration, shall mean any play, motion picture, dance, or other exhibition performed before an audience;</p> <p>(14) Promote shall mean to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or place an order for advertising or to knowingly offer in person or through an agent or agree to do the same;</p> <p>(15) Sexual conduct shall mean acts of masturbation, homosexuality, sodomy, sexual intercourse, or prolonged physical contact with a person's clothed or unclothed genitals, pubic area, or buttocks or, if such person is female, breast;</p> <p>(16) Sexual excitement shall mean the condition of human male or female genitals when in a state of sexual stimulation or arousal; and</p> <p>(17) Sadomasochistic abuse shall mean flagellation or torture by or upon a nude person or a person clad in undergarments, a mask, or a bizarre costume or the condition of being fettered, bound, or otherwise physically restrained when performed to predominantly appeal to the shameful or morbid interest.</p>
<p>Defenses (<i>Nebraska</i>)</p>	<p>NEB. REV. STAT. ANN. § 28-813.01 (West 2011). <u>Sexually explicit conduct; visual depiction; unlawful; penalty</u></p> <p>(3) It shall be an affirmative defense to a charge made pursuant to this section that:</p> <p>(a) The visual depiction portrays no person other than the defendant; or</p> <p>(b)(i) The defendant was less than nineteen years of age; (ii) the visual depiction of sexually explicit conduct portrays a child who is fifteen years of age or older; (iii) the visual depiction was knowingly and voluntarily generated by the child depicted therein; (iv) the visual depiction was knowingly and voluntarily provided by the child depicted in the visual depiction; (v) the visual depiction contains only one child; (vi) the defendant has not provided or made available the visual depiction to another person except the child depicted who originally sent the visual depiction to the defendant; and (vii) the defendant did not coerce the child in the visual depiction to either</p>

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	create or send the visual depiction.
Penalty ( <i>Nebraska</i> )	<p>NEB. REV. STAT. ANN. § 193.130 (West 2011).  <u>Categories and punishment of felonies</u></p> <p>1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.</p> <p>2. Except as otherwise provided by specific statute, for each felony committed on or after July 1, 1995:</p> <p>(a) A category A felony is a felony for which a sentence of death or imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.</p> <p>(b) A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.</p> <p>(c) A category C 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 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.</p> <p>(d) A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.</p> <p>(e) A category E 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. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.</p> <p>NEB. REV. STAT. ANN. § 193.140 (West 2011).  <u>Punishment of gross misdemeanors</u></p>

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<p>Penalty Cont' (<i>Nebraska</i>)</p>	<p>Every person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for not more than 1 year, or by a fine of not more than \$2,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such gross misdemeanor prescribed a different penalty.</p> <p>NEB. REV. STAT. ANN. § 193.150 (West 2011). <u>Punishment of misdemeanors</u></p> <p>1. Every person convicted of a misdemeanor shall be punished by imprisonment in the county jail for not more than 6 months, or by a fine of not more than \$1,000, or by both fine and imprisonment, unless the statute in force at the time of commission of such misdemeanor prescribed a different penalty.</p> <p>2. In lieu of all or a part of the punishment which may be imposed pursuant to subsection 1, the convicted person may be sentenced to perform a fixed period of community service pursuant to the conditions prescribed in NRS 176.087.</p> <p>NEB. REV. STAT. ANN. § 28-319 (West 2011). <u>Sexual assault; first degree; penalty</u></p> <p>(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to a mandatory minimum term of twenty-five years in prison.</p> <p>NEB. REV. STAT. ANN. § 28-319.01 (West 2011). <u>Sexual assault of a child; first degree; penalty</u></p> <p>(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.</p> <p>(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after</p>
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Penalty Cont' (Nebraska)	<p>July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.</p> <p>NEB. REV. STAT. ANN. § 28-320.01 (West 2011).  <u>Sexual assault of a child; second or third degree; penalties</u></p> <p>(4) Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.</p> <p>(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.</p>
<b>Nevada<sup>36</sup></b>	
Statute (Nevada)	<p>NEV. REV. STAT. ANN. § 200.366<sup>37</sup> (West 2008).  <u>Sexual assault: Definition; penalties</u></p> <p>1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.</p> <p>2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:</p> <p>(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the</p>

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<p>Statute Cont' (Nevada)</p>	<p>sexual assault, by imprisonment in the state prison:</p> <p>(1) For life without the possibility of parole; or</p> <p>(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.</p> <p>(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.</p> <p>3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:</p> <p>(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.</p> <p>(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.</p> <p>(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.</p> <p>4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:</p> <p>(a) A sexual assault pursuant to this section or any other sexual offense against a child; or</p> <p>(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.</p> <p>5. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:</p> <p>(a) Incest pursuant to NRS 201.180;</p> <p>(b) Lewdness with a child pursuant to NRS 201.230;</p> <p>(c) Sado-masochistic abuse pursuant to NRS 201.262; or</p> <p>(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.</p> <p>NEV. REV. STAT. ANN. §200.368 (West 2011). <u>Statutory sexual seduction: Penalties</u></p> <p>Except under circumstances where a greater penalty is provided in NRS 201.540, a person who commits statutory sexual seduction shall be punished:</p>
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<p>Statute Cont' (Nevada)</p>	<p>1. If he is 21 years of age or older, for a category C felony as provided in NRS 193.130. 2. If he is under the age of 21 years, for a gross misdemeanor.</p> <p>NEV. REV. STAT. ANN. § 200.508 (West 2011). <u>Abuse, neglect or endangerment of child: Penalties; definitions</u></p> <p>1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect: (a) If substantial bodily or mental harm results to the child: (1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony. . . or (2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony. . . or (b) If substantial bodily or mental harm does not result to the child: (1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or (2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>2. A person who is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect: (a) If substantial bodily or mental harm results to the child: (1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or (2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or (b) If substantial bodily or mental harm does not result to the child:</p>
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<p>Statute Cont' (Nevada)</p>	<p>(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or</p> <p>(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that he delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.</p> <p>4. As used in this section:</p> <p>(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070, 432B.100, 432B.110, 432B.140 and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.</p> <p>(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.</p> <p>(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.</p> <p>(d) "Physical injury" means:</p> <p>(1) Permanent or temporary disfigurement; or</p> <p>(2) Impairment of any bodily function or organ of the body.</p> <p>(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior.</p> <p>NEV. REV. STAT. ANN. § 200.710 (West 2011).</p> <p><u>Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance</u></p> <p>1. A person who knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance is guilty of a category A felony and shall be punished as provided in NRS 200.750.</p> <p>2. A person who knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance is guilty of a category A felony and shall be punished as provided in NRS 200.750, regardless of whether the minor is aware that the sexual portrayal is part of a performance.</p>
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<p>Statute Cont' (Nevada)</p>	<p>NEV. REV. STAT. ANN. § 200.720 (West 2011). <u>Promotion of sexual performance of minor unlawful</u></p> <p>A person who knowingly promotes a performance of a minor:</p> <ol style="list-style-type: none"> <li>1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct; or</li> <li>2. Where the minor is the subject of a sexual portrayal,</li> </ol> <p>is guilty of a category A felony and shall be punished as provided in NRS 200.750.</p> <p>NEV. REV. STAT. ANN. § 200.725 (West 2011). <u>Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty</u></p> <p>A person who knowingly prepares, advertises or distributes any item or material that depicts a minor engaging in, or simulating, or assisting others to engage in or simulate, sexual conduct is guilty of a category B felony.</p> <p>NEV. REV. STAT. ANN. § 200.730 (West 2011). <u>Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties</u></p> <p>A person who knowingly and willfully has in his possession for any purpose any film, photograph or other visual presentation depicting a person under the age of 16 years as the subject of a sexual portrayal or engaging in or simulating, or assisting others to engage in or simulate, sexual conduct:</p> <ol style="list-style-type: none"> <li>1. For the first offense, is guilty of a category B felony.</li> <li>2. For any subsequent offense, is guilty of a category A felony.</li> </ol> <p>NEV. REV. STAT. ANN. § 201.195 (West 2011). <u>Solicitation of minor to engage in acts constituting crime against nature; penalties</u></p> <ol style="list-style-type: none"> <li>1. A person who incites, entices or solicits a minor to engage in acts which constitute the infamous crime against nature:             <ol style="list-style-type: none"> <li>(a) If the minor actually engaged in such acts as a result and:                 <ol style="list-style-type: none"> <li>(1) The minor was less than 14 years of age, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.</li> <li>(2) The minor was 14 years of age or older, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.</li> </ol> </li> <li>(b) If the minor did not engage in such acts:</li> </ol> </li> </ol>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Nevada)</p>	<p>(1) For the first offense, is guilty of a gross misdemeanor.  (2) For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.  2. As used in this section, the “infamous crime against nature” means anal intercourse, cunnilingus or fellatio between natural persons of the same sex. Any sexual penetration, however slight, is sufficient to complete the infamous crime against nature.</p> <p>NEV. REV. STAT. ANN. § 201.230 (West 2011).  <u>Lewdness with child under 14 years; penalties</u></p> <p>1. A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.  2. Except as otherwise provided in subsection 3, a person who commits lewdness with a child is guilty of a category A felony.  4. For the purpose of this section, “other sexual offense against a child” has the meaning ascribed to it in subsection 5 of NRS 200.366.</p> <p>NEV. REV. STAT. ANN. § 201.560 (West 2011).  <u>Definitions; exceptions; penalties</u></p> <p>1. Except as otherwise provided in subsection 3, a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:  (a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from his home or from any location known to his parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:  (1) Without the express consent of the parent or guardian or other person legally responsible for the child; and  (2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or  (b) Another person whom he believes to be a child who is less than 16 years of age and at least 5 years younger than he is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.  2. Except as otherwise provided in subsection 3, a person commits the crime of luring a person with mental illness if he knowingly contacts or communicates with a person with mental illness with the intent to persuade, lure or transport the person with mental illness away from his home or from any location known to any person legally responsible for the person with mental illness to a place other than where the person with mental illness is located:</p>
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<p>Statute Cont' (Nevada)</p>	<p>(a) For any purpose that a reasonable person under the circumstances would know would endanger the health, safety or welfare of the person with mental illness;</p> <p>(b) Without the express consent of the person legally responsible for the person with mental illness; and</p> <p>(c) With the intent to avoid the consent of the person legally responsible for the person with mental illness.</p> <p>3. The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.</p> <p>4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:</p> <p>(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony. (b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category C felony and shall be punished as provided in NRS 193.130; or</p> <p>(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.</p> <p>5. A person who violates or attempts to violate the provisions of this section in a manner other than through the use of a computer, system or network:</p> <p>(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony. ;(b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category B felony. ; or(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.</p> <p>6. As used in this section:</p> <p>(a) "Computer" has the meaning ascribed to it in NRS 205.4735.</p> <p>(b) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.</p> <p>(c) "Material" means anything that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.</p> <p>(d) "Network" has the meaning ascribed to it in NRS 205.4745.</p> <p>(e) "Person with mental illness" means a person who has any mental dysfunction leading to impaired ability to maintain himself and to function effectively in his life situation without external support.</p> <p>(f) "Sexual conduct" has the meaning ascribed to it in NRS 201.520.</p> <p>(g) "System" has the meaning ascribed to it in NRS 205.476.</p>
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<p>Statute Cont' (Nevada)</p>	<p>NEV. REV. STAT. ANN. § 201.540 (West 2011). <u>Sexual conduct between certain employees of school or volunteers at school and pupil: Penalty; exception</u></p> <p>1. Except as otherwise provided in subsection 4, a person who:</p> <p>(a) Is 21 years of age or older;</p> <p>(b) Is employed in a position of authority by a public school or private school or volunteering in a position of authority at a public or private school; and</p> <p>(c) Engages in sexual conduct with a pupil who is 16 or 17 years of age and who is enrolled in or attending the public school or private school at which the person is employed or volunteering, is guilty of a category C felony and shall be punished as provided in NRS 193.130.</p> <p>2. Except as otherwise provided in subsection 4, a person who:</p> <p>(a) Is 21 years of age or older;</p> <p>(b) Is employed in a position of authority by a public school or private school or volunteering in a position of authority at a public or private school; and</p> <p>(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and who is enrolled in or attending the public school or private school at which the person is employed or volunteering, is guilty of a category B felony.</p> <p>3. For the purposes of subsections 1 and 2, a person shall be deemed to be employed in a position of authority by a public school or private school or deemed to be volunteering in a position of authority at a public or private school if the person is employed or volunteering as:</p> <p>(a) A teacher or instructor;</p> <p>(b) An administrator;</p> <p>(c) A head or assistant coach; or</p> <p>(d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.</p> <p>4. The provisions of this section do not apply to a person who is married to the pupil.</p> <p>NEV. REV. STAT. ANN. § 201.550 (West 2011). <u>Sexual conduct between certain employees of college or university and student: Penalty; exception</u></p> <p>1. Except as otherwise provided in subsection 3, a person who:</p> <p>(a) Is 21 years of age or older;</p> <p>(b) Is employed in a position of authority by a college or university; and</p>
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Statute Cont' (Nevada)	<p>(c) Engages in sexual conduct with a student who is 16 or 17 years of age and who is enrolled in or attending the college or university at which the person is employed, is guilty of a category C felony and shall be punished as provided in NRS 193.130.</p> <p>2. For the purposes of subsection 1, a person shall be deemed to be employed in a position of authority by a college or university if the person is employed as:</p> <p>(a) A teacher, instructor or professor;</p> <p>(b) An administrator; or</p> <p>(c) A head or assistant coach.</p> <p>3. The provisions of this section do not apply to a person who is married to the student.</p>
Age of Consent♦ (Nevada)	16
Definitions (Nevada)	<p>NEV. REV. STAT. ANN. § 200.364 (West 2011). <u>Definitions</u></p> <p>As used in NRS 200.364 to 200.3774, inclusive, unless the context otherwise requires:</p> <p>1. “Perpetrator” means a person who commits a sexual assault.</p> <p>2. “Sexual penetration” means cunnilingus, fellatio, or any intrusion, however slight, of any part of a person's body or any object manipulated or inserted by a person into the genital or anal openings of the body of another, including sexual intercourse in its ordinary meaning.</p> <p>3. “Statutory sexual seduction” means:</p> <p>(a) Ordinary sexual intercourse, anal intercourse, cunnilingus or fellatio committed by a person 18 years of age or older with a person under the age of 16 years; or</p> <p>(b) Any other sexual penetration committed by a person 18 years of age or older with a person under the age of 16 years with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of either of the persons.</p> <p>4. “Victim” means a person who is subjected to a sexual assault.</p> <p>NEV. REV. STAT. ANN. § 200.700 (West 2011). <u>Definitions</u></p> <p>As used in NRS 200.700 to 200.760, inclusive, unless the context otherwise provides:</p>

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<p>Definitions Cont' (Nevada)</p>	<p>1. "Performance" means any play, film, photograph, computer-generated image, electronic representation, dance or other visual presentation.</p> <p>2. "Promote" means to produce, direct, procure, manufacture, sell, give, lend, publish, distribute, exhibit, advertise or possess for the purpose of distribution.</p> <p>3. "Sexual conduct" means sexual intercourse, lewd exhibition of the genitals, fellatio, cunnilingus, bestiality, anal intercourse, excretion, sado-masochistic abuse, masturbation, or the penetration of any part of a person's body or of any object manipulated or inserted by a person into the genital or anal opening of the body of another.</p> <p>4. "Sexual portrayal" means the depiction of a person in a manner which appeals to the prurient interest in sex and which does not have serious literary, artistic, political or scientific value.</p> <p>NEV. REV. STAT. ANN. § 201.195 (West 2011).</p> <p><u>Solicitation of minor to engage in acts constituting crime against nature; penalties</u></p> <p>2. As used in this section, the "infamous crime against nature" means anal intercourse, cunnilingus or fellatio between natural persons of the same sex. Any sexual penetration, however slight, is sufficient to complete the infamous crime against nature.</p> <p>NEV. REV. STAT. ANN. § 201.257 (West 2011).</p> <p><u>"Harmful to minors" defined</u></p> <p>"Harmful to minors" means that quality of any description or representation, whether constituting all or a part of the material considered, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominantly appeals to the prurient, shameful or morbid interest of minors, is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, and is without serious literary, artistic, political or scientific value.</p> <p>NEV. REV. STAT. ANN. § 201.262 (West 2011).</p> <p><u>"Sado-masochistic abuse" defined</u></p> <p>"Sado-masochistic abuse" means:</p> <ol style="list-style-type: none"> <li>1. Flagellation or torture practiced by or upon a person whether or not clad in undergarments, a mask or bizarre costume; or</li> <li>2. The condition of being fettered, bound or otherwise physically restrained.</li> </ol> <p>NEV. REV. STAT. ANN. § 201.560 (West 2011).</p>
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## NIC/WCL Project on Addressing Prison Rape

Definitions Cont' (Nevada)	<p><u>Definitions; exceptions; penalties</u></p> <p>6. As used in this section:</p> <p>(a) "Computer" has the meaning ascribed to it in NRS 205.4735.</p> <p>(b) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.</p> <p>(c) "Material" means anything that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.</p> <p>(d) "Network" has the meaning ascribed to it in NRS 205.4745.</p> <p>(e) "Person with mental illness" means a person who has any mental dysfunction leading to impaired ability to maintain himself and to function effectively in his life situation without external support.</p> <p>(f) "Sexual conduct" has the meaning ascribed to it in NRS 201.520.</p> <p>(g) "System" has the meaning ascribed to it in NRS 205.476.</p>
Defenses (Nevada)	None.
Penalty (Nevada)	<p>NEV. REV. STAT. ANN. § 200.366<sup>38</sup> (West 2008).</p> <p><u>Sexual assault: Definition; penalties</u></p> <p>2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:</p> <p>(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:</p> <p>(1) For life without the possibility of parole; or</p> <p>(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.</p> <p>(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.</p> <p>3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:</p> <p>(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.</p>

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<p>Penalty Cont' (Nevada)</p>	<p>(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.</p> <p>(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.</p> <p>4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:</p> <p>(a) A sexual assault pursuant to this section or any other sexual offense against a child; or</p> <p>(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.</p> <p>NEV. REV. STAT. ANN. § 200.508 (West 2011). <u>Abuse, neglect or endangerment of child: Penalties; definitions</u></p> <p>(a) If substantial bodily or mental harm results to the child:</p> <p>(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or</p> <p>(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or</p> <p>(b) If substantial bodily or mental harm does not result to the child:</p> <p>(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or</p> <p>(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>2. A person who is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental</p>
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<p>Penalty Cont' (Nevada)</p>	<p>suffering as the result of abuse or neglect:</p> <p>(a) If substantial bodily or mental harm results to the child:</p> <p>(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or</p> <p>(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or</p> <p>(b) If substantial bodily or mental harm does not result to the child:</p> <p>(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or</p> <p>(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130, unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.</p> <p>3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that he delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.</p> <p>NEV. REV. STAT. ANN. § 200.725 (West 2011). <u>Preparing, advertising or distributing materials depicting pornography involving minor unlawful; penalty</u></p> <p>A person who [violates this section] shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 15 years, or by a fine of not more than \$15,000, or by both fine and imprisonment.</p> <p>NEV. REV. STAT. ANN. § 200.730 (West 2011). <u>Possession of visual presentation depicting sexual conduct of person under 16 years of age unlawful; penalties</u></p> <p>1. For the first offense, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.</p> <p>2. For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of life with the possibility of parole, and may be further punished by a fine of not more than \$5,000.</p>
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<p>Penalty Cont' (Nevada)</p>	<p>(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.</p> <p>5. A person who violates or attempts to violate the provisions of this section in a manner other than through the use of a computer, system or network:</p> <p>(a) is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and may be further punished by a fine of not more than \$10,000;</p> <p>(b) is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and may be further punished by a fine of not more than \$10,000; or</p> <p>(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.</p> <p>NEV. REV. STAT. ANN. § 201.540 (West 2011). <u>Sexual conduct between certain employees of school or volunteers at school and pupil: Penalty; exception</u></p> <p>2. Except as otherwise provided in subsection 4, a person who [violates this section]</p> <p>(c) is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.</p> <p>NEV. REV. STAT. ANN. § 193.130 (West 2011). <u>Categories and punishment of felonies</u></p> <p>1. Except when a person is convicted of a category A felony, and except as otherwise provided by specific statute, a person convicted of a felony shall be sentenced to a minimum term and a maximum term of imprisonment which must be within the limits prescribed by the applicable statute, unless the statute in force at the time of commission of the felony prescribed a different penalty. The minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed.2. Except as otherwise provided by specific statute, for each felony committed on or after July 1, 1995:(a) A category A felony is a felony for which a sentence of death or imprisonment in the state prison for life with or without the possibility of parole may be imposed, as provided by specific statute.</p> <p>(b) A category B felony is a felony for which the minimum term of imprisonment in the state prison that may be imposed is not less than 1 year and the maximum term of imprisonment that may be imposed is not more than 20 years, as provided by specific statute.</p> <p>(c) A category C 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 5 years. In addition to any other penalty, the court may impose a fine of not more than \$10,000, unless a greater fine is authorized or required by statute.</p>
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Penalty Cont' (Nevada)	<p>(d) A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater fine is authorized or required by statute.</p> <p>(e) A category E 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. Except as otherwise provided in paragraph (b) of subsection 1 of NRS 176A.100, upon sentencing a person who is found guilty of a category E felony, the court shall suspend the execution of the sentence and grant probation to the person upon such conditions as the court deems appropriate. Such conditions of probation may include, but are not limited to, requiring the person to serve a term of confinement of not more than 1 year in the county jail. In addition to any other penalty, the court may impose a fine of not more than \$5,000, unless a greater penalty is authorized or required by statute.</p>
<b>New Hampshire</b>	
Statute (New Hampshire)	<p>N.H. REV. STAT. ANN. § 632-A:2 (West 2011).  <u>Aggravated Felonious Sexual Assault.</u></p> <p>I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:</p> <p>(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.</p> <p>(b) When the victim is physically helpless to resist.</p> <p>(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.</p> <p>(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.</p> <p>(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.</p> <p>(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.</p> <p>(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating</p>

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<p>Statute Cont' (<i>New Hampshire</i>)</p>	<p>relationship or within one year of termination of that therapeutic or treating relationship:</p> <p>(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or</p> <p>(2) Uses this position as such provider to coerce the victim to submit.</p> <p>(h) When, except as between legally married spouses, the victim is mentally defective and the actor knows or has reason to know that the victim is mentally defective.</p> <p>(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.</p> <p>(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:</p> <p>(1) the actor is a member of the same household as the victim; or</p> <p>(2) the actor is related by blood or affinity to the victim.</p> <p>(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.</p> <p>(l) When the victim is less than 13 years of age.</p> <p>(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.</p> <p>(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:</p> <p>(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or</p> <p>(2) When the actor is a probation or parole officer or 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> <p>Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.</p> <p>II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.</p> <p>III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.</p> <p>IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to</p>
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American University, Washington College of Law

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<p>Statute Cont' (New Hampshire)</p>	<p>legitimacy, stepchildren, and relationships of parent and child by adoption.</p> <p>N.H. REV. STAT. ANN. § 632-A:3 (West 2011). <u>Felonious Sexual Assault</u></p> <p>A person is guilty of a class B felony if such person:</p> <p>I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or</p> <p>II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or</p> <p>III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.</p> <p>IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:</p> <p>(a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or 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> <p>Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.</p> <p>N.H. REV. STAT. ANN. § 632-A:4 (West 2011). <u>Sexual Assault</u></p> <p>I. A person is guilty of a class A misdemeanor under any of the following circumstances:</p> <p>(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.</p> <p>(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.</p> <p>(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.</p> <p>II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.</p>
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<p>Statute Cont' (<i>New Hampshire</i>)</p>	<p>III. A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person when the actor is in a position of authority over the person under any of the following circumstances:  (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 juvenile detention facility where the actor is employed; or  (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.  Consent of the victim under any of the circumstances set forth in paragraph III shall not be considered a defense.</p> <p>N.H. REV. STAT. ANN. § 645:1 (West 2011).  <u>Indecent Exposure and Lewdness</u></p> <p>I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.  II. A person is guilty of a class B felony if:  (a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.  (b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.  (c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.  III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.</p> <p>N.H. REV. STAT. ANN. § 649-A:3 (West 2011).  <u>Possession of Child Sexual Abuse Images</u></p> <p>I. No person shall knowingly:  (a) Buy, procure, possess, or control any visual representation of a child engaging in sexually explicit conduct; or  (b) Bring or cause to be brought into this state any visual representation of a child engaging in sexually explicit conduct.  II. An offense under this section shall be a class A felony if such person has had no previous convictions in this state or another</p>
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<p>Statute Cont' (<i>New Hampshire</i>)</p>	<p>jurisdiction for the conduct prohibited by paragraph I. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.</p> <p>III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant:</p> <p>(a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and</p> <p>(b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof:</p> <p>(1) Took reasonable steps to destroy each such visual depiction; or</p> <p>(2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.</p> <p>N.H. REV. STAT. ANN. § 649-A:3-a (West 2011). <u>Distribution of Child Sexual Abuse Images</u></p> <p>I. No person shall:</p> <p>(a) Knowingly sell, exchange, or otherwise transfer, or possess with intent to sell, exchange, or otherwise transfer any visual representation of a child engaging in or being engaged in sexually explicit conduct;</p> <p>(b) Knowingly publish, exhibit, or otherwise make available any visual representation of a child engaging in or being engaged in sexually explicit conduct.</p> <p>(b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.</p> <p>III. Nothing in this chapter shall be construed to limit any law enforcement agency from possessing or displaying or otherwise make available any images as may be necessary to the performance of a valid law enforcement function.</p> <p>N.H. REV. STAT. ANN. § 649-A:3-b (West 2011). <u>Manufacture of Child Sexual Abuse Images</u></p> <p>I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.</p>
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<p>Statute Cont' (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 649-B:3 (West 2011). <u>Computer Pornography Prohibited</u></p> <p>I. No person shall knowingly:            (a) Compile, enter into, or transmit by means of computer;            (b) Make, print, publish, or reproduce by other computerized means;            (c) Cause or allow to be entered into or transmitted by means of computer; or            (d) Buy, sell, receive, exchange, or disseminate by means of computer, any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information, for purposes of facilitating, encouraging, offering, or soliciting sexual conduct of or with any child, or the visual depiction of such conduct.</p> <p>II. Any person who violates the provisions of this section is guilty of a class B felony.</p> <p>N.H. REV. STAT. ANN. § 649-B:4 (West 2011). <u>Certain Uses of Computer Services Prohibited.</u></p> <p>I. No person shall knowingly utilize a computer on-line service, internet service, or local bulletin board service to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to commit any of the following:            (a) Any offense under RSA 632-A, relative to sexual assault and related offenses.            (b) Indecent exposure and lewdness under RSA 645:1.            (c) Endangering a child as defined in RSA 639:3, III.</p> <p>II. (a) A person who violates the provisions of paragraph I shall be guilty of a class A felony if such person believed the child was under the age of 13, otherwise such person shall be guilty of a class B felony.</p> <p>III. It shall not be a defense to a prosecution under this section that the victim was not actually a child so long as the person reasonably believed that the victim was a child.</p>
<p>Age of Consent♦ (<i>New Hampshire</i>)</p>	<p>16</p>
<p>Definitions (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 632-A:1 (West 2011). <u>Definitions</u></p>

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<p>Definitions Cont' (<i>New Hampshire</i>)</p>	<p>In this chapter:</p> <p>I. "Actor" means a person accused of a crime of sexual assault.</p> <p>I-a. "Affinity" means a relation which one spouse because of marriage has to blood relatives of the other spouse.</p> <p>I-b. "Genital openings" means the internal or external genitalia including, but not limited to, the vagina, labia majora, labia minora, vulva, urethra or perineum.</p> <p>I-c. "Pattern of sexual assault" means committing more than one act under RSA 632-A:2 or RSA 632-A:3, or both, upon the same victim over a period of 2 months or more and within a period of 5 years.</p> <p>II. "Retaliate" means to undertake action against the interests of the victim, including, but not limited to:</p> <p>(a) Physical or mental torment or abuse.</p> <p>(b) Kidnapping, false imprisonment or extortion.</p> <p>(c) Public humiliation or disgrace.</p> <p>III. "Serious personal injury" means extensive bodily injury or disfigurement, extreme mental anguish or trauma, disease or loss or impairment of a sexual or reproductive organ.</p> <p>IV. "Sexual contact" means the intentional touching whether directly, through clothing, or otherwise, of the victim's or actor's sexual or intimate parts, including emissions, tongue, anus, breasts, and buttocks. Sexual contact includes only that aforementioned conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification.</p> <p>V. (a) "Sexual penetration" means:</p> <p>(1) Sexual intercourse; or</p> <p>(2) Cunnilingus; or</p> <p>(3) Fellatio; or</p> <p>(4) Anal intercourse; or</p> <p>(5) Any intrusion, however slight, of any part of the actor's body, including emissions, or any object manipulated by the actor into genital or anal openings of the victim's body; or</p> <p>(6) Any intrusion, however slight, of any part of the victim's body, including emissions, or any object manipulated by the victim into the oral, genital, or anal openings of the actor's body; or</p> <p>(7) Any act which forces, coerces, or intimidates the victim to perform any sexual penetration as defined in subparagraphs (1)-(6) on the actor, on another person, or on himself.</p> <p>(b) Emissions include semen, urine, and feces. Emission is not required as an element of any form of sexual penetration.</p> <p>(c) "Objects" include animals as defined in RSA 644:8, II.</p> <p>VI. "Therapy" means the treatment of bodily, mental, or behavioral disorders by remedial agents or methods.</p>
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<p>Definitions Cont' (<i>New Hampshire</i>)</p>	<p>N.H. REV. STAT. ANN. § 649-A:2 (West 2011). <u>Definitions</u></p> <p>In this chapter:</p> <p>I. “Child” means any person under the age of 18 years.</p> <p>II. “Disseminate” means to import, publish, produce, print, manufacture, distribute, sell, lease, exhibit, or display.</p> <p>III. “Sexually explicit conduct” means human masturbation, the touching of the actor's or other person's sexual organs in the context of a sexual relationship, sexual intercourse actual or simulated, normal or perverted, whether alone or between members of the same or opposite sex or between humans and animals, or any lewd exhibitions of the buttocks, genitals, flagellation, bondage, or torture. Sexual intercourse is simulated when it depicts explicit sexual intercourse that gives the appearance of the consummation of sexual intercourse, normal or perverted.</p> <p>IV. “Visual representation” means any visual depiction, including any photograph, film, video, digital image, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:</p> <p>(a) The production of such visual depiction involves the use of a child engaging in or being engaged in sexually explicit conduct; or</p> <p>(b) Such visual depiction is a digital image, computer image, or computer-generated image of a child engaging in or being engaged in sexually explicit conduct; or</p> <p>(c) Such visual depiction has been created, adapted, or modified to appear that an identifiable child is engaging in or being engaged in sexually explicit conduct.</p> <p>V. (a) “Identifiable child” means a person:</p> <p>(1) Who was a child at the time the visual depiction was created, adapted, or modified; or</p> <p>(2) Whose image as a child was used in creating, adapting, or modifying the visual depiction; and</p> <p>(3) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature.</p> <p>(b) The term “identifiable child” shall not be construed to require proof of the actual identity of the identifiable child.</p> <p>VI. “Previous conviction” or “previously convicted” means having been convicted by a jury or a judge, or having plead guilty prior to the commission of the current offense. For purposes of this paragraph, a previous conviction need not have been affirmed on appeal.</p> <p>VII. “Computer” means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.</p>
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Definitions Cont' ( <i>New Hampshire</i> )	N.H. REV. STAT. ANN. § 649-B:2 (West 2011). <u>Definition</u>  In this chapter, “child” means any person under the age of 16 years.
Defenses ( <i>New Hampshire</i> )	N.H. REV. STAT. ANN. § 649-A:3 (West 2011). <u>Possession of Child Sexual Abuse Images</u>  III. It shall be an affirmative defense to a charge of violating paragraph I of this section that the defendant: (a) Possessed less than 3 images of any visual depiction proscribed by that paragraph; and (b) Promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof: (1) Took reasonable steps to destroy each such visual depiction; or (2) Reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.  N.H. REV. STAT. ANN. § 649-A:4 (West 2011) <u>Exemption</u>  A person shall not be guilty of a violation under this chapter if he is a librarian, or a paid or volunteer member of a library staff working under the supervision of a librarian, engaged in the normal course of his employment, or if he is regularly employed by anybody as a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other nonmanagerial or nonsupervisory capacity in a motion picture theatre; provided that he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, and provided further that he is not in any way responsible for acquiring such material for sale, rental or exhibition.
Penalty ( <i>New Hampshire</i> )	N.H. REV. STAT. ANN. § 651:2 (West 2011). <u>Sentences and Limitations.</u>  I. A person convicted of a felony or a Class A misdemeanor may be sentenced to imprisonment, probation, conditional or unconditional

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<p>Penalty Cont' (<i>New Hampshire</i>)</p>	<p>discharge, or a fine.</p> <p>II. If a sentence of imprisonment is imposed, the court shall fix the maximum thereof which is not to exceed:</p> <p>(a) Fifteen years for a class A felony, (b) Seven years for a class B felony, (c) One year for a class A misdemeanor</p> <p>N.H. REV. STAT. ANN. § 649-A:3 (West 2011). <u>Possession of Child Sexual Abuse Images</u></p> <p>II. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in another jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum sentence.</p> <p>N.H. REV. STAT. ANN. § 649-A:3-a (West 2011). <u>Distribution of Child Sexual Abuse Images</u></p> <p>II. (a) If such person has had no previous convictions in this state or another state for the conduct prohibited by paragraph I, the defendant may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the minimum. (b) If such person has no previous convictions in this state or another state for the conduct prohibited in paragraph I, and is convicted under subparagraph I(b) with having less than 3 images or visual representations, the defendant will be guilty of a class B felony.</p> <p>N.H. REV. STAT. ANN. § 649-A:3-b (West 2011). <u>Manufacture of Child Sexual Abuse Images</u></p> <p>II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or</p>
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<p>Penalty Cont' (<i>New Hampshire</i>)</p>	<p>for such term as the court may order.</p> <p>N.H. REV. STAT. ANN. § 649-B:4 (West 2011). <u>Certain Uses of Computer Services Prohibited.</u></p> <p>II. (b) A person convicted under paragraph I based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction shall be charged as a class A felony. If the indictment also alleges that the person believed that the child was under the age of 13, the person may be sentenced to a maximum sentence not to exceed 20 years and a minimum sentence not to exceed 10 years.</p> <p>(c) If the person has been previously convicted 2 or more times for an offense under this section or a reasonably equivalent statute in another state, the person may be sentenced to a maximum term not to exceed 30 years.</p>
<p style="text-align: center;"><b>New Jersey</b></p>	
<p>Statute (<i>New Jersey</i>)</p>	<p>N.J. STAT. ANN. § 2C:14-2 (West 2011). <u>Sexual assault</u></p> <p>a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:</p> <ul style="list-style-type: none"> <li>(1) The victim is less than 13 years old;</li> <li>(2) The victim is at least 13 but less than 16 years old; and</li> <li>(a) The actor is related to the victim by blood or affinity to the third degree, or</li> <li>(b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or</li> <li>(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;</li> <li>(3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;</li> <li>(4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;</li> <li>(5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;</li> </ul>

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<p>Statute Cont' (New Jersey)</p>	<p>(6) The actor uses physical force or coercion and severe personal injury is sustained by the victim; (7) The victim is one whom the actor knew or should have known was physically helpless, mentally defective or mentally incapacitated. Aggravated sexual assault is a crime of the first degree. b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim. 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: (1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury; (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; (3) The victim is at least 16 but less than 18 years old and: (a) The actor is related to the victim by blood or affinity to the third degree; or (b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or (c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household; (4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim. Sexual assault is a crime of the second degree.</p> <p>N.J. STAT. ANN. § 2C:14-3 (West 2011). <u>Criminal sexual contact</u></p> <p>a. An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2a. (2) through (7). Aggravated criminal sexual contact is a crime of the third degree. b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2c. (1) through (4). Criminal sexual contact is a crime of the fourth degree.</p> <p>N.J. STAT. ANN. § 2C:14-4 (West 2011). <u>Lewdness</u></p> <p>a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably</p>
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Statute Cont' (New Jersey)	<p>expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.</p> <p>b. A person commits a crime of the fourth degree if:</p> <p>(1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.</p> <p>(2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.</p> <p>c. As used in this section: "lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.</p>
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Definitions (New Jersey)	<p>N.J. STAT. ANN. § 2C:14-1 (West 2011). <u>Definitions</u></p> <p>The following definitions apply to this chapter:</p> <p>a. "Actor" means a person accused of an offense proscribed under this act;</p> <p>b. "Victim" means a person alleging to have been subjected to offenses proscribed by this act;</p> <p>c. "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 actor or upon the actor's instruction. The depth of insertion shall not be relevant as to the question of commission of the crime;</p> <p>d. "Sexual contact" means an intentional touching by the victim or actor, either directly or through clothing, of the victim's or actor's intimate parts for the purpose of degrading or humiliating the victim or sexually arousing or sexually gratifying the actor. Sexual contact of the actor with himself must be in view of the victim whom the actor knows to be present;</p> <p>e. "Intimate parts" means the following body parts: sexual organs, genital area, anal area, inner thigh, groin, buttock or breast of a person;</p> <p>f. "Severe personal injury" means severe bodily injury, disfigurement, disease, incapacitating mental anguish or chronic pain;</p> <p>g. "Physically helpless" means that condition in which a person is unconscious or is physically unable to flee or is physically unable to</p>

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Definitions Cont' (New Jersey)	<p>communicate unwillingness to act;</p> <p>h. “Mentally defective” means that condition in which a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent;</p> <p>i. “Mentally incapacitated” means that condition in which a person is rendered temporarily incapable of understanding or controlling his conduct due to the influence of a narcotic, anesthetic, intoxicant, or other substance administered to that person without his prior knowledge or consent, or due to any other act committed upon that person which rendered that person incapable of appraising or controlling his conduct;</p> <p>j. “Coercion” as used in this chapter shall refer to those acts which are defined as criminal coercion in <a href="#">section 2C:13-5</a>(1), (2), (3), (4), (6) and (7).</p> <p>N.J. STAT. ANN. § 2C:14-4 (West 2011). <u>Lewdness</u></p> <p>c. As used in this section: “lewd acts” shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.</p>
Defenses (New Jersey)	None.
Penalty (New Jersey)	<p>N.J. STAT. ANN. § 2C:43-6 (West 2011). <u>Sentence of imprisonment for crime; ordinary terms; mandatory terms</u></p> <p>a. Except as otherwise provided, a person who has been convicted of a crime may be sentenced to imprisonment, as follows:</p> <p>(1) In the case of a crime of the first degree, for a specific term of years which shall be fixed by the court and shall be between 10 years and 20 years;</p> <p>(2) In the case of a crime of the second degree, for a specific term of years which shall be fixed by the court and shall be between five years and 10 years;</p> <p>(3) In the case of a crime of the third degree, for a specific term of years which shall be fixed by the court and shall be between three years and five years;</p>

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Penalty Cont' (New Jersey)	<p>(4) In the case of a crime of the fourth degree, for a specific term which shall be fixed by the court and shall not exceed 18 months.</p> <p>N.J. STAT. ANN. § 2C:43-3.6 (West 2011).  <u>Penalties</u></p> <p>a. In addition to any fine, fee, assessment or penalty authorized under the provisions of Title 2C of the New Jersey Statutes, a person convicted of a sex offense, as defined in section 2 of P.L.1994, c. 133 (C.2C:7-2), shall be assessed a penalty of \$800 for each such offense.</p>
<b>New Mexico</b>	
Statute (New Mexico)	<p>N.M. STAT. ANN. § 30-9-1 (West 2011).  <u>Enticement of child</u></p> <p>Enticement of child consists of:</p> <p>A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code; or</p> <p>B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.</p> <p>Whoever commits enticement of child is guilty of a misdemeanor.</p> <p>N.M. STAT. ANN. § 30-9-11 (West 2011).  <u>Criminal sexual penetration</u></p> <p>A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.</p> <p>B. Criminal sexual penetration does not include medically indicated procedures.</p> <p>C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age</p>

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<p>Statute Cont' (<i>New Mexico</i>)</p>	<p>with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.</p> <p>D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:</p> <ol style="list-style-type: none"> <li>(1) on a child under thirteen years of age; or</li> <li>(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.</li> </ol> <p>Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.</p> <p>E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:</p> <ol style="list-style-type: none"> <li>(1) by the use of force or coercion on a child thirteen to eighteen years of age;</li> <li>(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;</li> <li>(3) by the use of force or coercion that results in personal injury to the victim;</li> <li>(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;</li> <li>(5) in the commission of any other felony; or</li> <li>(6) when the perpetrator is armed with a deadly weapon.</li> </ol> <p>Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act.</p> <p>F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.</p> <p>Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.</p> <p>G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:</p> <ol style="list-style-type: none"> <li>(1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or</li> <li>(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.</li> </ol> <p>Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.</p>
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<p>Statute Cont' (<i>New Mexico</i>)</p>	<p>N.M. STAT. ANN. § 30-9-12 (West 2011). <u>Criminal sexual contact</u></p> <p>A. Criminal sexual contact is the unlawful and intentional touching of or application of force, without consent, to the unclothed intimate parts of another who has reached his eighteenth birthday, or intentionally causing another who has reached his eighteenth birthday to touch one's intimate parts.</p> <p>B. Criminal sexual contact does not include touching by a psychotherapist on his patient that is:</p> <ol style="list-style-type: none"> <li>(1) inadvertent;</li> <li>(2) casual social contact not intended to be sexual in nature; or</li> <li>(3) generally recognized by mental health professionals as being a legitimate element of psychotherapy.</li> </ol> <p>C. Criminal sexual contact in the fourth degree consists of all criminal sexual contact perpetrated:</p> <ol style="list-style-type: none"> <li>(1) by the use of force or coercion that results in personal injury to the victim;</li> <li>(2) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons; or</li> <li>(3) when the perpetrator is armed with a deadly weapon.</li> </ol> <p>Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.</p> <p>D. Criminal sexual contact is a misdemeanor when perpetrated with the use of force or coercion.</p> <p>E. For the purposes of this section, “intimate parts” means the primary genital area, groin, buttocks, anus or breast.</p> <p>N.M. STAT. ANN. § 30-9-13 (West 2011). <u>Criminal sexual contact of a minor</u></p> <p>A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, “intimate parts” means the primary genital area, groin, buttocks, anus or breast.</p> <p>B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:</p> <ol style="list-style-type: none"> <li>(1) on a child under thirteen years of age; or</li> <li>(2) on a child thirteen to eighteen years of age when: <ol style="list-style-type: none"> <li>(a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;</li> <li>(b) the perpetrator uses force or coercion that results in personal injury to the child;</li> <li>(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or</li> </ol> </li> </ol>
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<p>Statute Cont' (New Mexico)</p>	<p>(d) the perpetrator is armed with a deadly weapon. C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated: (1) on a child under thirteen years of age; or (2) on a child thirteen to eighteen years of age when: (a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit; (b) the perpetrator uses force or coercion which results in personal injury to the child; (c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or (d) the perpetrator is armed with a deadly weapon. Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child. D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact: (1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or (2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school. Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.</p> <p>N.M. STAT. ANN. § 30-9-14 (West 2011). <u>Indecent exposure</u></p> <p>A. Indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view. B. As used in this section, “primary genital area” means the mons pubis, penis, testicles, mons veneris, vulva or vagina. C. Whoever commits indecent exposure is guilty of a misdemeanor.</p> <p>N.M. STAT. ANN. § 30-9-14.3 (West 2011). <u>Aggravated indecent exposure</u></p> <p>A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:</p>
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<p>Statute Cont' (New Mexico)</p>	<p>(1) exposure to a child less than eighteen years of age;  (2) assault, as provided in Section 30-3-1 NMSA 1978;  (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;  (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;  (5) battery, as provided in Section 30-3-4 NMSA 1978;  (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;  (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or  (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.  B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.  C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.</p> <p>N.M. STAT. ANN. § 30-9-20 (West 2011).  <u>Voyeurism prohibited--penalties</u></p> <p>A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:  (1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or  (2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.  B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.  C. As used in this section:  (1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and  (2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type."</p> <p>N.M. STAT. ANN. § 30-37-2 (West 2011).  <u>Offenses; books; pictures</u></p> <p>It is unlawful for a person to knowingly sell, deliver, distribute, display for sale or provide to a minor, or knowingly to possess with intent to sell, deliver, distribute, display for sale or provide to a minor:</p>
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<p>Statute Cont' (<i>New Mexico</i>)</p>	<p>A. any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body, or any replica, article or device having the appearance of either male or female genitals which depicts nudity, sexual conduct, sexual excitement or sado-masochistic abuse and which is harmful to minors; or  B. any book, pamphlet, magazine, printed matter however produced or sound recording which contains any matter enumerated in Subsection A of this section or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-masochistic abuse and which, taken as a whole, is harmful to minors.  N.M. STAT. ANN. § 30-37-2.1 (West 2011).  <u>Offenses; retail display</u></p> <p>A. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the cover of which depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which is harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is on open display to, or within the convenient reach of, minors who may frequent the retail establishment. Such books, magazines or printed materials may be displayed behind an opaque covering which conceals the depiction of nudity, sado-masochistic abuse, sexual conduct or sexual excitement, provided that those books, magazines or printed materials are not within the convenient reach of minors who may frequent the retail establishment.  B. It is unlawful for any person, offering for sale in a retail establishment open to the general public any book, magazine or other printed material the content of which exploits, is devoted to or is principally made up of descriptions or depictions of nudity, sado-masochistic abuse, sexual conduct or sexual excitement and which are harmful to minors, to knowingly exhibit that book, magazine or material in that establishment in such a way that it is within the convenient reach of minors who may frequent the retail establishment.</p> <p>N.M. STAT. ANN. § 30-37-3 (West 2011).  <u>Offenses; motion pictures; plays</u></p> <p>It is unlawful for any person knowingly to exhibit to a minor or knowingly to provide to a minor an admission ticket or pass or knowingly to admit a minor to premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors.</p> <p>N.M. STAT. ANN. § 30-37-3.1 (West 2011).  <u>Outdoor theaters; offenses</u></p>
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<p>Statute Cont' (New Mexico)</p>	<p>A. It is unlawful for the owner or operator of an outdoor motion picture theater to show or exhibit any motion picture which in whole or in part depicts unclothed sexual conduct in an outdoor theater unless the exhibitor can prove that the outdoor screen on which the picture is to be shown cannot be seen by any minor who has not taken extraordinary measures to view the screen or who is not within the area provided for those persons who have been admitted by a ticket or pass.</p> <p>B. As used in this section, "unclothed sexual conduct" means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks.</p> <p>C. The notice provisions of Section 30-37-4 NMSA 1978 shall not apply to this section.</p> <p>N.M. STAT. ANN. § 30-37-3.2 (West 2011).</p> <p><u>Child solicitation by electronic communication device</u></p> <p>A. Child solicitation by electronic communication device consists of a person knowingly and intentionally soliciting a child under sixteen years of age, by means of an electronic communication device, to engage in sexual intercourse, sexual contact or in a sexual or obscene performance, or to engage in any other sexual conduct when the perpetrator is at least four years older than the child.</p> <p>B. Whoever commits child solicitation by electronic communication device is guilty of a:</p> <p>(1) fourth degree felony if the child is at least thirteen but under sixteen years of age; or</p> <p>(2) third degree felony if the child is under thirteen years of age.</p> <p>C. Whoever commits child solicitation by electronic communication device and also appears for, attends or is present at a meeting that the person arranged pursuant to the solicitation is guilty of a:</p> <p>(1) third degree felony if the child is at least thirteen but under sixteen years of age; or</p> <p>(2) second degree felony if the child is under thirteen years of age.</p> <p>D. In a prosecution for child solicitation by electronic communication device, it is not a defense that the intended victim of the defendant was a peace officer posing as a child under sixteen years of age.</p> <p>E. For purposes of determining jurisdiction, child solicitation by electronic communication device is committed in this state if an electronic communication device transmission either originates or is received in this state.</p> <p>F. As used in this section, "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal.</p> <p>N.M. STAT. ANN. § 30-37-3.3 (West 2011).</p> <p><u>Criminal sexual communication with a child--penalty</u></p>
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Statute Cont' (New Mexico)	<p>A. Criminal sexual communication with a child consists of a person knowingly and intentionally communicating directly with a specific child under sixteen years of age by sending the child obscene images of the person's intimate parts by means of an electronic communication device when the perpetrator is at least four years older than the child.</p> <p>B. Whoever commits sexual communication with a child is guilty of a fourth degree felony.</p> <p>C. As used in this section:</p> <p>(1) "electronic communication device" means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and</p> <p>(2) "intimate parts" means the primary genital area, groin, buttocks, anus or breast.</p>
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Definitions (New Mexico)	<p>N.M. STAT. ANN. § 30-9-10 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in Sections 30-9-10 through 30-9-16 NMSA 1978:</p> <p>A. "force or coercion" means:</p> <p>(1) the use of physical force or physical violence;</p> <p>(2) the use of threats to use physical violence or physical force against the victim or another when the victim believes that there is a present ability to execute the threats;</p> <p>(3) the use of threats, including threats of physical punishment, kidnapping, extortion or retaliation directed against the victim or another when the victim believes that there is an ability to execute the threats;</p> <p>(4) the perpetration of criminal sexual penetration or criminal sexual contact when the perpetrator knows or has reason to know that the victim is unconscious, asleep or otherwise physically helpless or suffers from a mental condition that renders the victim incapable of understanding the nature or consequences of the act; or</p> <p>(5) the perpetration of criminal sexual penetration or criminal sexual contact by a psychotherapist on his patient, with or without the patient's consent, during the course of psychotherapy or within a period of one year following the termination of psychotherapy. Physical or verbal resistance of the victim is not an element of force or coercion;</p> <p>B. "great mental anguish" means psychological or emotional damage that requires psychiatric or psychological treatment or care, either on an inpatient or outpatient basis, and is characterized by extreme behavioral change or severe physical symptoms;</p> <p>C. "patient" means a person who seeks or obtains psychotherapy;</p>

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<p>Definitions Cont' (New Mexico)</p>	<p>D. “personal injury” means bodily injury to a lesser degree than great bodily harm and includes, but is not limited to, disfigurement, mental anguish, chronic or recurrent pain, pregnancy or disease or injury to a sexual or reproductive organ;</p> <p>E. “position of authority” means that position occupied by a parent, relative, household member, teacher, employer or other person who, by reason of that position, is able to exercise undue influence over a child;</p> <p>F. “psychotherapist” means a person who is or purports to be a:</p> <ol style="list-style-type: none"> <li>(1) licensed physician who practices psychotherapy;</li> <li>(2) licensed psychologist;</li> <li>(3) licensed social worker;</li> <li>(4) licensed nurse;</li> <li>(5) counselor;</li> <li>(6) substance abuse counselor;</li> <li>(7) psychiatric technician;</li> <li>(8) mental health worker;</li> <li>(9) marriage and family therapist;</li> <li>(10) hypnotherapist; or</li> <li>(11) minister, priest, rabbi or other similar functionary of a religious organization acting in his role as a pastoral counselor;</li> </ol> <p>G. “psychotherapy” means professional treatment or assessment of a mental or an emotional illness, symptom or condition;</p> <p>H. “school” means any public or private school, including the New Mexico military institute, the New Mexico school for the blind and visually impaired, the New Mexico school for the deaf, the New Mexico boys' school, the New Mexico youth diagnostic and development center, the Los Lunas medical center, the Fort Stanton hospital, the New Mexico behavioral health institute at Las Vegas and the Carrie Tingley crippled children's hospital, that offers a program of instruction designed to educate a person in a particular place, manner and subject area. “School” does not include a college or university; and</p> <p>I. “spouse” means a legal husband or wife, unless the couple is living apart or either husband or wife has filed for separate maintenance or divorce.</p> <p>N.M. STAT. ANN. § 30-37-1 (West 2011). <u>Definitions</u></p> <p>As used in this act:</p> <p>A. “minor” means any unmarried person who has not reached his eighteenth birthday;</p> <p>B. “nudity” means the showing of the male or female genitals, pubic area or buttocks with less than a full opaque covering, or the</p>
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<p>Definitions Cont' (<i>New Mexico</i>)</p>	<p>depiction of covered male genitals in a discernibly turgid state;  C. “sexual conduct” means act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be female, breast;  D. “sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal;  E. “sado-masochistic abuse” means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained;  F. “harmful to minors” means that quality of any description of representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse, when it:  (1) predominantly appeals to the prurient, shameful or morbid interest of minors; and  (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and  (3) is utterly without redeeming social importance for minors; and  G. “knowingly” means having general knowledge of, or reason to know, or a belief or reasonable ground for belief which warrants further inspection or inquiry or both, of:  (1) the character and content of any material described herein, which is reasonably susceptible of examination by the defendant;  (2) the age of the minor.</p> <p>N.M. STAT. ANN. § 30-9-14 (West 2011).  <u>Indecent exposure</u></p> <p>B. As used in this section, “primary genital area” means the mons pubis, penis, testicles, mons veneris, vulva or vagina.</p> <p>N.M. STAT. ANN. § 30-9-20 (West 2011).  <u>Voyeurism prohibited--penalties</u></p> <p>C. As used in this section:  (1) “intimate areas” means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and  (2) “instrumentality” means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.”</p> <p>N.M. STAT. ANN. § 30-37-3.1 (West 2011).</p>
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Definitions Cont' (New Mexico)	<p><u>Outdoor theaters; offenses</u></p> <p>B. As used in this section, “unclothed sexual conduct” means an act of masturbation, homosexuality, sodomy, sexual intercourse or physical contact with a person's unclothed genitals, pubic area or buttocks</p> <p>N.M. STAT. ANN. § 30-37-3.2 (West 2011).  <u>Child solicitation by electronic communication device</u></p> <p>F. As used in this section, “electronic communication device” means a computer, video recorder, digital camera, fax machine, telephone, cellular telephone, pager, audio equipment or any other device that can produce an electronically generated image, message or signal</p> <p>N.M. STAT. ANN. § 30-37-3.3 (West 2011).  <u>Criminal sexual communication with a child--penalty</u></p> <p>C. As used in this section:  (1) “electronic communication device” means a computer, video recorder, digital camera, fax machine, telephone, pager or any other device that can produce an electronically generated image; and  (2) “intimate parts” means the primary genital area, groin, buttocks, anus or breast.”</p>
Defenses (New Mexico)	None.
Penalty (New Mexico)	<p>N.M. STAT. ANN. § 30-9-11 (West 2011).  <u>Criminal sexual penetration</u></p> <p>E. [W]hoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act.</p>

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<p>Penalty Cont' (<i>New Mexico</i>)</p>	<p>N.M. STAT. ANN. § 30-9-13 (West 2011). <u>Criminal sexual contact of a minor</u></p> <p>B. Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.</p> <p>N.M. STAT. ANN. § 30-9-14 (West 2011). <u>Indecent exposure</u></p> <p>D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing indecent exposure to participate in and complete a program of professional counseling at his own expense.</p> <p>N.M. STAT. ANN. § 30-9-14.3 (West 2011). <u>Aggravated indecent exposure</u></p> <p>D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.</p> <p>N.M. STAT. ANN. § 31-18-15 (West 2011). <u>Sentencing authority; noncapital felonies; basic sentences and fines; parole authority; meritorious deductions</u></p> <p>A. If a person is convicted of a noncapital felony, the basic sentence of imprisonment is as follows:(1) for a first degree felony resulting in the death of a child, life imprisonment; (2) for a first degree felony for aggravated criminal sexual penetration, life imprisonment; (3) for a first degree felony, eighteen years imprisonment; (4) for a second degree felony resulting in the death of a human being, fifteen years imprisonment;</p>
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Penalty Cont' (New Mexico)	(5) for a second degree felony for a sexual offense against a child, fifteen years imprisonment; (6) for a second degree felony, nine years imprisonment; (7) for a third degree felony resulting in the death of a human being, six years imprisonment; (8) for a third degree felony for a sexual offense against a child, six years imprisonment; (9) for a third degree felony, three years imprisonment; or (10) for a fourth degree felony, eighteen months imprisonment.
<b>New York</b>	
Statute (New York)	<p>NY PENAL LAW § 130.05 (McKinney 2011).  <u>Sex offenses; lack of consent</u></p> <p>1. Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without consent of the victim.</p> <p>2. Lack of consent results from:</p> <ul style="list-style-type: none"> <li>(a) Forcible compulsion; or</li> <li>(b) Incapacity to consent; or</li> <li>(c) Where the offense charged is sexual abuse or forcible touching, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct; or</li> <li>(d) Where the offense charged is rape in the third degree as defined in subdivision three of section 130.25, or criminal sexual act in the third degree as defined in subdivision three of section 130.40, in addition to forcible compulsion, circumstances under which, at the time of the act of intercourse, oral sexual conduct or anal sexual conduct, the victim clearly expressed that he or she did not consent to engage in such act, and a reasonable person in the actor's situation would have understood such person's words and acts as an expression of lack of consent to such act under all the circumstances. <p>3. A person is deemed incapable of consent when he or she is:</p> <ul style="list-style-type: none"> <li>(a) less than seventeen years old; or</li> <li>(b) mentally disabled; or</li> <li>(c) mentally incapacitated; or</li> </ul> </li></ul>

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<p>Statute Cont' (New York)</p>	<p>(d) physically helpless; or (e) committed to the care and custody of the state department of correctional services or a hospital, as such term is defined in subdivision two of section four hundred of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such department or hospital.</p> <p>NY PENAL LAW § 130.10 (McKinney 2011). <u>Sex offenses; limitation; defenses</u></p> <p>1. In any prosecution under this article in which the victim's lack of consent is based solely upon his or her incapacity to consent because he or she was mentally disabled, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant, at the time he or she engaged in the conduct constituting the offense, did not know of the facts or conditions responsible for such incapacity to consent.</p> <p>2. Conduct performed for a valid medical or mental health care purpose shall not constitute a violation of any section of this article in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article.</p> <p>3. In any prosecution for the crime of rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55 in which incapacity to consent is based on the circumstances set forth in paragraph (h) of subdivision three of section 130.05 of this article it shall be an affirmative defense that the client or patient consented to such conduct charged after having been expressly advised by the health care or mental health care provider that such conduct was not performed for a valid medical purpose.</p> <p>4. In any prosecution under this article in which the victim's lack of consent is based solely on his or her incapacity to consent because he or she was less than seventeen years old, mentally disabled, or a client or patient and the actor is a health care provider, it shall be a defense that the defendant was married to the victim as defined in subdivision four of section 130.00 of this article.</p> <p>NY PENAL LAW § 130.20 (McKinney 2011). <u>Sexual misconduct</u></p> <p>A person is guilty of sexual misconduct when:</p> <ol style="list-style-type: none"> <li>1. He or she engages in sexual intercourse with another person without such person's consent; or</li> <li>2. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent; or</li> <li>3. He or she engages in sexual conduct with an animal or a dead human body.</li> </ol>
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<p>Statute Cont' (New York)</p>	<p>Sexual misconduct is a class A misdemeanor.</p> <p>NY PENAL LAW § 130.25 (McKinney 2011). <u>Rape in the third degree</u></p> <p>A person is guilty of rape in the third degree when:</p> <ol style="list-style-type: none"> <li>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;</li> <li>2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person less than seventeen years old; or</li> <li>3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.</li> </ol> <p>Rape in the third degree is a class E felony.</p> <p>NY PENAL LAW § 130.30 (McKinney 2011). <u>Rape in the second degree</u></p> <p>A person is guilty of rape in the second degree when:</p> <ol style="list-style-type: none"> <li>1. being eighteen years old or more, he or she engages in sexual intercourse with another person less than fifteen years old; or</li> <li>2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.</li> </ol> <p>It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.</p> <p>Rape in the second degree is a class D felony.</p> <p>NY PENAL LAW § 130.35 (McKinney 2011). <u>Rape in the first degree</u></p> <p>A person is guilty of rape in the first degree when he or she engages in sexual intercourse with another person:</p> <ol style="list-style-type: none"> <li>1. By forcible compulsion; or</li> <li>2. Who is incapable of consent by reason of being physically helpless; or</li> <li>3. Who is less than eleven years old; or</li> </ol>
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<p>Statute Cont' (New York)</p>	<p>4. Who is less than thirteen years old and the actor is eighteen years old or more. Rape in the first degree is a class B felony.</p> <p>NY PENAL LAW § 130.40 (McKinney 2011). <u>Criminal sexual act in the third degree</u></p> <p>A person is guilty of criminal sexual act in the third degree when:</p> <ol style="list-style-type: none"> <li>1. He or she engages in oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;</li> <li>2. Being twenty-one years old or more, he or she engages in oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or</li> <li>3. He or she engages in oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.</li> </ol> <p>NY PENAL LAW § 130.45 (McKinney 2011). <u>Criminal sexual act in the second degree</u></p> <p>A person is guilty of criminal sexual act in the second degree when:</p> <ol style="list-style-type: none"> <li>1. being eighteen years old or more, he or she engages in oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or</li> <li>2. he or she engages in oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.</li> </ol> <p>It shall be an affirmative defense to the crime of criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.</p> <p>Criminal sexual act in the second degree is a class D felony.</p> <p>NY PENAL LAW § 130.50 (McKinney 2011). <u>Criminal sexual act in the first degree</u></p> <p>A person is guilty of criminal sexual act in the first degree when he or she engages in oral sexual conduct or anal sexual conduct with another person:</p>
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<p>Statute Cont' (New York)</p>	<ol style="list-style-type: none"> <li>1. By forcible compulsion; or</li> <li>2. Who is incapable of consent by reason of being physically helpless; or</li> <li>3. Who is less than eleven years old; or</li> <li>4. Who is less than thirteen years old and the actor is eighteen years old or more.</li> </ol> <p>Criminal sexual act in the first degree is a class B felony.</p> <p>NY PENAL LAW § 130.52 (McKinney 2011). <u>Forcible touching</u></p> <p>A person is guilty of forcible touching when such person intentionally, and for no legitimate purpose, forcibly touches the sexual or other intimate parts of another person for the purpose of degrading or abusing such person; or for the purpose of gratifying the actor's sexual desire.</p> <p>For the purposes of this section, forcible touching includes squeezing, grabbing or pinching.</p> <p>Forcible touching is a class A misdemeanor.</p> <p>NY PENAL LAW § 130.53 (McKinney 2011). <u>Persistent sexual abuse</u></p> <p>A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130.60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.</p> <p>Persistent sexual abuse is a class E felony.</p> <p>NY PENAL LAW § 130.55 (McKinney 2011). <u>Sexual abuse in the third degree</u></p> <p>A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was</p>
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<p>Statute Cont' (New York)</p>	<p>due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person. Sexual abuse in the third degree is a class B misdemeanor.</p> <p>NY PENAL LAW § 130.60 (McKinney 2011). <u>Sexual abuse in the second degree</u></p> <p>A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:</p> <ol style="list-style-type: none"> <li>1. Incapable of consent by reason of some factor other than being less than seventeen years old; or</li> <li>2. Less than fourteen years old.</li> </ol> <p>Sexual abuse in the second degree is a class A misdemeanor.</p> <p>NY PENAL LAW § 130.65 (McKinney 2011). <u>Sexual abuse in the first degree</u></p> <p>A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:</p> <ol style="list-style-type: none"> <li>1. By forcible compulsion; or</li> <li>2. When the other person is incapable of consent by reason of being physically helpless; or</li> <li>3. When the other person is less than eleven years old.</li> </ol> <p>Sexual abuse in the first degree is a class D felony.</p> <p>NY PENAL LAW § 130.65-a (McKinney 2011). <u>Aggravated sexual abuse in the fourth degree</u></p> <ol style="list-style-type: none"> <li>1. A person is guilty of aggravated sexual abuse in the fourth degree when:             <ol style="list-style-type: none"> <li>(a) He or she inserts a foreign object in the vagina, urethra, penis or rectum of another person and the other person is incapable of consent by reason of some factor other than being less than seventeen years old; or</li> <li>(b) He or she inserts a finger in the vagina, urethra, penis or rectum of another person causing physical injury to such person and such person is incapable of consent by reason of some factor other than being less than seventeen years old.</li> </ol> </li> <li>2. Conduct performed for a valid medical purpose does not violate the provisions of this section.</li> </ol>
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<p>Statute Cont' (New York)</p>	<p>Aggravated sexual abuse in the fourth degree is a class E felony.</p> <p>NY PENAL LAW § 130.66 (McKinney 2011). <u>Aggravated sexual abuse in the third degree</u></p> <p>1. A person is guilty of aggravated sexual abuse in the third degree when he inserts a foreign object in the vagina, urethra, penis or rectum of another person: (a) By forcible compulsion; or (b) When the other person is incapable of consent by reason of being physically helpless; or (c) When the other person is less than eleven years old.</p> <p>2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis or rectum of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.</p> <p>3. Conduct performed for a valid medical purpose does not violate the provisions of this section.</p> <p>Aggravated sexual abuse in the third degree is a class D felony.</p> <p>NY PENAL LAW § 130.67 (McKinney 2011). <u>Aggravated sexual abuse in the second degree</u></p> <p>1. A person is guilty of aggravated sexual abuse in the second degree when he inserts a finger in the vagina, urethra, penis, or rectum of another person causing physical injury to such person: (a) By forcible compulsion; or (b) When the other person is incapable of consent by reason of being physically helpless; or (c) When the other person is less than eleven years old.</p> <p>2. Conduct performed for a valid medical purpose does not violate the provisions of this section.</p> <p>Aggravated sexual abuse in the second degree is a class C felony.</p> <p>NY PENAL LAW § 130.70 (McKinney 2011). <u>Aggravated sexual abuse in the first degree</u></p> <p>1. A person is guilty of aggravated sexual abuse in the first degree when he inserts a foreign object in the vagina, urethra, penis or</p>
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<p>Statute Cont' (New York)</p>	<p>rectum of another person causing physical injury to such person:            (a) By forcible compulsion; or            (b) When the other person is incapable of consent by reason of being physically helpless; or            (c) When the other person is less than eleven years old.            2. Conduct performed for a valid medical purpose does not violate the provisions of this section.            Aggravated sexual abuse in the first degree is a class B felony.</p> <p>NY PENAL LAW § 130.75 (McKinney 2011).  <u>Course of sexual conduct against a child in the first degree</u></p> <p>1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration:            (a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or            (b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which include at least one act of sexual intercourse, oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.            2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.            Course of sexual conduct against a child in the first degree is a class B felony.</p> <p>NY PENAL LAW § 130.80 (McKinney 2011).  <u>Course of sexual conduct against a child in the second degree</u></p> <p>1. A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration:            (a) he or she engages in two or more acts of sexual conduct with a child less than eleven years old; or            (b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old.            2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.            Course of sexual conduct against a child in the second degree is a class D felony.</p>
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<p>Statute Cont' (<i>New York</i>)</p>	<p>NY PENAL LAW § 130.96 (McKinney 2011). <u>Predatory sexual assault against a child</u></p> <p>A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than thirteen years old. Predatory sexual assault against a child is a class A-II felony.</p> <p>NY PENAL LAW § 235.15 (McKinney 2011). <u>Obscenity or disseminating indecent material to minors in the second degree; defense</u></p> <p>1. In any prosecution for obscenity, or disseminating indecent material to minors in the second degree in violation of subdivision three of section 235.21 of this article, it is an affirmative defense that the persons to whom allegedly obscene or indecent material was disseminated, or the audience to an allegedly obscene performance, consisted of persons or institutions having scientific, educational, governmental or other similar justification for possessing, disseminating or viewing the same.</p> <p>2. In any prosecution for obscenity, it is an affirmative defense that the person so charged was a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of obscene material for sale, rental or exhibition or in the promotion, presentation or direction of any obscene performance, or is in any way responsible for acquiring obscene material for sale, rental or exhibition.</p> <p>NY PENAL LAW § 235.21 (McKinney 2011). <u>Disseminating indecent material to minors in the second degree</u></p> <p>A person is guilty of disseminating indecent material to minors in the second degree when:</p> <p>1. With knowledge of its character and content, he sells or loans to a minor for monetary consideration:</p> <p>(a) Any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct or sado-masochistic abuse and which is harmful to minors; or</p> <p>(b) Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (a) hereof, or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct or sado-</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (New York)</p>	<p>masochistic abuse and which, taken as a whole, is harmful to minors; or</p> <p>2. Knowing the character and content of a motion picture, show or other presentation which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he:</p> <p>(a) Exhibits such motion picture, show or other presentation to a minor for a monetary consideration; or</p> <p>(b) Sells to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such motion picture, show or other presentation; or</p> <p>(c) Admits a minor for a monetary consideration to premises whereon there is exhibited or to be exhibited such motion picture show or other presentation; or</p> <p>3. Knowing the character and content of the communication which, in whole or in part, depicts actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor.</p> <p>Disseminating indecent material to minors in the second degree is a class E felony.</p> <p>NY PENAL LAW § 235.22 (McKinney 2011). <u>Disseminating indecent material to minors in the first degree</u></p> <p>A person is guilty of disseminating indecent material to minors in the first degree when:</p> <p>1. knowing the character and content of the communication which, in whole or in part, depicts or describes, either in words or images actual or simulated nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors, he intentionally uses any computer communication system allowing the input, output, examination or transfer, of computer data or computer programs from one computer to another, to initiate or engage in such communication with a person who is a minor; and</p> <p>2. by means of such communication he importunes, invites or induces a minor to engage in sexual intercourse, oral sexual conduct or anal sexual conduct, or sexual contact with him, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for his benefit.</p> <p>Disseminating indecent material to minors in the first degree is a class D felony.</p> <p>NY PENAL LAW § 235.23 (McKinney 2011). <u>Disseminating indecent material to minors; presumption and defenses</u></p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (New York)</p>	<p>1. A person who engages in the conduct proscribed by section 235.21 is presumed to do so with knowledge of the character and content of the material sold or loaned, or the motion picture, show or presentation exhibited or to be exhibited.</p> <p>2. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision one or two of section 235.21 of this article, it is an affirmative defense that:</p> <p>(a) The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and</p> <p>(b) Such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was seventeen years old or more.</p> <p>3. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article, it shall be a defense that:</p> <p>(a) The defendant made a reasonable effort to ascertain the true age of the minor and was unable to do so as a result of actions taken by the minor; or</p> <p>(b) The defendant has taken, in good faith, reasonable, effective and appropriate actions under the circumstances to restrict or prevent access by minors to materials specified in such subdivision, which may involve any appropriate measures to restrict minors from access to such communications, including any method which is feasible under available technology; or</p> <p>(c) The defendant has restricted access to such materials by requiring use of a verified credit card, debit account, adult access code or adult personal identification number; or</p> <p>(d) The defendant has in good faith established a mechanism such that the labelling, segregation or other mechanism enables such material to be automatically blocked or screened by software or other capabilities reasonably available to responsible adults wishing to effect such blocking or screening and the defendant has not otherwise solicited minors not subject to such screening or blocking capabilities to access that material or to circumvent any such screening or blocking.</p> <p>NY PENAL LAW § 235.24 (McKinney 2011) <u>Disseminating indecent material to minors; limitations</u></p> <p>In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision three of section 235.21 of this article or disseminating indecent material to minors in the first degree pursuant to section 235.22 of this article:</p> <p>1. No person shall be held to have violated such provisions solely for providing access or connection to or from a facility, system, or network not under that person's control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that do not include the creation of the content of the communication.</p>
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<p>Statute Cont' (New York)</p>	<p>(a) The limitations provided by this subdivision shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate such provisions, or who knowingly advertises the availability of such communications.</p> <p>(b) The limitations provided by this subdivision shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of such provisions that is owned or controlled by such person.</p> <p>2. No employer shall be held liable under such provisions for the actions of an employee or agent unless the employee's or agent's conduct is within the scope of his employment or agency and the employer having knowledge of such conduct, authorizes or ratifies such conduct, or recklessly disregards such conduct.</p> <p>NY PENAL LAW § 263.05 (McKinney 2011). <u>Use of a child in a sexual performance</u></p> <p>A person is guilty of the use of a child in a sexual performance if knowing the character and content thereof he employs, authorizes or induces a child less than seventeen years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he consents to the participation by such child in a sexual performance.</p> <p>Use of a child in a sexual performance is a class C felony.</p> <p>NY PENAL LAW § 263.10 (McKinney 2011). <u>Promoting an obscene sexual performance by a child</u></p> <p>A person is guilty of promoting an obscene sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any obscene performance which includes sexual conduct by a child less than seventeen years of age.</p> <p>Promoting an obscene sexual performance by a child is a class D felony.</p> <p>NY PENAL LAW § 263.11 (McKinney 2011). <u>Possessing an obscene sexual performance by a child</u></p> <p>A person is guilty of possessing an obscene sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any obscene performance which includes sexual conduct by a child less than sixteen years of age.</p> <p>Possessing an obscene sexual performance by a child is a class E felony.</p>
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<p>Statute Cont' (New York)</p>	<p>NY PENAL LAW § 263.15 (McKinney 2011). <u>Promoting a sexual performance by a child</u></p> <p>A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than seventeen years of age. Promoting a sexual performance by a child is a class D felony.</p> <p>NY PENAL LAW § 263.16 (McKinney 2011). <u>Possessing a sexual performance by a child</u></p> <p>A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control any performance which includes sexual conduct by a child less than sixteen years of age. Possessing a sexual performance by a child is a class E felony.</p> <p>NY PENAL LAW § 263.30 (McKinney 2011). <u>Facilitating a sexual performance by a child with a controlled substance or alcohol</u></p> <p>1. A person is guilty of facilitating a sexual performance by a child with a controlled substance or alcohol when he or she: (a)(i) knowingly and unlawfully possesses a controlled substance as defined in section thirty-three hundred six of the public health law or any controlled substance that requires a prescription to obtain, (ii) administers that substance to a person under the age of seventeen without such person's consent, (iii) intends to commit against such person conduct constituting a felony as defined in section 263.05, 263.10, or 263.15 of this article, and (iv) does so commit or attempt to commit such conduct against such person; or (b)(i) administers alcohol to a person under the age of seventeen without such person's consent, (ii) intends to commit against such person conduct constituting a felony defined in section 263.05, 263.10, or 263.15 of this article, and (iii) does so commit or attempt to commit such conduct against such person.</p> <p>2. For the purposes of this section, "controlled substance" means any substance or preparation, compound, mixture, salt, or isomer of any substance defined in section thirty-three hundred six of the public health law. Facilitating a sexual performance by a child with a controlled substance or alcohol is a class B felony.</p>
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Definitions (New York)	<p>NY PENAL LAW § 130.00 (McKinney 2011).  <u>Sex offenses; definitions of terms</u></p> <p>The following definitions are applicable to this article:</p> <ol style="list-style-type: none"> <li>1. “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight.</li> <li>2. (a) “Oral sexual conduct” means conduct between persons consisting of contact between the mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina.</li> <li>(b) “Anal sexual conduct” means conduct between persons consisting of contact between the penis and anus.</li> <li>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.</li> <li>4. For the purposes of this article “married” means the existence of the relationship between the actor and the victim as spouses which is recognized by law at the time the actor commits an offense proscribed by this article against the victim.</li> <li>5. “Mentally disabled” means that a person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct.</li> <li>6. “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other act committed upon him without his consent.</li> <li>7. “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</li> <li>8. “Forcible compulsion” means to compel by either: <ol style="list-style-type: none"> <li>a. use of physical force; or</li> <li>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 another person will immediately be kidnapped.</li> </ol> </li> <li>9. “Foreign object” means any instrument or article which, when inserted in the vagina, urethra, penis or rectum, is capable of causing physical injury.</li> <li>10. “Sexual conduct” means sexual intercourse, oral sexual conduct, anal sexual conduct, aggravated sexual contact, or sexual contact.</li> <li>11. “Aggravated sexual contact” means inserting, other than for a valid medical purpose, a foreign object in the vagina, urethra, penis or</li> </ol>

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<p>Definitions Cont' (New York)</p>	<p>rectum of a child, thereby causing physical injury to such child.</p> <p>12. "Health care provider" means any person who is, or is required to be, licensed or registered or holds himself or herself out to be licensed or registered, or provides services as if he or she were licensed or registered in the profession of medicine, chiropractic, dentistry or podiatry under any of the following: article one hundred thirty-one, one hundred thirty-two, one hundred thirty-three, or one hundred forty-one of the education law.</p> <p>13. "Mental health care provider" shall mean a licensed physician, licensed psychologist, registered professional nurse, licensed clinical social worker or a licensed master social worker under the supervision of a physician, psychologist or licensed clinical social worker.</p> <p>NY PENAL LAW § 130.05 (McKinney 2011). <u>Sex offenses; lack of consent</u></p> <p>1.(e) For purposes of this paragraph, "employee" means (i) an employee of the state department of correctional services who performs 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; (ii) an employee of the division of parole who performs professional duties in a state correctional facility and who provides institutional parole services pursuant to section two hundred fifty-nine-e of the executive law; or (iii) an employee of the office of mental health who performs professional duties in a state correctional facility or hospital, as such term is defined in subdivision two of section four hundred of the correction law, consisting of providing custody, or medical or mental health services for such inmates; or (iv) a person, including a volunteer, providing direct services to inmates in the state correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the state department of correctional services or, in the case of a volunteer, a written agreement with such department, provided that the person received written notice concerning the provisions of this paragraph; or (f) committed to the care and custody of a local correctional facility, as such term is defined in subdivision two of section forty of the correction law, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to the care and custody of such facility. For purposes of this paragraph, "employee" means an employee of the local correctional facility where the person is committed who performs professional duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for inmates. For purposes of this paragraph, "employee" shall also mean a person, including a volunteer or a government employee of the state division of parole or a local health, education or probation agency, providing direct services to inmates in the local correctional facility in which the victim is confined at the time of the offense pursuant to a contractual arrangement with the local correctional department or, in the case of such a volunteer or</p>
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<p>Definitions Cont' (New York)</p>	<p>government employee, a written agreement with such department, provided that such person received written notice concerning the provisions of this paragraph; or (g) committed to or placed with the office of children and family services and in residential care, and the actor is an employee, not married to such person, who knows or reasonably should know that such person is committed to or placed with such office of children and family services and in residential care. For purposes of this paragraph, “employee” means an employee of the office of children and family services or of a residential facility who performs duties consisting of providing custody, medical or mental health services, counseling services, educational services, or vocational training for persons committed to or placed with the office of children and family services and in residential care; or (h) a client or patient and the actor is a health care provider or mental health care provider charged with rape in the third degree as defined in section 130.25, criminal sexual act in the third degree as defined in section 130.40, aggravated sexual abuse in the fourth degree as defined in section 130.65-a, or sexual abuse in the third degree as defined in section 130.55, and the act of sexual conduct occurs during a treatment session, consultation, interview, or examination.</p> <p>NY PENAL LAW § 235.00 (McKinney 2011). <u>Obscenity; definitions of terms</u></p> <p>The following definitions are applicable to sections 235.05, 235.10 and 235.15:</p> <ol style="list-style-type: none"> <li>1. “Obscene.” Any material or performance is “obscene” if (a) the average person, applying contemporary community standards, would find that considered as a whole, its predominant appeal is to the prurient interest in sex, and (b) it depicts or describes in a patently offensive manner, actual or simulated: sexual intercourse, criminal sexual act, sexual bestiality, masturbation, sadism, masochism, excretion or lewd exhibition of the genitals, and (c) considered as a whole, it lacks serious literary, artistic, political, and scientific value. Predominant appeal shall be judged with reference to ordinary adults unless it appears from the character of the material or the circumstances of its dissemination to be designed for children or other specially susceptible audience.</li> <li>2. “Material” means anything tangible which is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.</li> <li>3. “Performance” means any play, motion picture, dance or other exhibition performed before an audience.</li> <li>4. “Promote” means to manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.</li> <li>5. “Wholesale promote” means to manufacture, issue, sell, provide, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate or to offer or agree to do the same for purposes of resale.</li> <li>6. “Simulated” means the explicit depiction or description of any of the types of conduct set forth in clause (b) of subdivision one of this</li> </ol>
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<p>Definitions Cont' (New York)</p>	<p>section, which creates the appearance of such conduct.</p> <p>7. "Criminal sexual act" means any of the types of sexual conduct defined in subdivision two of section 130.00 provided, however, that in any prosecution under this article the marital status of the persons engaged in such conduct shall be irrelevant and shall not be considered.</p> <p>NY PENAL LAW § 235.20 (McKinney 2011). <u>Disseminating indecent material to minors; definitions of terms</u></p> <p>The following definitions are applicable to sections 235.21, 235.22, 235.23 and 235.24 of this article:</p> <ol style="list-style-type: none"> <li>1. "Minor" means any person less than seventeen years old.</li> <li>2. "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.</li> <li>3. "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.</li> <li>4. "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.</li> <li>5. "Sado-masochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.</li> <li>6. "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, when it:             <ol style="list-style-type: none"> <li>(a) Considered as a whole, appeals to the prurient interest in sex of minors; and</li> <li>(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and</li> <li>(c) Considered as a whole, lacks serious literary, artistic, political and scientific value for minors.</li> </ol> </li> <li>7. The term "access software" means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:             <ol style="list-style-type: none"> <li>(a) filter, screen, allow or disallow content;</li> <li>(b) pick, choose, analyze or digest content; or</li> <li>(c) transmit, receive, display, forward, cache, search, subset, organize, reorganize or translate content.</li> </ol> </li> </ol> <p>NY PENAL LAW § 263.00 (McKinney 2011)</p>
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<p>Definitions Cont' (New York)</p>	<p><u>Definitions</u></p> <p>As used in this article the following definitions shall apply:</p> <ol style="list-style-type: none"> <li>1. "Sexual performance" means any performance or part thereof which, for purposes of section 263.16 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.05 or 263.15 of this article, includes sexual conduct by a child less than seventeen years of age.</li> <li>2. "Obscene sexual performance" means any performance which, for purposes of section 263.11 of this article, includes sexual conduct by a child less than sixteen years of age or, for purposes of section 263.10 of this article, includes sexual conduct by a child less than seventeen years of age, in any material which is obscene, as such term is defined in section 235.00 of this chapter.</li> <li>3. "Sexual conduct" means actual or simulated sexual intercourse, oral sexual conduct, anal sexual conduct, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.</li> <li>4. "Performance" means any play, motion picture, photograph or dance. Performance also means any other visual representation exhibited before an audience.</li> <li>5. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit or advertise, or to offer or agree to do the same.</li> <li>6. "Simulated" means the explicit depiction of any of the conduct set forth in subdivision three of this section which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals or buttocks.</li> <li>7. "Oral sexual conduct" and "anal sexual conduct" mean the conduct defined by subdivision two of section 130.00 of this chapter.</li> <li>8. "Sado-masochistic abuse" means the conduct defined in subdivision five of section 235.20 of this chapter.</li> </ol> <p>NY PENAL LAW § 263.30 (McKinney 2011).</p> <p><u>Facilitating a sexual performance by a child with a controlled substance or alcohol</u></p> <ol style="list-style-type: none"> <li>2. For the purposes of this section, "controlled substance" means any substance or preparation, compound, mixture, salt, or isomer of any substance defined in section thirty-three hundred six of the public health law.</li> </ol> <p>N.Y. PENAL LAW § 70.80 (McKinney 2011).</p> <p><u>Sentences of imprisonment for conviction of a felony sex offense</u></p> <ol style="list-style-type: none"> <li>1. Definitions.</li> </ol> <p>(a) For the purposes of this section, a "felony sex offense" means a conviction of any felony defined in article one hundred thirty of this</p>
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<p>Definitions Cont' (New York)</p>	<p>chapter, including a sexually motivated felony, or patronizing a prostitute in the first degree as defined in section 230.06 of this chapter, incest in the second degree as defined in section 255.26 of this chapter, or incest in the first degree as defined in section 255.27 of this chapter, or a felony attempt or conspiracy to commit any of the above.</p> <p>(b) A felony sex offense shall be deemed a “violent felony sex offense” if it is for an offense defined as a violent felony offense in section 70.02 of this article, or for a sexually motivated felony as defined in section 130.91 of this chapter where the specified offense is a violent felony offense as defined in section 70.02 of this article.</p> <p>(c) For the purposes of this section, a “predicate felony sex offender” means a person who stands convicted of any felony sex offense as defined in paragraph (a) of this subdivision, other than a class A-I felony, after having previously been subjected to one or more predicate felony convictions as defined in subdivision one of section 70.06 or subdivision one of section 70.04 of this article.</p> <p>(d) For purposes of this section, a “violent felony offense” is any felony defined in subdivision one of section 70.02 of this article, and a “non-violent felony offense” is any felony not defined therein.</p>
<p>Defenses (New York)</p>	<p>NY PENAL LAW § 235.15 (McKinney 2011). <u>Obscenity or disseminating indecent material to minors in the second degree; defense</u></p> <p>2. In any prosecution for obscenity, it is an affirmative defense that the person so charged was a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of obscene material for sale, rental or exhibition or in the promotion, presentation or direction of any obscene performance, or is in any way responsible for acquiring obscene material for sale, rental or exhibition.</p> <p>NY PENAL LAW § 235.23 (McKinney 2011). <u>Disseminating indecent material to minors; presumption and defenses</u></p> <p>2. In any prosecution for disseminating indecent material to minors in the second degree pursuant to subdivision one or two of section 235.21 of this article, it is an affirmative defense that:</p> <p>(a) The defendant had reasonable cause to believe that the minor involved was seventeen years old or more; and</p> <p>(b) Such minor exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was seventeen years old or more.</p>

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Defenses Cont’ (New York)	<p>NY PENAL LAW § 263.20 (McKinney 2011) <u>Sexual performance by a child; affirmative defenses</u></p> <p>1. Under this article, it shall be an affirmative defense that the defendant in good faith reasonably believed the person appearing in the performance was, for purposes of section 263.11 or 263.16 of this article, sixteen years of age or over or, for purposes of section 263.05, 263.10 or 263.15 of this article, seventeen years of age or over.</p> <p>2. In any prosecution for any offense pursuant to this article, it is an affirmative defense that the person so charged was a librarian engaged in the normal course of his employment, a motion picture projectionist, stage employee or spotlight operator, cashier, doorman, usher, candy stand attendant, porter or in any other non-managerial or non-supervisory capacity in a motion picture theatre; provided he has no financial interest, other than his employment, which employment does not encompass compensation based upon any proportion of the gross receipts, in the promotion of a sexual performance for sale, rental or exhibition or in the promotion, presentation or direction of any sexual performance, or is in any way responsible for acquiring such material for sale, rental or exhibition.</p>																				
Penalty (New York)	<p>N.Y. PENAL LAW §§ 60.13, 70.80 (McKinney 2011). <u>McKinney’s Sentence Charts, Chart III. Sex Felony</u></p> <p style="text-align: center;"><b>II. Non-violent Class B to E Felony</b></p> <p><b>“First” Sex Offender</b></p> <p>[N.Y. PENAL LAW § 70.80(4) (McKinney 2011)]</p> <table><tr><th>Class</th><th>Sentence</th><th colspan="2">Alternative</th></tr><tr><td></td><td>Determinate</td><td>Post-release Supervision</td><td></td></tr><tr><td>B</td><td>5 up to 25</td><td>5 up to 20</td><td>None</td></tr><tr><td>C</td><td>3.5 up to 15</td><td>5 up to 15</td><td>None</td></tr><tr><td>D</td><td>2 up to 7</td><td>3 up to 10</td><td>Probation.</td></tr></table>	Class	Sentence	Alternative			Determinate	Post-release Supervision		B	5 up to 25	5 up to 20	None	C	3.5 up to 15	5 up to 15	None	D	2 up to 7	3 up to 10	Probation.
Class	Sentence	Alternative																			
	Determinate	Post-release Supervision																			
B	5 up to 25	5 up to 20	None																		
C	3.5 up to 15	5 up to 15	None																		
D	2 up to 7	3 up to 10	Probation.																		

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Penalty Cont' (New York)				Definite up to 1 year.
	E	1.5 up to 4	3 up to 10	Probation.
				Definite up to 1 year.
	<p>Note: "First" sex offender.  A "first" sex offender is a defendant who may have a prior felony conviction but does not qualify for a multiple felony offender sentence.  Note: Additional non-jail options for a "first" felony offender of a class D or E felony are not specified in Penal Law § 70.80; but, it may be argued that other statutes provide such additional options as an intermittent sentence of imprisonment and a "split sentence." See Practice Commentary to Penal Law § 60.13.</p>			
	<b>Offender with a prior non-violent felony conviction</b>			
	[N.Y. PENAL LAW § 70.80(5) (McKinney 2011)]			
	Class	Sentence		Alternative
		Determinate	Post-release supervision	
	B	8 up to 25	10 up to 25	None
	C	5 up to 15	7 up to 20	None
	D	3 up to 7	5 up to 15	None
	E	2 up to 4	5 up to 15	None
	<b>Offender with a prior violent felony conviction</b>			
	[N.Y. PENAL LAW § 70.80(5) (McKinney 2011)]			

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Penalty Cont' (New York)	Class	Sentence		Alternative
		Determinate	Post-release supervision	
	B	9 up to 25	10 up to 25	None
	C	6 up to 15	7 up to 20	None
	D	4 up to 7	5 up to 15	None
	E	2.5 up to 4	5 up to 15	None
	Note: Restitution may be required in addition to any sentence. The mandatory surcharge and various fees must be imposed. See Introduction.			
	Note: A “second child sexual assault felony offender” must be sentenced as set forth in part IV.			
	<b>Persistent Felony Offender</b>			
	[N.Y. PENAL LAW § 70.10 (McKinney 2011)]			

Indeterminate sentence of imprisonment, in the discretion of the court	
Minimum	Maximum
15 to 25 years	Life

**IV. Second Child Sexual Assault Felony Offender**

[N.Y. PENAL LAW § 70.07 (McKinney 2011)]

According to the “felony sex offense” sentencing statute: “Persons eligible for sentencing under [Penal Law § 70.07] governing second child sexual assault felonies shall be sentenced under such section” [Penal Law § 70.80(3)]. This sentence for a “second child sexual assault” applies irrespective of whether the felony which was committed is deemed a violent or non-violent felony.

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Penalty Cont' (New York)	The applicable sentences are:		
	Stands convicted of:	Prior conviction was:	Sentence:
	Class A-II or B	Class A-II, B or C	Indeterminate: 15-25 to life
	Class B	Class D or E	Determinate: 12 to 30
	Class C	Class A-II, B or C	Determinate: 12 to 30; or  Indeterminate: 15-25 to life
	Class C	Class D or E	Determinate: 10 to 25
	Class D	Any felony	Determinate: 5 to 15
	Class E	Any felony	Determinate: 4 to 12
	<p>Note: Post-release supervision. As part of the “felony sex offense” legislation, the period of post-release supervision for a “second child sexual assault felony offender” was increased from 5 years to a minimum of 10 years and a maximum of 20 years, as fixed by the sentencing court. PL 70.80(3) and 70.45(2-a)(j).</p> <p>Note: Alternative sentence for youth: If the defendant was under 18 years of age at the time of the commission of the prior conviction for “sexual assault against a child,” then the court may, in its discretion, sentence the defendant pursuant to the terms of imprisonment set forth in the “second violent felony offender” statute [Penal Law § 70.04(3)], irrespective of whether the defendant would otherwise qualify for sentence as a second violent felony offender. See Chart IV.</p>		

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	Note: Restitution may be required in addition to any sentence. The mandatory surcharge and various fees must be imposed. See Introduction.
<b>North Carolina</b>	
Statute (North Carolina)	<p>N.C. GEN. STAT. § 14-27.2 (West 2011).  <u>First-degree rape</u></p> <p>(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:  (1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or  (2) With another person by force and against the will of the other person, and:  a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or  b. Inflicts serious personal injury upon the victim or another person; or  c. The person commits the offense aided and abetted by one or more other persons.  (b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.  (c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.</p> <p>N.C. GEN. STAT. § 14-27.2A (West 2011).  <u>Rape of a child; adult offender</u></p> <p>(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.  (d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.</p>

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<p>Statute Cont' (North Carolina)</p>	<p>(e) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section.</p> <p>N.C. GEN. STAT. § 14-27.3 (West 2011). <u>Second-degree rape</u></p> <p>(a) A person is guilty of rape in the second degree if the person engages in vaginal intercourse with another person: (1) By force and against the will of the other person; or (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know the other person is mentally disabled, mentally incapacitated, or physically helpless. (b) Any person who commits the offense defined in this section is guilty of a Class C felony. (c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child conceived during the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.</p> <p>N.C. GEN. STAT. § 14-27.4 (West 2011). <u>First-degree sexual offense</u></p> <p>(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act: (1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or (2) With another person by force and against the will of the other person, and: a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or b. Inflicts serious personal injury upon the victim or another person; or c. The person commits the offense aided and abetted by one or more other persons. (b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.</p> <p>N.C. GEN. STAT. § 14-27.4A (West 2011). <u>Sexual offense with a child; adult offender</u></p> <p>(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim</p>
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<p>Statute Cont' (North Carolina)</p>	<p>who is a child under the age of 13 years.</p> <p>(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section.</p> <p>N.C. GEN. STAT. § 14-27.5 (West 2011). <u>Second-degree sexual offense</u></p> <p>(a) A person is guilty of a sexual offense in the second degree if the person engages in a sexual act with another person: (1) By force and against the will of the other person; or (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless. (b) Any person who commits the offense defined in this section is guilty of a Class C felony.</p> <p>N.C. GEN. STAT. § 14-27.5A (West 2011). <u>Sexual battery</u></p> <p>(a) A person is guilty of sexual battery if the person, for the purpose of sexual arousal, sexual gratification, or sexual abuse, engages in sexual contact with another person: (1) By force and against the will of the other person; or (2) Who is mentally disabled, mentally incapacitated, or physically helpless, and the person performing the act knows or should reasonably know that the other person is mentally disabled, mentally incapacitated, or physically helpless. (b) Any person who commits the offense defined in this section is guilty of a Class A1 misdemeanor.</p> <p>N.C. GEN. STAT. § 14-27.7 (West 2011). <u>Intercourse and sexual offenses with certain victims; consent no defense</u></p> <p>(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of 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. Consent is not a defense to a charge under this section.</p>
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<p>Statute Cont' (North Carolina)</p>	<p>(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term “same school” means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms “school”, “school personnel”, and “student” shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term “school safety officer” shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.</p> <p>N.C. GEN. STAT. § 14-27.7A (West 2011). <u>Statutory rape or sexual offense of person who is 13, 14, or 15 years old</u></p> <p>(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.</p> <p>(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.</p> <p>N.C. GEN. STAT. § 14-190.7 (West 2011). <u>Dissemination to minors under the age of 16 years</u></p> <p>Every person 18 years of age or older who knowingly disseminates to any minor under the age of 16 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be guilty of a Class I felony.</p> <p>N.C. GEN. STAT. § 14-190.8 (West 2011). <u>Dissemination to minors under the age of 13 years</u></p>
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<p>Statute Cont' (North Carolina)</p>	<p>Every person 18 years of age or older who knowingly disseminates to any minor under the age of 13 years any material which he knows or reasonably should know to be obscene within the meaning of G.S. 14-190.1 shall be punished as a Class I felon.</p> <p>N.C. GEN. STAT. § 14-190.9 (West 2011). <u>Indecent exposure</u></p> <p>(a) Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.</p> <p>(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.</p> <p>(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.</p> <p>(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech.</p> <p>N.C. GEN. STAT. § 14-190.14 (West 2011). <u>Displaying material harmful to minors</u></p> <p>(a) Offense.--A person commits the offense of displaying material that is harmful to minors if, having custody, control, or supervision of a commercial establishment and knowing the character or content of the material, he displays material that is harmful to minors at that establishment so that it is open to view by minors as part of the invited general public. Material is not considered displayed under this section if the material is placed behind "blinder racks" that cover the lower two thirds of the material, is wrapped, is placed behind the counter, or is otherwise covered or located so that the portion that is harmful to minors is not open to the view of minors.</p>
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<p>Statute Cont' (North Carolina)</p>	<p>(b) Punishment.--Violation of this section is a Class 2 misdemeanor. Each day's violation of this section is a separate offense.</p> <p>N.C. GEN. STAT. § 14-190.15 (West 2011). <u>Disseminating harmful material to minors; exhibiting harmful performances to minors</u></p> <p>(a) Disseminating Harmful Material.--A person commits the offense of disseminating harmful material to minors if, with or without consideration and knowing the character or content of the material, he:</p> <p>(1) Sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or</p> <p>(2) Allows a minor to review or peruse material that is harmful to minors.</p> <p>(b) Exhibiting Harmful Performance.--A person commits the offense of exhibiting a harmful performance to a minor if, with or without consideration and knowing the character or content of the performance, he allows a minor to view a live performance that is harmful to minors.</p> <p>(c) Defenses.--Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:</p> <p>(1) The defendant was a parent or legal guardian of the minor.</p> <p>(2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.</p> <p>(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.</p> <p>(4) The dissemination was made with the prior consent of a parent or guardian of the recipient.</p> <p>(d) Punishment.--Violation of this section is a Class 1 misdemeanor.</p> <p>N.C. GEN. STAT. § 14-190.16 (West 2011). <u>First degree sexual exploitation of a minor</u></p> <p>(a) Offense.--A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:</p> <p>(1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live</p>
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<p>Statute Cont' (North Carolina)</p>	<p>performance or for the purpose of producing material that contains a visual representation depicting this activity; or  (2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or  (3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or  (4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.  (b) Inference.--In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.  (c) Mistake of Age.--Mistake of age is not a defense to a prosecution under this section.  (d) Punishment and Sentencing.--Violation of this section is a Class C felony.</p> <p>N.C. GEN. STAT. § 14-190.17 (West 2011).  <u>Second degree sexual exploitation of a minor</u></p> <p>(a) Offense.--A person commits the offense of second degree sexual exploitation of a minor if, knowing the character or content of the material, he:  (1) Records, photographs, films, develops, or duplicates material that contains a visual representation of a minor engaged in sexual activity; or  (2) Distributes, transports, exhibits, receives, sells, purchases, exchanges, or solicits material that contains a visual representation of a minor engaged in sexual activity.  (b) Inference.--In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.  (c) Mistake of Age.--Mistake of age is not a defense to a prosecution under this section.  (d) Punishment and Sentencing.--Violation of this section is a Class E felony.</p> <p>N.C. GEN. STAT. § 14-190.17A (West 2011).  <u>Third degree sexual exploitation of a minor</u></p> <p>(a) Offense.--A person commits the offense of third degree sexual exploitation of a minor if, knowing the character or content of the material, he possesses material that contains a visual representation of a minor engaging in sexual activity.</p>
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<p>Statute Cont' (North Carolina)</p>	<p>(b) Inference.--In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations or otherwise represents or depicts as a minor is a minor.</p> <p>(c) Mistake of Age.--Mistake of age is not a defense to a prosecution under this section.</p> <p>(d) Punishment and Sentencing.--Violation of this section is a Class H felony.</p> <p>N.C. GEN. STAT. § 14-190.18 (West 2011). <u>Promoting prostitution of a minor</u></p> <p>(a) Offense.--A person commits the offense of promoting prostitution of a minor if he knowingly:</p> <ol style="list-style-type: none"> <li>(1) Entices, forces, encourages, or otherwise facilitates a minor to participate in prostitution; or</li> <li>(2) Supervises, supports, advises, or protects the prostitution of or by a minor.</li> </ol> <p>(b) Mistake of Age.--Mistake of age is not a defense to a prosecution under this section.</p> <p>(c) Punishment and Sentencing.--Violation of this section is a Class C felony.</p> <p>N.C. GEN. STAT. § 14-190.19 (West 2011). <u>Participating in prostitution of a minor</u></p> <p>(a) Offense.--A person commits the offense of participating in the prostitution of a minor if he is not a minor and he patronizes a minor prostitute. As used in this section, "patronizing a minor prostitute" means:</p> <ol style="list-style-type: none"> <li>(1) Soliciting or requesting a minor to participate in prostitution;</li> <li>(2) Paying or agreeing to pay a minor, either directly or through the minor's agent, to participate in prostitution; or</li> <li>(3) Paying a minor, or the minor's agent, for having participated in prostitution, pursuant to a prior agreement.</li> </ol> <p>(b) Mistake of Age.--Mistake of age is not a defense to a prosecution under this section.</p> <p>(c) Punishment and Sentencing.--Violation of this section is a Class F felony.</p> <p>N.C. GEN. STAT. § 14-202.1 (West 2011). <u>Taking indecent liberties with children</u></p> <p>(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:</p> <ol style="list-style-type: none"> <li>(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years</li> </ol>
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<p>Statute Cont' (North Carolina)</p>	<p>for the purpose of arousing or gratifying sexual desire; or (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years. (b) Taking indecent liberties with children is punishable as a Class F felony.</p> <p>N.C. GEN. STAT. § 14-202.2 (West 2011). <u>Indecent liberties between children</u></p> <p>(a) A person who is under the age of 16 years is guilty of taking indecent liberties with children if the person either: (1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire; or (2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire. (b) A violation of this section is punishable as a Class 1 misdemeanor.</p> <p>N.C. GEN. STAT. § 14-202.3 (West 2011). <u>Solicitation of child by computer to commit an unlawful sex act</u></p> <p>(a) Offense. -- A person is guilty of solicitation of a child by a computer if the person is 16 years of age or older and the person knowingly, with the intent to commit an unlawful sex act, entices, advises, coerces, orders, or commands, by means of a computer, a child who is less than 16 years of age and at least 3 years younger than the defendant, or a person the defendant believes to be a child who is less than 16 years of age and who the defendant believes to be at least 3 years younger than the defendant, to meet with the defendant or any other person for the purpose of committing an unlawful sex act. Consent is not a defense to a charge under this section. (b) Jurisdiction. -- The offense is committed in the State for purposes of determining jurisdiction, if the transmission that constitutes the offense either originates in the State or is received in the State. (c) Punishment.--A violation of this section is punishable as follows: (1) A violation is a Class H felony except as provided by subdivision (2) of this subsection. (2) If either the defendant, or any other person for whom the defendant was arranging the meeting in violation of this section, actually appears at the meeting location, then the violation is a Class G felony.</p> <p>N.C. GEN. STAT. § 14-202.4 (West 2011).</p>
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<p>Statute Cont' (North Carolina)</p>	<p><u>Taking indecent liberties with a student</u></p> <p>(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.</p> <p>(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.</p> <p>(c) Consent is not a defense to a charge under this section.</p> <p>(d) For purposes of this section, the following definitions apply:</p> <p>(1) "Indecent liberties" means:</p> <ol style="list-style-type: none"> <li>Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or</li> <li>Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.</li> </ol> <p>For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.</p> <p>(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.</p> <p>(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.</p> <p>(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.</p> <p>(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.</p> <p>(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school.</p>
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Definitions (North Carolina)	N.C. GEN. STAT. § 14-27.1 (West 2011). <u>Definitions</u>
Definitions Cont' (North Carolina)	<p>As used in this Article, unless the context requires otherwise:</p> <p>(1) "Mentally disabled" means (i) a victim who suffers from mental retardation, or (ii) a victim who suffers from a mental disorder, either of which temporarily or permanently renders the victim substantially incapable of appraising the nature of his or her conduct, or of resisting the act of vaginal intercourse or a sexual act, or of communicating unwillingness to submit to the act of vaginal intercourse or a sexual act.</p> <p>(2) "Mentally incapacitated" means a victim who due to any act committed upon the victim is rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.</p> <p>(3) "Physically helpless" means (i) a victim who is unconscious; or (ii) a victim who is physically unable to resist an act of vaginal intercourse or a sexual act or communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.</p> <p>(4) "Sexual act" means cunnilingus, fellatio, analingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided, that it shall be an affirmative defense that the penetration was for accepted medical purposes.</p> <p>(5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.</p> <p>(6) "Touching" as used in subdivision (5) of this section, means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.</p> <p>N.C. GEN. STAT. § 14-190.13 (West 2011). <u>Definitions for certain offenses concerning minors</u></p> <p>The following definitions apply to G.S. 14-190.14, displaying material harmful to minors; G.S. 14-190.15, disseminating or exhibiting to minors harmful material or performances; G.S. 14-190.16, first degree sexual exploitation of a minor; G.S. 14-190.17, second degree sexual exploitation of a minor; G.S. 14-190.17A, third degree sexual exploitation of a minor; G.S. 14-190.18, promoting prostitution of a minor; G.S. 14-190.19, participating in prostitution of a minor.</p> <p>(1) Harmful to Minors.--That quality of any material or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:</p>

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<p>Definitions Cont' (North Carolina)</p>	<p>a. The average adult person applying contemporary community standards would find that the material or performance has a predominant tendency to appeal to a prurient interest of minors in sex; and</p> <p>b. The average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors; and</p> <p>c. The material or performance lacks serious literary, artistic, political, or scientific value for minors.</p> <p>(2) Material.--Pictures, drawings, video recordings, films or other visual depictions or representations but not material consisting entirely of written words.</p> <p>(3) Minor.--An individual who is less than 18 years old and is not married or judicially emancipated.</p> <p>(4) Prostitution.--Engaging or offering to engage in sexual activity with or for another in exchange for anything of value.</p> <p>(5) Sexual Activity.--Any of the following acts:</p> <p>a. Masturbation, whether done alone or with another human or an animal.</p> <p>b. Vaginal, anal, or oral intercourse, whether done with another human or with an animal.</p> <p>c. Touching, in an act of apparent sexual stimulation or sexual abuse, of the clothed or unclothed genitals, pubic area, or buttocks of another person or the clothed or unclothed breasts of a human female.</p> <p>d. An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a person clad in undergarments or in revealing or bizarre costume.</p> <p>e. Excretory functions; provided, however, that this sub-subdivision shall not apply to G.S. 14-190.17A.</p> <p>f. The insertion of any part of a person's body, other than the male sexual organ, or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure.</p> <p>g. The lascivious exhibition of the genitals or pubic area of any person.</p> <p>(6) Sexually Explicit Nudity.--The showing of:</p> <p>a. Uncovered, or less than opaquely covered, human genitals, pubic area, or buttocks, or the nipple or any portion of the areola of the human female breast, except as provided in G.S. 14-190.9(b); or</p> <p>b. Covered human male genitals in a discernibly turgid state.</p> <p>N.C. GEN. STAT. § 14-202.4 (West 2011). <u>Taking indecent liberties with a student</u></p> <p>(d) For purposes of this section, the following definitions apply:</p> <p>(1) "Indecent liberties" means:</p>
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Definitions Cont' (North Carolina)	<p>a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or</p> <p>b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.</p> <p>For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.</p> <p>(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.</p> <p>(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.</p> <p>(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.</p> <p>(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.</p> <p>(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school.</p>
Defenses (North Carolina)	<p>N.C. GEN. STAT. § 14-190.15 (West 2011).</p> <p><u>Disseminating harmful material to minors; exhibiting harmful performances to minors</u></p> <p>(c) Defenses.--Except as provided in subdivision (3), a mistake of age is not a defense to a prosecution under this section. It is an affirmative defense to a prosecution under this section that:</p> <p>(1) The defendant was a parent or legal guardian of the minor.</p> <p>(2) The defendant was a school, church, museum, public library, governmental agency, medical clinic, or hospital carrying out its legitimate function; or an employee or agent of such an organization acting in that capacity and carrying out a legitimate duty of his employment.</p> <p>(3) Before disseminating or exhibiting the harmful material or performance, the defendant requested and received a driver's license, student identification card, or other official governmental or educational identification card or paper indicating that the minor to whom the material or performance was disseminated or exhibited was at least 18 years old, and the defendant reasonably believed the minor was at least 18 years old.</p> <p>(4) The dissemination was made with the prior consent of a parent or guardian of the recipient.</p>
Penalty	N.C. GEN. STAT. § 14-27.2A (West 2008).

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(North Carolina)	<p><u>Rape of a child; adult offender</u></p> <p>(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.</p> <p>(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.</p> <p>N.C. GEN. STAT. § 14-27.4A (West 2011).</p> <p><u>Sexual offense with a child; adult offender</u></p> <p>(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.</p> <p>(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17.</p> <p>N.C. GEN. STAT. § 14-3 (West 2011).</p>
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<p>Penalty Cont' (North Carolina)</p>	<p><u>Punishment of misdemeanors, infamous offenses, offenses committed in secrecy and malice, or with deceit and intent to defraud, or with ethnic animosity</u></p> <p>(a) Except as provided in subsections (b) and (c), every person who shall be convicted of any misdemeanor for which no specific classification and no specific punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor. Any misdemeanor that has a specific punishment, but is not assigned a classification by the General Assembly pursuant to law is classified as follows, based on the maximum punishment allowed by law for the offense as it existed on the effective date of Article 81B of Chapter 15A of the General Statutes:</p> <p>(1) If that maximum punishment is more than six months imprisonment, it is a Class 1 misdemeanor;</p> <p>(2) If that maximum punishment is more than 30 days but not more than six months imprisonment, it is a Class 2 misdemeanor; and</p> <p>(3) If that maximum punishment is 30 days or less imprisonment or only a fine, it is a Class 3 misdemeanor.</p> <p>N.C. GEN. STAT. § 15A-1340.17 (West 2011).</p> <p><u>Punishment limits for each class of offense and prior record level</u></p> <p>(a) Offense Classification; Default Classifications.--The offense classification is as specified in the offense for which the sentence is being imposed. If the offense is a felony for which there is no classification, it is a Class I felony.</p> <p>(b) Fines.--Any judgment that includes a sentence of imprisonment may also include a fine. If a community punishment is authorized, the judgment may consist of a fine only. Additionally, when the defendant is other than an individual, the judgment may consist of a fine only. Unless otherwise provided, the amount of the fine is in the discretion of the court.</p> <p>(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart Described.--The authorized punishment for each class of offense and prior record level is as specified in the chart below. Prior record levels are indicated by the Roman numerals placed horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically on the left side of the chart. Each cell on the chart contains the following components:</p> <p>(1) A sentence disposition or dispositions: "C" indicates that a community punishment is authorized; "I" indicates that an intermediate punishment is authorized; "A" indicates that an active punishment is authorized; and "Life Imprisonment Without Parole" indicates that the defendant shall be imprisoned for the remainder of the prisoner's natural life.</p> <p>(2) A presumptive range of minimum durations, if the sentence of imprisonment is neither aggravated or mitigated; any minimum term of imprisonment in that range is permitted unless the court finds pursuant to G. S. 15A-1340.16 that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.</p> <p>(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment</p>
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	(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.					
	PRIOR RECORD LEVEL					
	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 18+ Pts
	A Life Imprisonment Without Parole or Death as Established by Statute					
	A	A	A	A	A	A
	240-300	276-345	317-397	365-456	Life Imprisonment Without Parole	
	B1	192-240	221-276	254-317	292-365	336-420
		144-192	166-221	190-254	219-292	252-336
						290-386
	A	A	A	A	A	A
	157-196	180-225	207-258	238-297	273-342	314-393
	B2	125-157	144-180	165-207	190-238	219-273
		94-125	108-144	124-165	143-190	164-219
						189-251
	A	A	A	A	A	A
	73-92	83-104	96-120	110-138	127-159	146-182
	C	58-73	67-83	77-96	88-110	101-127
		44-58	50-67	58-77	66-88	76-101
						87-117
	A	A	A	A	A	A
	64-80	73-92	84-105	97-121	111-139	128-160
	D	51-64	59-73	67-84	78-97	89-111
		38-51	44-59	51-67	58-78	67-89
						77-103
	I/A	I/A	A	A	A	A
	25-31	29-36	33-41	38-48	44-55	50-63

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Penalty Cont' (North Carolina)	E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
		15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
		I/A	I/A	I/A	A	A	A	DISPOSITION
		16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
	F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
		10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
		I/A	I/A	I/A	I/A	A	A	DISPOSITION
		13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
	G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
		8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
		C	C/I/	I	I/A	I/A	I/A	DISPOSITION
		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated
	(d) Maximum Sentences Specified for Class F through Class I Felonies.--Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class F through Class I felonies. The first figure in each cell in the table is the minimum term and the second is the maximum term.							
	3-4	4-5	5-6	6-8	7-9	8-10	9-11	10-12
	11-14	12-15	13-16	14-17	15-18	16-20	17-21	18-22
	19-23	20-24	21-26	22-27	23-28	24-29	25-30	26-32
	27-33	28-34	29-35	30-36	31-38	32-39	33-40	34-41
	35-42	36-44	37-45	38-46	39-47	40-48	41-50	42-51

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	43-52	44-53	45-54	46-56	47-57	48-58	49-59
Penalty Cont' (North Carolina)	(e) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms up to 339 Months.--Unless provided otherwise in a statute establishing a punishment for a specific crime, for each minimum term of imprisonment in the chart in subsection (c) of this section, expressed in months, the corresponding maximum term of imprisonment, also expressed in months, is as specified in the table below for Class B1 through Class E felonies. The first figure in each cell of the table is the minimum term and the second is the maximum term.						
	15-27	16-29	17-30	18-31	19-32	20-33	21-35
	23-37	24-38	25-39	26-41	27-42	28-43	29-44
	31-47	32-48	33-49	34-50	35-51	36-53	37-54
	39-56	40-57	41-59	42-60	43-61	44-62	45-63
	47-66	48-67	49-68	50-69	51-71	52-72	53-73
	55-75	56-77	57-78	58-79	59-80	60-81	61-83
	63-85	64-86	65-87	66-89	67-90	68-91	69-92
	71-95	72-96	73-97	74-98	75-99	76-101	77-102
	79-104	80-105	81-107	82-108	83-109	84-110	85-111
	87-114	88-115	89-116	90-117	91-119	92-120	93-121
	95-123	96-125	97-126	98-127	99-128	100-129	101-131
	103-133	104-134	105-135	106-137	107-138	108-139	109-140
	111-143	112-144	113-145	114-146	115-147	116-149	117-150
	119-152	120-153	121-155	122-156	123-157	124-158	125-159
	127-162	128-163	129-164	130-165	131-167	132-168	133-169
	135-171	136-173	137-174	138-175	139-176	140-177	141-179
	143-181	144-182	145-183	146-185	147-186	148-187	149-188
	151-191	152-192	153-193	154-194	155-195	156-197	157-198
	159-200	160-201	161-203	162-204	163-205	164-206	165-207
	167-210	168-211	169-212	170-213	171-215	172-216	173-217
	175-219	176-221	177-222	178-223	179-224	180-225	181-227
	183-229	184-230	185-231	186-233	187-234	188-235	189-236
	191-239	192-240	193-241	194-242	195-243	196-245	197-246

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	207-258	208-259	209-260	210-261	211-263	212-264	213-265	214-266
	215-267	216-269	217-270	218-271	219-272	220-273	221-275	222-276
	223-277	224-278	225-279	226-281	227-282	228-283	229-284	230-285
	231-287	232-288	233-289	234-290	235-291	236-293	237-294	238-295
	239-296	240-297	241-299	242-300	243-301	244-302	245-303	246-305
	247-306	248-307	249-308	250-309	251-311	252-312	253-313	254-314
	255-315	256-317	257-318	258-319	259-320	260-321	261-323	262-324
	263-325	264-326	265-327	266-329	267-330	268-331	269-332	270-333
	271-335	272-336	273-337	274-338	275-339	276-341	277-342	278-343
	279-344	280-345	281-347	282-348	283-349	284-350	285-351	286-353
	287-354	288-355	289-356	290-357	291-359	292-360	293-361	294-362
	295-363	296-365	297-366	298-367	299-368	300-369	301-371	302-372
	303-373	304-374	305-375	306-377	307-378	308-379	309-380	310-381
	311-383	312-384	313-385	314-386	315-387	316-389	317-390	318-391
	319-392	320-393	321-395	322-396	323-397	324-398	325-399	326-401
	327-402	328-403	329-404	330-405	331-407	332-408	333-409	334-410
	335-411	336-413	337-414	338-415	339-416			
	(e1) Maximum Sentences Specified for Class B1 through Class E Felonies for Minimum Terms of 340 Months or More.--Unless provided otherwise in a statute establishing a punishment for a specific crime, when the minimum sentence is 340 months or more, the corresponding maximum term of imprisonment shall be equal to the sum of the minimum term of imprisonment and twenty percent (20%) of the minimum term of imprisonment, rounded to the next highest month, plus nine additional months.							
	North Dakota							
Statute (North Dakota)	N.D. CENT. CODE § 12.1-20-03.1 (West 2011). <u>Continuous sexual abuse of a child</u>							

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<p>Statute Cont' (North Dakota)</p>	<p>1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.</p> <p>2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.</p> <p>3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.</p> <p>N.D. CENT. CODE § 12.1-20-05 (West 2011). <u>Corruption or solicitation of minors</u></p> <p>1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.</p> <p>2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.</p> <p>3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.</p> <p>N.D. CENT. CODE § 12.1-20-05.1 (West 2011). <u>Luring minors by computer or other electronic means</u></p> <p>1. An adult is guilty of luring minors by computer or other electronic means when:</p> <p>a. The adult knows the character and content of a communication that, in whole or in part, implicitly or explicitly discusses or depicts actual or simulated nudity, sexual acts, sexual contact, sadomasochistic abuse, or other sexual performances and uses any computer communication system or other electronic means that allows the input, output, examination, or transfer of data or programs from one</p>
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<p>Statute Cont' (North Dakota)</p>	<p>computer or electronic device to another to initiate or engage in such communication with a person the adult believes to be a minor; and b. By means of that communication the adult importunes, invites, or induces a person the adult believes to be a minor to engage in sexual acts or to have sexual contact with the adult, or to engage in a sexual performance, obscene sexual performance, or sexual conduct for the adult's benefit, satisfaction, lust, passions, or sexual desires.</p> <p>2. A violation of this section is a class A misdemeanor if the adult is less than twenty-two years of age and reasonably believes the minor is age fifteen to seventeen. If the adult is less than twenty-two years of age and reasonably believes the minor is under age fifteen, or the adult is twenty-two years of age or older and the adult reasonably believes the minor is age fifteen to seventeen, violation of this section is a class C felony. If the adult is twenty-two years of age or older and the adult reasonably believes the minor is under the age of fifteen, violation of this section is a class B felony. The court shall sentence an adult convicted of a class B or class C felony under this section to serve a term of imprisonment of at least one year, except the court may sentence an individual to less than one year if the individual did not take a substantial step toward meeting with the minor.</p> <p>3. The attorney general may issue an administrative subpoena compelling an internet service provider or cellular phone company to provide subscriber information to a law enforcement agency investigating a possible violation of this section.</p> <p>N.D. CENT. CODE § 12.1-20-06 (West 2011). <u>Sexual abuse of wards</u></p> <p>A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.</p> <p>N.D. CENT. CODE § 12.1-20-06.1 (West 2011). <u>Sexual exploitation by therapist--Definitions--Penalty</u></p> <p>Any person who is or who holds oneself out to be a therapist and who intentionally has sexual contact, as defined in section 12.1-20-02, with a patient or client during any treatment, consultation, interview, or examination is guilty of a class C felony. Consent by the complainant is not a defense under this section. A complaint of a violation of this section may be made to the police department of the city in which the violation occurred, the sheriff of the county in which the violation occurred, or the bureau of criminal investigation. Local law enforcement agencies and the bureau of criminal investigation shall cooperate in investigations of violations of this section. As used in this section, unless the context or subject matter otherwise requires:</p> <p>1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.</p>
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<p>Statute Cont' (North Dakota)</p>	<p>2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.</p> <p>N.D. CENT. CODE § 12.1-20-07 (West 2011). <u>Sexual assault</u></p> <p>1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:</p> <ul style="list-style-type: none"> <li>a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;</li> <li>b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;</li> <li>c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;</li> <li>d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;</li> <li>e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or</li> <li>f. The other person is a minor, fifteen years of age or older, and the actor is an adult.</li> </ul> <p>2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.</p> <p>N.D. CENT. CODE § 12.1-20-08 (West 2011). <u>Fornication</u></p> <p>An individual is guilty of a class A misdemeanor if the individual engages in a sexual act in a public place. A minor engaging in a sexual act is guilty of a class B misdemeanor, unless that sexual act was committed against the minor in violation of sections 12.1-20-01 through 12.1-20-07.</p>
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<p>Statute Cont' (North Dakota)</p>	<p>N.D. CENT CODE § 12.1-20-12.1 (West 2011). <u>Indecent Exposure</u></p> <ol style="list-style-type: none"> <li>1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person: <ol style="list-style-type: none"> <li>a. Masturbates in a public place or in the presence of a minor; or</li> <li>b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.</li> </ol> </li> <li>2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.</li> <li>3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.</li> <li>4. The act of a woman discreetly breastfeeding her child is not a violation of this section.</li> </ol> <p>N.D. CENT. CODE § 12.1-27.1-03 (West 2011). <u>Promoting obscenity to minors--Minor performing in obscene performance--Classification of offenses</u></p> <ol style="list-style-type: none"> <li>1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.</li> <li>2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.</li> </ol> <p>N.D. CENT. CODE § 12.1-27.1-03.1 (West 2011). <u>Objectionable materials or performance--Display to minors--Definitions--Penalty</u></p> <ol style="list-style-type: none"> <li>1. A person is guilty of a class B misdemeanor if he willfully displays at newsstands or any other business establishment frequented by minors, or where minors are or may be invited as a part of the general public, any photograph, book, paperback book, pamphlet, or magazine, the exposed cover or available content of which exploits, is devoted to, or is principally made up of depictions of nude or partially denuded human figures posed or presented in a manner to exploit sex, lust, or perversion for commercial gain.</li> <li>2. As used in this section: <ol style="list-style-type: none"> <li>a. "Nude or partially denuded human figures" means less than completely and opaquely covered human genitals, pubic regions, female</li> </ol> </li> </ol>
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<p>Statute Cont' (North Dakota)</p>	<p>breasts or a female breast, if the breast or breasts are exposed below a point immediately above the top of the areola, or human buttocks; and includes human male genitals in a discernibly turgid state even if completely and opaquely covered.</p> <p>b. "Where minors are or may be invited as a part of the general public" includes any public roadway or public walkway.</p> <p>c. The above shall not be construed to include a bona fide school, college, university, museum, public library, or art gallery.</p> <p>N.D. CENT. CODE § 12.1-27.2-02 (West 2011). <u>Use of a minor in a sexual performance</u></p> <p>A person is guilty of a class B felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.</p> <p>N.D. CENT. CODE § 12.1-27.2-03 (West 2011). <u>Promoting or directing an obscene sexual performance by a minor</u></p> <p>A person is guilty of a class B felony if, knowing the character and content of a performance, that person produces, directs, or promotes any obscene performance which includes sexual conduct by a person who was a minor at the time of the performance.</p> <p>N.D. CENT. CODE § 12.1-27.2-04 (West 2011). <u>Promoting a sexual performance by a minor</u></p> <p>A person is guilty of a class C felony if, knowing the character and content of a performance, that person produces, directs, or promotes any performance which includes sexual conduct by a person who was a minor at the time of the performance.</p> <p>N.D. CENT. CODE § 12.1-27.2-04.1 (West 2011). <u>Possession of certain materials prohibited</u></p> <p>A person is guilty of a class C felony if, knowing of its character and content, that person knowingly possesses any motion picture, photograph, or other visual representation that includes sexual conduct by a minor.</p> <p>N.D. CENT. CODE § 12.1-36-01 (West 2011).</p>
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	<p><u>Surgical alteration of the genitals of female minor--Penalty--Exception</u></p> <p>1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.</p> <p>2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.</p>
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Definitions (North Dakota)	<p>N.D. CENT. CODE § 12.1-20-02 (West 2011). <u>Definitions</u></p> <p>In sections 12.1-20-03 through 12.1-20-12:</p> <p>1. “Coercion” means to exploit fear or anxiety through intimidation, compulsion, domination or control with the intent to compel conduct or compliance</p> <p>2. “Deviate sexual act” means any form of sexual contact with an animal, bird, or dead person.</p> <p>3. “Object” means anything used in commission of a sexual act other than the person of the actor.</p> <p>4. “Sexual act” means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body and the penis, anus, or vulva; or the use of an object which comes in contact with the victim's anus, vulva, or penis. For the purposes of this subsection, sexual contact between the penis and the vulva, the penis and the anus, any other portion of the human body and the anus or vulva, or an object and the anus, vulva, or penis of the victim, occurs upon penetration, however slight. Emission is not required.</p> <p>5. “Sexual contact” means any touching, whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires.</p> <p>N.D. CENT. CODE § 12.1-27.2-01 (West 2011). <u>Definitions</u></p>

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<p>Definitions Cont' (North Dakota)</p>	<p>As used in this chapter:</p> <ol style="list-style-type: none"> <li>1. "Obscene sexual performance" means any performance which includes sexual conduct by a minor in any obscene material or obscene performance, as defined in section 12.1-27.1-01.</li> <li>2. "Performance" means any play, motion picture, photograph, dance, or other visual representation, or any part of a performance.</li> <li>3. "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise.</li> <li>4. "Sexual conduct" means actual or simulated sexual intercourse, sodomy, sexual bestiality, masturbation, sadomasochistic abuse, or lewd exhibition of the buttocks, breasts or genitals, including the further definitions of sodomy and sadomasochistic abuse under section 12.1-27.1-01.</li> <li>5. "Sexual performance" means any performance which includes sexual conduct by a minor.</li> <li>6. "Simulated" means the explicit depiction of any of the conduct set forth in subsection 4 which creates the appearance of actual sexual conduct and which exhibits any nude or partially denuded human figure, as defined in section 12.1-27.1-03.1.</li> </ol> <p>N.D. CENT. CODE § 12.1-20-06.1 (West 2011). <u>Sexual exploitation by therapist--Definitions—Penalty</u></p> <p>As used in this section, unless the context or subject matter otherwise requires:</p> <ol style="list-style-type: none"> <li>1. "Psychotherapy" means the diagnosis or treatment of a mental or emotional condition, including alcohol or drug addiction.</li> <li>2. "Therapist" means a physician, psychologist, psychiatrist, social worker, nurse, chemical dependency counselor, member of the clergy, or other person, whether licensed or not by the state, who performs or purports to perform psychotherapy.</li> </ol> <p>N.D. CENT. CODE § 12.1-27.1-02 (West 2011). <u>Promoting obscenity to minors--Definitions</u></p> <p>As used in this section and in section 12.1-27.1-03:</p> <ol style="list-style-type: none"> <li>1. "Promote" means to produce, direct, manufacture, issue, sell, lend, mail, publish, distribute, exhibit, or advertise.</li> <li>2. "Harmful to minors" means that quality of any description or representation, in whatever form of sexual conduct or sexual excitement, when such description or representation: <ol style="list-style-type: none"> <li>a. Considered as a whole, appeals to the prurient sexual interest of minors;</li> <li>b. Is patently offensive to prevailing standards in the adult community in North Dakota as a whole with respect to what is suitable material for minors; and</li> </ol> </li> </ol>
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	<p>c. Considered as a whole, lacks serious literary, artistic, political, or scientific value for minors.</p> <p>3. “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.</p>
<p>Defenses (North Dakota)</p> <p>Defenses Cont’ (North Dakota)</p>	<p>N.D. CENT. CODE § 12.1-27.2-05 (West 2011). <u>Sexual performance by a minor--Affirmative defenses</u></p> <p>It is an affirmative defense to a prosecution under this chapter that:</p> <ol style="list-style-type: none"> <li>1. The defendant in good faith reasonably believed the person appearing in the performance was eighteen years of age or older;</li> <li>2. The material or performance involved was disseminated or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other appropriate purpose by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a similar interest in the material or performance; or</li> <li>3. The defendant had no financial interest in promoting a sexual performance by a minor, other than employment in a theater, which employment does not include compensation based upon any proportion of the receipts arising from promotion of the sexual performance, and that person was in no way responsible for acquiring the material for sale, rental, or exhibition.</li> </ol>
<p>Penalty (North Dakota)</p>	<p>N.D. CENT. CODE § 12.1-27.2-04.2 (West 2011). <u>Sexual performance by a minor--Enhanced penalties</u></p> <ol style="list-style-type: none"> <li>1. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, a person who commits an offense under this chapter and who acts in the course of a commercial or for-profit activity or transaction in which the offender had or shared ownership, control, managerial responsibility, or a financial interest other than wages is subject to the following penalty: <ol style="list-style-type: none"> <li>a. For an individual, a fine not to exceed ten thousand dollars; or</li> <li>b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed twenty-five thousand dollars.</li> </ol> </li> <li>2. Notwithstanding the provisions of sections 12.1-32-01 and 12.1-32-01.1 relating to fines, the court shall impose the following fine upon the conviction of a person or entity described in subsection 1 for a second or subsequent offense under this chapter: <ol style="list-style-type: none"> <li>a. For an individual, a fine not to exceed fifty thousand dollars; or</li> <li>b. For a corporation, limited liability company, association, partnership, or other legal entity, a fine not to exceed one hundred thousand dollars.</li> </ol> </li> </ol>

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<p>Penalty Cont' (North Dakota)</p>	<p>N.D. CENT. CODE § 12.1-32-01 (West 2011). <u>Classification of offenses--Penalties</u></p> <p>Offenses are divided into seven classes, which are denominated and subject to maximum penalties, as follows:</p> <ol style="list-style-type: none"> <li>1. Class AA felony, for which a maximum penalty of life imprisonment without parole may be imposed. The court must designate whether the life imprisonment sentence imposed is with or without an opportunity for parole. Notwithstanding the provisions of section 12-59-05, a person found guilty of a class AA felony and who receives a sentence of life imprisonment with parole, shall not be eligible to have that person's sentence considered by the parole board for thirty years, less sentence reduction earned for good conduct, after that person's admission to the penitentiary.</li> <li>2. Class A felony, for which a maximum penalty of twenty years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.</li> <li>3. Class B felony, for which a maximum penalty of ten years' imprisonment, a fine of ten thousand dollars, or both, may be imposed.</li> <li>4. Class C felony, for which a maximum penalty of five years' imprisonment, a fine of five thousand dollars, or both, may be imposed.</li> <li>5. Class A misdemeanor, for which a maximum penalty of one year's imprisonment, a fine of two thousand dollars, or both, may be imposed.</li> <li>6. Class B misdemeanor, for which a maximum penalty of thirty days' imprisonment, a fine of one thousand dollars, or both, may be imposed.</li> <li>7. Infraction, for which a maximum fine of five hundred dollars may be imposed. Any person convicted of an infraction who has, within one year prior to commission of the infraction of which the person was convicted, been previously convicted of an offense classified as an infraction may be sentenced as though convicted of a class B misdemeanor. If the prosecution contends that the infraction is punishable as a class B misdemeanor, the complaint shall specify that the offense is a misdemeanor.</li> </ol> <p>This section shall not be construed to forbid sentencing under section 12.1-32-09, relating to extended sentences.</p> <p>N.D. CENT. CODE § 12.1-32-09 (West 2011). <u>Dangerous special offenders--Habitual offenders--Extended sentences--Procedure</u></p> <ol style="list-style-type: none"> <li>1. A court may sentence a convicted offender to an extended sentence as a dangerous special offender or a habitual offender in accordance with this section upon a finding of any one or more of the following:             <ol style="list-style-type: none"> <li>a. The convicted offender is a dangerous, mentally abnormal person whose conduct has been characterized by persistent aggressive behavior and the behavior makes the offender a serious danger to other persons.</li> <li>b. The convicted offender is a professional criminal who has substantial income or resources derived from criminal activity.</li> </ol> </li> </ol>
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<p>Penalty Cont' (North Dakota)</p>	<p>c. The convicted offender is a habitual offender. The court may not make such a finding unless the offender is an adult and has previously been convicted in any state or states or by the United States of two felonies of class C or above committed at different times when the offender was an adult. For the purposes of this subdivision, a felony conviction in another state or under the laws of the United States is considered a felony of class C or above if it is punishable by a maximum term of imprisonment of five years or more.</p> <p>d. The offender was convicted of an offense that seriously endangered the life of another person and the offender had previously been convicted of a similar offense.</p> <p>e. The offender is especially dangerous because the offender used a firearm, dangerous weapon, or destructive device in the commission of the offense or during the flight therefrom.</p> <p>A conviction shown on direct or collateral review or at the hearing to be invalid or for which the offender has been pardoned on the ground of innocence must be disregarded for purposes of subdivision c. In support of findings under subdivision b, it may be shown that the offender has had control of income or property not explained as derived from a source other than criminal activity. For purposes of subdivision b, a substantial source of income means a source of income which for any period of one year or more exceeds the minimum wage, determined on the basis of a forty-hour week and a fifty-week year, without reference to exceptions, under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, for an employee engaged in commerce or in the production of goods for commerce, and which for the same period exceeds fifty percent of the offender's declared adjusted gross income<sup>39</sup> under chapter 57-38.</p> <p>2. The extended sentence may be imposed in the following manner:</p> <p>a. If the offense for which the offender is convicted is a class A felony, the court may impose a sentence up to a maximum of life imprisonment.</p> <p>b. If the offense for which the offender is convicted is a class B felony, the court may impose a sentence up to a maximum of imprisonment for twenty years.</p> <p>c. If the offense for which the offender is convicted is a class C felony, the court may impose a sentence up to a maximum of imprisonment for ten years.</p> <p>3. Whenever an attorney charged with the prosecution of a defendant in a court of this state for an alleged felony committed when the defendant was over the age of eighteen years has reason to believe that the defendant is a dangerous special offender or a habitual offender, the attorney, at a reasonable time before trial or acceptance by the court of a plea of guilty, may sign and file with the court, and may amend, a notice specifying that the defendant is a dangerous special offender or a habitual offender who upon conviction for the felony is subject to the imposition of a sentence under subsection 2, and setting out with particularity the reasons why the attorney believes the defendant to be a dangerous special offender or a habitual offender. In no case may the fact that the prosecuting attorney is seeking sentencing of the defendant as a dangerous special offender or a habitual offender be disclosed to the jury before a verdict. If the court finds that the filing of the notice as a public record may prejudice fair consideration of a pending criminal matter, the court may order the notice sealed and the notice is not subject to subpoena or public inspection during the pendency of the criminal matter,</p>
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<p>Penalty Cont' (North Dakota)</p>	<p>except on order of the court, but is subject to inspection by the defendant alleged to be a dangerous special offender or a habitual offender and the offender's counsel.</p> <p>4. Upon any plea of guilty, or verdict or finding of guilt of the defendant of such felony, a hearing must be held, before sentence is imposed, in accordance with this subsection as follows:</p> <p>a. By a jury, or the court if a jury is waived by the defendant, if the notice alleges that the defendant is a dangerous special offender under subdivision a, b, d, or e of subsection 1. The jury, or the court if a jury is waived, must find that the defendant is a dangerous special offender under one or more of these subdivisions by proof beyond a reasonable doubt. However, in the case of a notice alleging only subdivision e of subsection 1, the trial jury, or the trial court if a jury is waived, may make a special finding of proof of this subdivision without an additional hearing subsequent to a verdict or finding of guilt.</p> <p>b. By the court if the notice alleges that the defendant is a habitual offender under subdivision c of subsection 1. The court must find that the defendant is a habitual offender by a preponderance of the evidence.</p> <p>5. Except in the most extraordinary cases, the court shall obtain a presentence report and may receive a diagnostic testing report under subsection 5 of section 12.1-32-02 before holding a hearing under this subsection. The court shall fix a time for the hearing and notice thereof must be given to the defendant and the prosecution at least five days prior thereto. The court shall permit the prosecution and counsel for the defendant, or the defendant if the defendant is not represented by counsel, to inspect the presentence report sufficiently before the hearing as to afford a reasonable opportunity for verification. In extraordinary cases, the court may withhold material not relevant to a proper sentence, diagnostic opinion that might seriously disrupt a program of rehabilitation, any source of information obtained on a promise of confidentiality, and material previously disclosed in open court. A court withholding all or part of a presentence report shall inform the parties of its action and place in the record the reasons therefor. The court may require parties inspecting all or part of a presentence report to give notice of any part thereof intended to be controverted. In connection with the hearing, the defendant is entitled to compulsory process and cross-examination of such witnesses as appear at the hearing. A duly authenticated copy of a former judgment or commitment is prima facie evidence of such former judgment or commitment. If the jury or the court finds, after hearing, one or more of the grounds set forth in subsection 1, that the defendant is a dangerous special offender or a habitual offender, the court shall sentence the defendant to imprisonment for an appropriate term within the limits specified in subsection 2.</p>
<p style="text-align: center;"><b>Ohio</b></p>	
<p>Statute</p>	<p>OHIO REV. CODE ANN. § 2907.02 (West 2011).</p>

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<p>(Ohio)</p> <p>Statute Cont' (Ohio)</p>	<p><u>Rape; evidence; marriage or cohabitation not defenses to rape charges</u></p> <p>(A)(1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:</p> <p>(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.</p> <p>(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.</p> <p>(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.</p> <p>(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.</p> <p>(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified</p>
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<p>Statute Cont' (Ohio)</p>	<p>a tier III sex offender/child-victim offender, as described in that division.</p> <p>(C) A victim need not prove physical resistance to the offender in prosecutions under this section.</p> <p>(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p> <p>Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p> <p>(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.</p> <p>(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.</p> <p>(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.</p> <p>OHIO REV. CODE ANN. § 2907.03 (West 2011). <u>Sexual battery</u></p> <p>(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:</p> <p>(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.</p> <p>(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.</p> <p>(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.</p> <p>(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.</p>
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<p>Statute Cont' (Ohio)</p>	<p>(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.</p> <p>(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.</p> <p>(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.</p> <p>(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.</p> <p>(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.</p> <p>(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.</p> <p>(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.</p> <p>(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.</p> <p>(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.</p> <p>(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.</p> <p>(C) As used in this section:</p> <p>(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.</p> <p>(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.</p> <p>(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.</p> <p>(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.</p>
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<p>Statute Cont' (Ohio)</p>	<p>OHIO REV. CODE ANN. § 2907.04 (West 2011). <u>Unlawful sexual conduct with a minor</u></p> <p>(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.</p> <p>(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.</p> <p>(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.</p> <p>(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.</p> <p>(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.</p> <p>(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.</p> <p>OHIO REV. CODE ANN. § 2907.05 (West 2011). <u>Gross sexual imposition</u></p> <p>(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:</p> <p>(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.</p> <p>(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.</p> <p>(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.</p> <p>(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.</p>
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<p>Statute Cont' (Ohio)</p>	<p>(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.</p> <p>(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.</p> <p>(C) Whoever violates this section is guilty of gross sexual imposition.</p> <p>(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.</p> <p>(2) Gross sexual imposition committed in violation of division (A)(4) or (B) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:</p> <p>(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;</p> <p>(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.</p> <p>(D) A victim need not prove physical resistance to the offender in prosecutions under this section.</p> <p>(E) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p> <p>Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.</p>
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<p>Statute Cont' (Ohio)</p>	<p>(F) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.</p> <p>(G) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.</p> <p>OHIO REV. CODE ANN. § 2907.06 (West 2011). <u>Sexual imposition</u></p> <p>(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:</p> <p>(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.</p> <p>(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.</p> <p>(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.</p> <p>(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.</p> <p>(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.</p> <p>(6) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribed minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person, or one of the other persons, is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.(7) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.</p> <p>(8) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.</p> <p>(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.</p>
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<p>Statute Cont' (Ohio)</p>	<p>(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12 of the Revised Code, a violation of this section is a misdemeanor of the first degree.</p> <p>OHIO REV. CODE ANN. § 2907.07 (West 2011). <u>Importuning</u></p> <p>(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.</p> <p>(B) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.</p> <p>(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:</p> <p>(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.</p> <p>(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.</p> <p>(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:</p> <p>(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.</p> <p>(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.</p> <p>(E) Divisions (C) and (D) of this section apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in this state or is received in this state.</p> <p>(F)(1) Whoever violates this section is guilty of importuning.</p> <p>(2) Except as otherwise provided in this division, a violation of division (A) or (C) of this section is a felony of the third degree on a</p>
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<p>Statute Cont' (Ohio)</p>	<p>first offense, and, notwithstanding division (C) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (A) or (C) of this section is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.</p> <p>(3) A violation of division (B) or (D) of this section is a felony of the fifth degree on a first offense, and, notwithstanding division (B) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (B) or (D) of this section is a felony of the fourth degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the fourth degree that is not less than twelve months in duration.</p> <p>OHIO REV. CODE ANN. § 2907.08 (West 2011). <u>Voyeurism</u></p> <p>(A) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.</p> <p>(B) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.</p> <p>(C) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor.</p> <p>(D) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person.</p> <p>(E)(1) Whoever violates this section is guilty of voyeurism.</p> <p>(2) A violation of division (A) of this section is a misdemeanor of the third degree.</p> <p>(3) A violation of division (B) of this section is a misdemeanor of the second degree.</p> <p>(4) A violation of division (D) of this section is a misdemeanor of the first degree.</p> <p>(5) A violation of division (C) of this section is a felony of the fifth degree.</p> <p>OHIO REV CODE ANN. § 2907.09 (West 2011).</p>
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<p>Statute Cont' (Ohio)</p>	<p><u>Public Indecency</u></p> <p>A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:</p> <ol style="list-style-type: none"> <li>(1) Expose the person's private parts;</li> <li>(2) Engage in sexual conduct or masturbation;</li> <li>(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.</li> </ol> <p>(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:</p> <ol style="list-style-type: none"> <li>(1) Engage in masturbation;</li> <li>(2) Engage in sexual conduct;</li> <li>(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;</li> <li>(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.</li> </ol> <p>(C)(1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.</p> <p>OHIO REV. CODE ANN. § 2907.311 (West 2011). <u>Displaying matter harmful to juveniles</u></p> <p>(A) No person who has custody, control, or supervision of a commercial establishment, with knowledge of the character or content of the material involved, shall display at the establishment any material that is harmful to juveniles and that is open to view by juveniles as part of the invited general public.</p> <p>(B) It is not a violation of division (A) of this section if the material in question is displayed by placing it behind “blinder racks” or similar devices that cover at least the lower two-thirds of the material, if the material in question is wrapped or placed behind the counter, or if the material in question otherwise is covered or located so that the portion that is harmful to juveniles is not open to the view of juveniles.</p> <p>OHIO REV. CODE ANN. § 2907.321 (West 2011). <u>Pandering obscenity involving a minor</u></p>
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<p>Statute Cont' (Ohio)</p>	<p>(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:</p> <ol style="list-style-type: none"> <li>(1) Create, reproduce, or publish any obscene material that has a minor as one of its participants or portrayed observers;</li> <li>(2) Promote or advertise for sale or dissemination; sell, deliver, disseminate, display, exhibit, present, rent, or provide; or offer or agree to sell, deliver, disseminate, display, exhibit, present, rent, or provide, any obscene material that has a minor as one of its participants or portrayed observers;</li> <li>(3) Create, direct, or produce an obscene performance that has a minor as one of its participants;</li> <li>(4) Advertise or promote for presentation, present, or participate in presenting an obscene performance that has a minor as one of its participants;</li> <li>(5) Buy, procure, possess, or control any obscene material, that has a minor as one of its participants;</li> <li>(6) Bring or cause to be brought into this state any obscene material that has a minor as one of its participants or portrayed observers.</li> </ol> <p>(B)(1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.</p> <p>(2) Mistake of age is not a defense to a charge under this section.</p> <p>(3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.</p> <p>(C) Whoever violates this section is guilty of pandering obscenity involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.322 or 2907.323 of the Revised Code, pandering obscenity involving a minor in violation of division (A)(5) of this section is a felony of the third degree.</p> <p>OHIO REV. CODE ANN. § 2907.322 <u>Pandering sexually oriented matter involving a minor</u></p> <p>(A) No person, with knowledge of the character of the material or performance involved, shall do any of the following:</p> <ol style="list-style-type: none"> <li>(1) Create, record, photograph, film, develop, reproduce, or publish any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;</li> <li>(2) Advertise for sale or dissemination, sell, distribute, transport, disseminate, exhibit, or display any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;</li> </ol>
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<p>Statute Cont' (Ohio)</p>	<p>(3) Create, direct, or produce a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;  (4) Advertise for presentation, present, or participate in presenting a performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;  (5) Knowingly solicit, receive, purchase, exchange, possess, or control any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality;  (6) Bring or cause to be brought into this state any material that shows a minor participating or engaging in sexual activity, masturbation, or bestiality, or bring, cause to be brought, or finance the bringing of any minor into or across this state with the intent that the minor engage in sexual activity, masturbation, or bestiality in a performance or for the purpose of producing material containing a visual representation depicting the minor engaged in sexual activity, masturbation, or bestiality.  (B)(1) This section does not apply to any material or performance that is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance.  (2) Mistake of age is not a defense to a charge under this section.  (3) In a prosecution under this section, the trier of fact may infer that a person in the material or performance involved is a minor if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the person as a minor.  (C) Whoever violates this section is guilty of pandering sexually oriented matter involving a minor. Violation of division (A)(1), (2), (3), (4), or (6) of this section is a felony of the second degree. Violation of division (A)(5) of this section is a felony of the fourth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 or 2907.323 of the Revised Code, pandering sexually oriented matter involving a minor in violation of division (A)(5) of this section is a felony of the third degree.</p> <p>OHIO REV. CODE ANN. § 2907.323 (West 2011).  <u>Illegal use of a minor in nudity-oriented material or performance</u></p> <p>(A) No person shall do any of the following:  (1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:  (a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the</p>
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Age of Consent♦ (Ohio)	16
Definitions (Ohio)	OHIO REV. CODE ANN. § 2907.01 (West 2011). <u>Definitions</u>

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<p>Definitions Cont' (Ohio)</p>	<p>As used in sections 2907.01 to 2907.38 of the Revised Code:</p> <p>(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 opening of another. Penetration, however slight, is sufficient to complete vaginal or anal intercourse.</p> <p>(B) "Sexual contact" means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.</p> <p>(C) "Sexual activity" means sexual conduct or sexual contact, or both.</p> <p>(D) "Prostitute" means a male or female who promiscuously engages in sexual activity for hire, regardless of whether the hire is paid to the prostitute or to another.</p> <p>(E) "Harmful to juveniles" means that quality of any material or performance describing or representing nudity, sexual conduct, sexual excitement, or sado-masochistic abuse in any form to which all of the following apply:</p> <p>(1) The material or performance, when considered as a whole, appeals to the prurient interest of juveniles in se(2) The material or performance is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for juveniles.</p> <p>(3) The material or performance, when considered as a whole, lacks serious literary, artistic, political, and scientific value for juveniles.</p> <p>(F) When considered as a whole, and judged with reference to ordinary adults or, if it is designed for sexual deviates or other specially susceptible group, judged with reference to that group, any material or performance is "obscene" if any of the following apply:</p> <p>(1) Its dominant appeal is to prurient interest;</p> <p>(2) Its dominant tendency is to arouse lust by displaying or depicting sexual activity, masturbation, sexual excitement, or nudity in a way that tends to represent human beings as mere objects of sexual appetite;</p> <p>(3) Its dominant tendency is to arouse lust by displaying or depicting bestiality or extreme or bizarre violence, cruelty, or brutality;</p> <p>(4) Its dominant tendency is to appeal to scatological interest by displaying or depicting human bodily functions of elimination in a way that inspires disgust or revulsion in persons with ordinary sensibilities, without serving any genuine scientific, educational, sociological, moral, or artistic purpose;</p> <p>(5) It contains a series of displays or descriptions of sexual activity, masturbation, sexual excitement, nudity, bestiality, extreme or bizarre violence, cruelty, or brutality, or human bodily functions of elimination, the cumulative effect of which is a dominant tendency to appeal to prurient or scatological interest, when the appeal to such an interest is primarily for its own sake or for commercial exploitation, rather than primarily for a genuine scientific, educational, sociological, moral, or artistic purpose.</p> <p>(G) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.</p>
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Definitions Cont' (Ohio)	<p>(H) "Nudity" means the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.</p> <p>(I) "Juvenile" means an unmarried person under the age of eighteen.</p> <p>(J) "Material" means any book, magazine, newspaper, pamphlet, poster, print, picture, figure, image, description, motion picture film, phonographic record, or tape, or other tangible thing capable of arousing interest through sight, sound, or touch and includes an image or text appearing on a computer monitor, television screen, liquid crystal display, or similar display device or an image or text recorded on a computer hard disk, computer floppy disk, compact disk, magnetic tape, or similar data storage device.</p> <p>(K) "Performance" means any motion picture, preview, trailer, play, show, skit, dance, or other exhibition performed before an audience.</p> <p>(L) "Spouse" means a person married to an offender at the time of an alleged offense, except that such person shall not be considered the spouse when any of the following apply:</p> <ol style="list-style-type: none"> <li>(1) When the parties have entered into a written separation agreement authorized by section 3103.06 of the Revised Code;</li> <li>(2) During the pendency of an action between the parties for annulment, divorce, dissolution of marriage, or legal separation;</li> <li>(3) In the case of an action for legal separation, after the effective date of the judgment for legal separation.</li> </ol> <p>(M) "Minor" means a person under the age of eighteen.</p> <p>(N) "Mental health client or patient" has the same meaning as in section 2305.51 of the Revised Code.</p> <p>(O) "Mental health professional" has the same meaning as in section 2305.115 of the Revised Code.</p> <p>(P) "Sado-masochistic abuse" means flagellation or torture by or upon a person or the condition of being fettered, bound, or otherwise physically restrained.</p>
Defenses (Ohio)	None.
Penalty (Ohio)	<p>OHIO REV. CODE ANN. § 2907.02 (West 2011).</p> <p><u>Rape; evidence; marriage or cohabitation not defenses to rape charges</u></p> <p>If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding</p>

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<p>Penalty Cont' (Ohio)</p>	<p>sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.</p> <p>OHIO REV. CODE ANN. § 2907.03 (West 2011). <u>Sexual battery</u></p> <p>(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.</p> <p>OHIO REV. CODE ANN. § 2907.05 (West 2011). <u>Gross sexual imposition</u></p> <p>(2) Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:</p>
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<p>Penalty Cont' (Ohio)</p>	<p>(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation; (b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.</p> <p>OHIO REV. CODE ANN. § 2907.07 (West 2011). <u>Importuning</u></p> <p>(3) A violation of division (B) or (D) of this section is a felony of the fifth degree on a first offense, and, notwithstanding division (B) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (B) or (D) of this section is a felony of the fourth degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the fourth degree that is not less than twelve months in duration.</p>
<p style="text-align: center;"><b>Oklahoma</b></p>	
<p>Statute (Oklahoma)</p>	<p>OKLA. STAT. tit. 21, § 888 (West 2011). <u>Forcible sodomy</u></p> <p>B. The crime of forcible sodomy shall include:</p> <ol style="list-style-type: none"> <li>1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or</li> <li>2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or</li> <li>3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime; or</li> <li>4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state; or</li> <li>5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of</li> </ol>

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<p>Statute Cont' (Oklahoma)</p>	<p>any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system.</p> <p>OKLA. STAT. tit. 21, § 1114 (West 2011). <u>Rape in first degree--Second degree</u></p> <p>A. Rape in the first degree shall include:</p> <ol style="list-style-type: none"> <li>1. rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age; or</li> <li>2. rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or</li> <li>3. rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or</li> <li>4. rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or</li> <li>5. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or</li> <li>6. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or</li> <li>7. rape by instrumentation committed upon a person under fourteen (14) years of age.</li> </ol> <p>B. In all other cases, rape or rape by instrumentation is rape in the second degree.</p> <p>OKLA. STAT. tit. 21, § 1123 (West 2011). <u>Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16--Sexual battery</u></p> <p>&lt;Text as amended by Laws 2010, c. 226, § 5. See, also, text as amended by Laws 2002, c. 455, § 6.&gt;</p> <p>A. It is a felony for any person to knowingly and intentionally:</p> <ol style="list-style-type: none"> <li>1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or</li> <li>2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or</li> <li>3. Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under</li> </ol>
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<p>Statute Cont' (Oklahoma)</p>	<p>sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or</p> <p>4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or</p> <p>5. In a lewd and lascivious manner and for the purpose of sexual gratification:</p> <ul style="list-style-type: none"> <li>a. urinate or defecate upon a child under sixteen (16) years of age,</li> <li>b. ejaculate upon or in the presence of a child,</li> <li>c. cause, expose, force or require a child to look upon the body or private parts of another person,</li> <li>d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,</li> <li>e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or</li> <li>f. force or require a child to touch or feel the body or private parts of said child or another person.</li> </ul> <p>B. No person shall commit sexual battery on any other person. "Sexual battery" shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner :</p> <ul style="list-style-type: none"> <li>1. Without the consent of that person;</li> <li>2. When committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state; or</li> <li>3. When committed by a federal employee or a contractor or an employee of a contractor of the federal government upon a person who is under the legal custody, supervision or authority of the United States Transportation Security Administration. If the federal employee or a contractor or an employee of a contractor of the federal government is involved in screening a passenger prior to boarding any manner of transportation, it shall not constitute a defense to prosecution under this paragraph unless reasonable suspicion exists at the time of the screening that the passenger may pose a danger to the traveling public; or</li> <li>4. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends. As used in this subsection, "employee of the same school system" means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.</li> </ul> <p>C. No person shall in any manner lewdly or lasciviously:</p> <ul style="list-style-type: none"> <li>1. Look upon, touch, maul, or feel the body or private parts of any human corpse in any indecent manner relating to sexual matters or</li> </ul>
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	<p>sexual interest; or</p> <p>2. Urinate, defecate or ejaculate upon any human corpse.</p> <p>E. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.</p>
Age of Consent♦ (Oklahoma)	16
Definitions (Oklahoma)	<p>OKLA. STAT. tit. 21, § 1111 (West 2011).  <u>Rape defined</u></p> <p>A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:</p> <ol style="list-style-type: none"> <li>1. Where the victim is under sixteen (16) years of age;</li> <li>2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;</li> <li>3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;</li> <li>4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;</li> <li>5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;</li> <li>6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;</li> <li>7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim; or</li> <li>8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school</li> </ol>

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Definitions Cont' (Oklahoma)	<p>system; or</p> <p>(9) Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and engages in sexual intercourse with a person who is in a ministerial role with respect to the victim. A person who is in a "ministerial role" includes, but is not limited to, pastors, clergy, religious leaders and youth ministers. B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.</p> <p>OKLA. STAT. tit. 21, § 1111.1 (West 2011).  <u>Rape by instrumentation</u></p> <p>Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political subdivision and engages in conduct prohibited by this section of law with a federal, state, 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, consent shall not be an element of the crime. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.</p>
Defenses (Oklahoma)	None.
Penalty (Oklahoma)	<p>OKLA. STAT. tit. 21, § 888 (West 2011).  <u>Forcible sodomy</u></p>

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<p>Penalty Cont' (Oklahoma)</p>	<p>A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of said offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.</p> <p>OKLA. STAT. tit. 21, § 1111.1 (West 2011). <u>Rape by instrumentation</u></p> <p>Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.</p> <p>OKLA. STAT. tit. 21, § 1115 (West 2011). <u>Punishment for rape in first degree</u></p> <p>&lt;Text as amended by Laws 2009, c. 234, § 124. See, also, text as amended by Laws 2002, c. 455, § 5.&gt; Rape in the first degree is a felony punishable by death or imprisonment in the custody of the Department of Corrections, for a term of not less than five (5) years, life or life without parole. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment</p>
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<p>Penalty Cont' (Oklahoma)</p>	<p>supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second or subsequent violation of subsection A of Section 1114 of this title shall not be eligible for any form of probation. Any person convicted of a third or subsequent violation of subsection A of Section 1114 of this title or of an offense under Section 888 of this title or an offense under Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or any attempt to commit any of these offenses or any combination of these offenses shall be punished by imprisonment in the custody of the Department of Corrections for life or life without parole.</p> <p>OKLA. STAT. tit. 21, § 1116 (West 2011) <u>Rape in second degree a felony</u> Rape in the second degree is a felony punishable by imprisonment in the State Penitentiary not less than one (1) year nor more than fifteen (15) years.</p> <p>OKLA. STAT. tit. 21, § 1123 (West 2011). <u>Lewd or indecent proposals or acts as to child under 16 or person believed to be under sixteen – sexual battery</u></p> <p>A. Any person convicted of any violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this subsection shall not apply unless the accused is at least three (3) years older than the victim, except when accomplished by the use of force or fear. Any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this subsection shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.</p> <p>D. Any person convicted of a violation of subsection B or C of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.F. Except for persons sentenced to life or</p>
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	life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.
<b>Oregon<sup>40</sup></b>	
Statute (Oregon)	<p>OR. REV. STAT. § 163.355 (West 2011).  <u>Rape in the third degree</u></p> <p>(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.  (2) Rape in the third degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.365 (West 2011).  <u>Rape in the second degree</u></p> <p>(1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.  (2) Rape in the second degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.375 (West 2011).  <u>Rape in the first degree</u></p> <p>(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:  (a) The victim is subjected to forcible compulsion by the person;  (b) The victim is under 12 years of age;  (c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or  (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.</p>

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<p>Statute Cont' (Oregon)</p>	<p>(2) Rape in the first degree is a Class A felony.</p> <p>OR. REV. STAT. § 163.385 (West 2011). <u>Sodomy in the third degree</u></p> <p>(1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse. (2) Sodomy in the third degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.395 (West 2011). <u>Sodomy in the second degree</u></p> <p>(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age. (2) Sodomy in the second degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.405 (West 2011). <u>Sodomy in the first degree</u></p> <p>(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if: (a) The victim is subjected to forcible compulsion by the actor; (b) The victim is under 12 years of age; (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness. (2) Sodomy in the first degree is a Class A felony.</p> <p>OR. REV. STAT. § 163.408 (West 2011). <u>Unlawful sexual penetration in the second degree</u></p>
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<p>Statute Cont' (Oregon)</p>	<p>(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.</p> <p>(2) Unlawful sexual penetration in the second degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.411 (West 2011). <u>Unlawful sexual penetration in the first degree</u></p> <p>(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:</p> <p>(a) The victim is subjected to forcible compulsion;</p> <p>(b) The victim is under 12 years of age; or</p> <p>(c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.</p> <p>(2) Unlawful sexual penetration in the first degree is a Class A felony.</p> <p>OR. REV. STAT. § 163.415 (West 2011). <u>Sexual abuse in the third degree</u></p> <p>(1) A person commits the crime of sexual abuse in the third degree if:</p> <p>(a) The person subjects another person to sexual contact and:</p> <p>(A) The victim does not consent to the sexual contact; or</p> <p>(B) The victim is incapable of consent by reason of being under 18 years of age; or</p> <p>(b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.</p> <p>(2) Sexual abuse in the third degree is a Class A misdemeanor.</p> <p>(3) As used in this section, “dangerous substance” means blood, urine, semen or feces.</p> <p>OR. REV. STAT § 163.425 (West 2011). <u>Sexual abuse in the second degree</u></p> <p>(1) A person commits the crime of sexual abuse in the second degree when:</p>
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<p>Statute Cont' (Oregon)</p>	<p>(a) That person subjects another person to sexual intercourse, deviate sexual intercourse or, except as provided in ORS 163.412, penetration of the vagina, anus or penis with any object other than the penis or mouth of the actor and the victim does not consent thereto.</p> <p>(b)(A) The person violates ORS 163.415 (1)(a)(B); (B) The person is 21 years of age or older; and (C) At any time before the commission of the offense, the person was the victim's coach as defined in ORS 163.426.</p> <p>(2) Sexual abuse in the second degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.427 (West 2011). <u>Sexual abuse in the first degree</u></p> <p>(1) A person commits the crime of sexual abuse in the first degree when that person: (a) Subjects another person to sexual contact and: (A) The victim is less than 14 years of age; (B) The victim is subjected to forcible compulsion by the actor; or (C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.</p> <p>(2) Sexual abuse in the first degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.432 (West 2011). <u>Online sexual corruption of a child in the second degree</u></p> <p>(1) A person commits the crime of online sexual corruption of a child in the second degree if the person is 18 years of age or older and: (a) For the purpose of arousing or gratifying the sexual desire of the person or another person, knowingly uses an online communication to solicit a child to engage in sexual contact or sexually explicit conduct; and (b) Offers or agrees to physically meet with the child.</p> <p>(2) Online sexual corruption of a child in the second degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.433 (West 2011). <u>Online sexual corruption of a child in the first degree</u></p>
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<p>Statute Cont' (Oregon)</p>	<p>(1) A person commits the crime of online sexual corruption of a child in the first degree if the person violates ORS 163.432 and intentionally takes a substantial step toward physically meeting with or encountering the child. (2) Online sexual corruption of a child in the first degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.435 (West 2011). <u>Contributing to the sexual delinquency of a minor</u></p> <p>(1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if: (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or (c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse. (2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.</p> <p>OR. REV. STAT. § 163.445 (West 2011). <u>Sexual misconduct</u></p> <p>(1) A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age. (2) Sexual misconduct is a Class C misdemeanor.</p> <p>OR. REV. STAT. § 163.452 (West 2011). <u>Custodial sexual misconduct in the first degree</u></p> <p>(1) A person commits the crime of custodial sexual misconduct in the first degree if the person: (a) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is: (A) In the custody of a law enforcement agency following arrest; (B) Confined or detained in a correctional facility; (C) Participating in an inmate or offender work crew or work release program; or</p>
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<p>Statute Cont' (Oregon)</p>	<p>(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and  (b) Is employed by or under contract with the state or local agency that:  (A) Employs the officer who arrested the other person;  (B) Operates the correctional facility in which the other person is confined or detained;  (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or  (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).  (2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.  (3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.  (4) Custodial sexual misconduct in the first degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.454 (West 2011).  <u>Custodial sexual misconduct in the second degree</u></p> <p>(1) A person commits the crime of custodial sexual misconduct in the second degree if the person:  (a) Engages in sexual contact with another person knowing that the other person is:  (A) In the custody of a law enforcement agency following arrest;  (B) Confined or detained in a correctional facility;  (C) Participating in an inmate or offender work crew or work release program; or  (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and  (b) Is employed by or under contract with the state or local agency that:  (A) Employs the officer who arrested the other person;  (B) Operates the correctional facility in which the other person is confined or detained;  (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or  (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).  (2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.  (3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.</p>
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<p>Statute Cont' (Oregon)</p>	<p>(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor.</p> <p>OR. REV. STAT. § 163.465 (West 2011). <u>Public indecency</u></p> <p>(1) A person commits the crime of public indecency if while in, or in view of, a public place the person performs: (a) An act of sexual intercourse; (b) An act of deviate sexual intercourse; or (c) An act of exposing the genitals of the person with the intent of arousing the sexual desire of the person or another person. (2)(a) Public indecency is a Class A misdemeanor. (b) Notwithstanding paragraph (a) of this subsection, public indecency is a Class C felony if the person has a prior conviction for public indecency or a crime described in ORS 163.355 to 163.445 or for a crime in another jurisdiction that, if committed in this state, would constitute public indecency or a crime described in ORS 163.355 to 163.445.</p> <p>OR. REV. STAT. § 163.467 (West 2011). <u>Private indecency</u></p> <p>(1) A person commits the crime of private indecency if the person exposes the genitals of the person with the intent of arousing the sexual desire of the person or another person and: (a) The person is in a place where another person has a reasonable expectation of privacy; (b) The person is in view of the other person; (c) The exposure reasonably would be expected to alarm or annoy the other person; and (d) The person knows that the other person did not consent to the exposure. (2) Private indecency is a Class A misdemeanor. (3) Subsection (1) of this section does not apply to a person who commits the act described in subsection (1) of this section if the person cohabits with and is involved in a sexually intimate relationship with the other person. (4) For purposes of this section, “place where another person has a reasonable expectation of privacy” includes, but is not limited to, residences, yards of residences, working areas and offices.</p> <p>OR. REV. STAT. § 163.479 (West 2011). <u>Unlawful contact with a child</u></p>
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<p>Statute Cont' (Oregon)</p>	<p>(1) A person commits the crime of unlawful contact with a child if the person:</p> <p>(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;</p> <p>(B) Has been designated a predatory sex offender under ORS 181.585;</p> <p>(C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or</p> <p>(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and</p> <p>(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.</p> <p>(2) As used in this section:</p> <p>(a) "Child" means a person under 18 years of age.</p> <p>(b) "Contact" means to communicate in any manner.</p> <p>(c) "Sex crime" has the meaning given that term in ORS 181.594.</p> <p>(3) Unlawful contact with a child is a Class C felony.</p> <p>OR. REV. STAT. § 163.670 (West 2011). <u>Using child in display of sexually explicit conduct</u></p> <p>(1) A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a photograph, motion picture, videotape or other visual recording.<sup>41</sup></p> <p>(2) Using a child in a display of sexually explicit conduct is a Class A felony.</p> <p>OR. REV. STAT. § 163.684 (West 2011).<sup>42</sup> <u>Encouraging child sexual abuse in the first degree</u></p> <p>(1) A person commits the crime of encouraging child sexual abuse in the first degree if the person:</p> <p>(a)(A) Knowingly develops, duplicates, publishes, prints, disseminates, exchanges, displays, finances, attempts to finance or sells any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child or possesses such matter with the intent to develop, duplicate, publish, print, disseminate, exchange, display or sell it; or</p> <p>(B) Knowingly brings into this state, or causes to be brought or sent into this state, for sale or distribution, any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child; and</p>
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<p>Statute Cont' (Oregon)</p>	<p>(b) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse. (2) Encouraging child sexual abuse in the first degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.686 (West 2011). <u>Encouraging child sexual abuse in the second degree</u></p> <p>(1) A person commits the crime of encouraging child sexual abuse in the second degree if the person: (a)(A)(i) Knowingly possesses or controls, any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and (B) Knows or is aware of and consciously disregards the fact that creation of the visual recording of sexually explicit conduct involved child abuse; or (b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and (B) Knows or is aware of and consciously disregards the fact that the conduct constitutes child abuse. (2) Encouraging child sexual abuse in the second degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.687 (West 2011). <u>Encouraging child sexual abuse in the third degree</u></p> <p>(1) A person commits the crime of encouraging child sexual abuse in the third degree if the person: (a)(A)(i) Knowingly possesses or controls, any photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; or (ii) Knowingly pays, exchanges or gives anything of value to obtain or view a photograph, motion picture, videotape or other visual recording of sexually explicit conduct involving a child for the purpose of arousing or satisfying the sexual desires of the person or another person; and (B) Knows or fails to be aware of a substantial and unjustifiable risk that the creation of the visual recording of sexually explicit conduct involved child abuse; or</p>
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<p>Statute Cont' (Oregon)</p>	<p>(b)(A) Knowingly pays, exchanges or gives anything of value to observe sexually explicit conduct by a child or knowingly observes, for the purpose of arousing or gratifying the sexual desire of the person, sexually explicit conduct by a child; and (B) Knows or fails to be aware of a substantial and unjustifiable risk that the conduct constitutes child abuse. (2) Encouraging child sexual abuse in the third degree is a Class A misdemeanor.</p> <p>OR. REV. STAT. § 163.688 (West 2011). <u>Possession of materials depicting sexually explicit conduct of a child in the first degree</u></p> <p>(1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the first degree if the person: (a) Knowingly possesses, accesses or views a visual depiction of sexually explicit conduct involving a child or a visual depiction of sexually explicit conduct that appears to involve a child; and (b) Uses the visual depiction to induce a child to participate or engage in sexually explicit conduct. (2) Possession of materials depicting sexually explicit conduct of a child in the first degree is a Class B felony.</p> <p>OR. REV. STAT. § 163.689 (West 2011).<sup>43</sup> <u>Possession of materials depicting sexually explicit conduct of a child in the second degree</u></p> <p>(1) A person commits the crime of possession of materials depicting sexually explicit conduct of a child in the second degree if the person: (a) Knowingly possesses any visual depiction of sexually explicit conduct involving a child or any visual depiction of sexually explicit conduct that appears to involve a child; and (b) Intends to use the visual depiction to induce a child to participate or engage in sexually explicit conduct. (2) Possession of materials depicting sexually explicit conduct of a child in the second degree is a Class C felony.</p> <p>OR. REV. STAT. § 163.693 (West 2011).<sup>44</sup> <u>Failure to report child pornography</u></p> <p>(1) A person commits the crime of failure to report child pornography if the person, in the course of processing or producing a photograph, motion picture, videotape or other visual recording, either commercially or privately, has reasonable cause to believe that the visual recording being processed or produced, or submitted for processing or production, depicts sexually explicit conduct involving a child and fails to report that fact to the appropriate law enforcement agency.</p>
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	(2) Failure to report child pornography is a Class A misdemeanor.
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Definitions (Oregon)	OR. REV. STAT. § 163.305 (West 2011). <u>Definitions</u>
Definitions Cont' (Oregon)	<p>As used in chapter 743, Oregon Laws 1971, unless the context requires otherwise:</p> <p>(1) “Deviate sexual intercourse” means sexual conduct between persons consisting of contact between the sex organs of one person and the mouth or anus of another.</p> <p>(2) “Forcible compulsion” means to compel by:</p> <p>(a) Physical force; or</p> <p>(b) A threat, express or implied, that places a person in fear of immediate or future death or physical injury to self or another person, or in fear that the person or another person will immediately or in the future be kidnapped.</p> <p>(3) “Mentally defective” means that a person suffers from a mental disease or defect that renders the person incapable of appraising the nature of the conduct of the person.</p> <p>(4) “Mentally incapacitated” means that a person is rendered incapable of appraising or controlling the conduct of the person at the time of the alleged offense because of the influence of a controlled or other intoxicating substance administered to the person without the consent of the person or because of any other act committed upon the person without the consent of the person.</p> <p>(5) “Physically helpless” means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>(6) “Sexual contact” means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.</p> <p>(7) “Sexual intercourse” has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.</p> <p>OR. REV. STAT. § 163.315 (West 2011). <u>Capability to consent; lack of resistance</u></p> <p>(1) A person is considered incapable of consenting to a sexual act if the person is:</p> <p>(a) Under 18 years of age;</p>

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<p>Definitions Cont' (Oregon)</p>	<p>(b) Mentally defective; (c) Mentally incapacitated; or (d) Physically helpless. (2) A lack of verbal or physical resistance does not, by itself, constitute consent but may be considered by the trier of fact along with all other relevant evidence.</p> <p>OR. REV. STAT. § 163.431 (West 2011). <u>Definitions</u></p> <p>As used in ORS 163.432 to 163.434: (1) “Child” means a person who the defendant reasonably believes to be under 16 years of age. (2) “Online communication” means communication that occurs via text messaging electronic mail, personal or instant messaging, chat rooms, bulletin boards or any other transmission of information by wire, radio, optical cable, cellular system, electromagnetic system or other similar means. (3) “Sexual contact” has the meaning given that term in ORS 163.305. (4) “Sexually explicit conduct” has the meaning given that term in ORS 163.665. (5) “Solicit” means to invite, request, seduce, lure, entice, persuade, prevail upon, coax, coerce or attempt to do so.</p> <p>OR. REV. STAT. § 163.448 (West 2011). <u>“Correctional facility” defined</u></p> <p>As used in ORS 163.452 and 163.454, “correctional facility” has the meaning given that term in ORS 162.135.</p> <p>OR. REV. STAT. § 163.665 (West 2011).<sup>45</sup> <u>Definitions</u></p> <p>As used in ORS 163.670 to 163.693: (1) “Child” means a person who is less than 18 years of age, and any reference to a child in relation to a visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the photograph, motion picture, videotape or other visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording.</p>
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<p>Definitions Cont' (Oregon)</p>	<p>(2) "Child abuse" means conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.</p> <p>(3) "Sexually explicit conduct" means actual or simulated:</p> <ul style="list-style-type: none"> <li>(a) Sexual intercourse or deviant sexual intercourse;</li> <li>(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;</li> <li>(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;</li> <li>(d) Masturbation;</li> <li>(e) Sadistic or masochistic abuse; or</li> <li>(f) Lewd exhibition of sexual or other intimate parts.</li> </ul> <p>(4) "Visual depiction" includes, but is not limited to, photographs, films, videotapes, pictures or computer or computer-generated images or pictures, whether made or produced by electronic, mechanical or other means.</p> <p>OR. REV. STAT. § 163.665 (West 2011).<sup>46</sup></p> <p><u>Definitions</u></p> <p>As used in ORS 163.670 to 163.693:</p> <p>(1) "Child" means a person who is less than 18 years of age, and any reference to a child in relation to a photograph, motion picture, videotape or other visual recording of the child is a reference to a person who was less than 18 years of age at the time the original image in the photograph, motion picture, videotape or other visual recording was created and not the age of the person at the time of an alleged offense relating to the subsequent reproduction, use or possession of the visual recording.</p> <p>(2) "Child abuse" means conduct that constitutes, or would constitute if committed in this state, a crime in which the victim is a child.</p> <p>(3) "Sexually explicit conduct" means actual or simulated:</p> <ul style="list-style-type: none"> <li>(a) Sexual intercourse or deviant sexual intercourse;</li> <li>(b) Genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex or between humans and animals;</li> <li>(c) Penetration of the vagina or rectum by any object other than as part of a medical diagnosis or treatment or as part of a personal hygiene practice;</li> <li>(d) Masturbation;</li> <li>(e) Sadistic or masochistic abuse; or</li> <li>(f) Lewd exhibition of sexual or other intimate parts.</li> </ul>
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Definitions Cont' (Oregon)	<p>(4) "Visual depiction" includes, but is not limited to, photographs, films, videotapes, pictures or computer or computer-generated images or pictures, whether made or produced by electronic, mechanical or other means.</p> <p>OR. REV. STAT. § 163.676 (West 2011).  <u>Exemption to prosecution under ORS 163.684</u></p> <p>(2) As used in this section, "employee" means any person regularly employed by the owner or operator of a motion picture theater if the person has no financial interest other than salary or wages in the ownership or operation of the motion picture theater, no financial interest in or control over the selection of the motion pictures shown in the theater, and is working within the motion picture theater where the person is regularly employed, but does not include a manager of the motion picture theater.</p>
Defenses (Oregon)	<p>OR. REV. STAT. § 163.325 (West 2011).  <u>Knowledge of victim's age</u></p> <p>(1) In any prosecution under ORS 163.355 to 163.445 in which the criminality of conduct depends on a child's being under the age of 16, it is no defense that the defendant did not know the child's age or that the defendant reasonably believed the child to be older than the age of 16.</p> <p>(2) When criminality depends on the child's being under a specified age other than 16, it is an affirmative defense for the defendant to prove that the defendant reasonably believed the child to be above the specified age at the time of the alleged offense.</p> <p>(3) In any prosecution under ORS 163.355 to 163.445 in which the victim's lack of consent is based solely upon the incapacity of the victim to consent because the victim is mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense for the defendant to prove that at the time of the alleged offense the defendant did not know of the facts or conditions responsible for the victim's incapacity to consent.</p> <p>OR. REV. STAT. § 163.345 (West 2011).  <u>Age; defense</u></p> <p>(1) In any prosecution under ORS 163.355, 163.365, 163.385, 163.395, 163.415, 163.425, 163.427 or 163.435 in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.</p>

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<p>Defenses Cont' (Oregon)</p>	<p>(2) In any prosecution under ORS 163.408, when the object used to commit the unlawful sexual penetration was the hand or any part thereof of the actor and in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense.</p> <p>(3) In any prosecution under ORS 163.445 in which the victim's lack of consent was due solely to incapacity to consent by reason of being less than a specified age, it is a defense that the actor was less than three years older than the victim at the time of the alleged offense if the victim was at least 15 years of age at the time of the alleged offense.</p> <p>OR. REV. STAT. § 163.454 (West 2011). <u>Custodial sexual misconduct in the second degree</u></p> <p>(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.</p> <p>OR. REV. STAT. § 163.434 (West 2011). <u>Defenses to online sexual corruption of a child</u></p> <p>(1) It is an affirmative defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was not more than three years older than the person reasonably believed the child to be.</p> <p>(2) It is not a defense to a prosecution for online sexual corruption of a child in the first or second degree that the person was in fact communicating with a law enforcement officer, as defined in ORS 163.730, or a person working under the direction of a law enforcement officer, who is 16 years of age or older.</p> <p>(3) Online sexual corruption of a child in the first or second degree is committed in either the county in which the communication originated or the county in which the communication was received.</p> <p>OR. REV. STAT. § 163.690 (West 2011). <u>Defense, lack of knowledge of age of child</u></p> <p>It is an affirmative defense to any prosecution under ORS 163.684, 163.686, 163.687 or 163.693 that the defendant, at the time of engaging in the conduct prohibited therein, did not know and did not have reason to know that the relevant sexually explicit conduct involved a child.</p>
<p>Penalty</p>	<p>OR. REV. STAT. § 161.605 (West 2011).</p>

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<p>(Oregon)</p>	<p><u>Maximum terms of imprisonment; felonies</u></p> <p>The maximum term of an indeterminate sentence of imprisonment for a felony is as follows:</p> <ol style="list-style-type: none"> <li>(1) For a Class A felony, 20 years.</li> <li>(2) For a Class B felony, 10 years.</li> <li>(3) For a Class C felony, 5 years.</li> <li>(4) For an unclassified felony as provided in the statute defining the crime.</li> </ol>
<p>Penalty Cont' (Oregon)</p>	<p>OR. REV. STAT. § 161.615 (West 2011). <u>Sentences for misdemeanors</u></p> <p>Sentences for misdemeanors shall be for a definite term. The court shall fix the term of imprisonment within the following maximum limitations:</p> <ol style="list-style-type: none"> <li>(1) For a Class A misdemeanor, 1 year.</li> <li>(2) For a Class B misdemeanor, 6 months.</li> <li>(3) For a Class C misdemeanor, 30 days.</li> <li>(4) For an unclassified misdemeanor, as provided in the statute defining the crime.</li> </ol> <p>OR. REV. STAT. § 161.625 (West 2011). <u>Felonies; fines</u></p> <ol style="list-style-type: none"> <li>(1) A sentence to pay a fine for a felony shall be a sentence to pay an amount, fixed by the court, not exceeding: <ol style="list-style-type: none"> <li>(a) \$500,000 for murder or aggravated murder.</li> <li>(b) \$375,000 for a Class A felony.</li> <li>(c) \$250,000 for a Class B felony.</li> <li>(d) \$125,000 for a Class C felony.</li> </ol> </li> <li>(2) A sentence to pay a fine for an unclassified felony shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.</li> <li>(3)(a) If a person has gained money or property through the commission of a felony, then upon conviction thereof the court, in lieu of imposing the fine authorized for the crime under subsection (1) or (2) of this section, may sentence the defendant to pay an amount, fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the crime.</li> </ol>

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Penalty Cont' (Oregon)	<p>(b) The provisions of paragraph (a) of this subsection do not apply to the felony theft of a companion animal, as defined in ORS 164.055, or a captive wild animal.</p> <p>(4) As used in this section, "gain" means the amount of money or the value of property derived from the commission of the felony, less the amount of money or the value of property returned to the victim of the crime or seized by or surrendered to lawful authority before the time sentence is imposed. "Value" shall be determined by the standards established in ORS 164.115.</p> <p>(5) When the court imposes a fine for a felony the court shall make a finding as to the amount of the defendant's gain from the crime. If the record does not contain sufficient evidence to support a finding the court may conduct a hearing upon the issue.</p> <p>(6) Except as provided in ORS 161.655, this section does not apply to a corporation.</p> <p>OR. REV. STAT. § 161.635 (West 2011). <u>Misdemeanors; fines</u></p> <p>(1) A sentence to pay a fine for a misdemeanor shall be a sentence to pay an amount, fixed by the court, not exceeding:</p> <p>(a) \$6,250 for a Class A misdemeanor.</p> <p>(b) \$2,500 for a Class B misdemeanor.</p> <p>(c) \$1,250 for a Class C misdemeanor.</p> <p>(2) A sentence to pay a fine for an unclassified misdemeanor shall be a sentence to pay an amount, fixed by the court, as provided in the statute defining the crime.</p> <p>(3) If a person has gained money or property through the commission of a misdemeanor, then upon conviction thereof the court, instead of imposing the fine authorized for the offense under this section, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense. In that event, ORS 161.625 (4) and (5) apply.</p> <p>(4) This section does not apply to corporations.</p>
<b>Pennsylvania</b>	
Statute (Pennsylvania)	<p>18 PA. CONS. STAT. ANN. § 3121 (West 2011). <u>Rape</u></p> <p>(a) Offense defined.--A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:</p>

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<p>Statute Cont' (<i>Pennsylvania</i>)</p>	<p>(1) By forcible compulsion.  (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.  (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.  (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.  (5) Who suffers from a mental disability which renders the complainant incapable of consent.  (6) Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.  (c) Rape of a child.--A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.  (d) Rape of a child with serious bodily injury.--A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.</p> <p>18 PA. CONS. STAT. ANN. § 3122.1 (West 2011).  <u>Statutory sexual assault</u></p> <p>Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other.</p> <p>18 PA. CONS. STAT. ANN. § 3123 (West 2011).  <u>Involuntary deviate sexual intercourse</u></p> <p>(a) Offense defined.--A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:  (1) by forcible compulsion;  (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;  (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;  (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;  (5) who suffers from a mental disability which renders him or her incapable of consent; or</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (<i>Pennsylvania</i>)</p>	<p>(6) Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.</p> <p>(7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.</p> <p>(b) Involuntary deviate sexual intercourse with a child.--A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.</p> <p>(c) Involuntary deviate sexual intercourse with a child with serious bodily injury.--A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.</p> <p>(d) Sentences.<sup>47</sup>--Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:</p> <p>(1) Subsection (b) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.</p> <p>(2) Subsection (c) shall be sentenced up to a maximum term of life imprisonment.</p> <p>(e) Definition.--As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.</p> <p>18 PA. CONS. STAT. ANN. § 3124.1 (West 2011). <u>Sexual assault</u></p> <p>Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.</p> <p>18 PA. CONS. STAT. ANN. § 3124.2 (West 2011).<sup>48</sup> <u>Institutional sexual assault</u></p> <p>(a) General rule.-- 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 correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident.</p>
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Current as of June 2011

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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (<i>Pennsylvania</i>)</p>	<p>(b) Definition.--As used in this section, the term “agent” means a person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution who is employed by any State or county agency or any person employed by an entity providing contract services to the agency. 18 PA. CONS. STAT. ANN. § 3125 (West 2011). <u>Aggravated indecent assault</u></p> <p>(a) Offenses defined.--Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:</p> <ol style="list-style-type: none"> <li>(1) the person does so without the complainant's consent;</li> <li>(2) the person does so by forcible compulsion;</li> <li>(3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;</li> <li>(4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;</li> <li>(5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;</li> <li>(6) the complainant suffers from a mental disability which renders him or her incapable of consent;</li> <li>(7) the complainant is less than 13 years of age; or</li> <li>(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.</li> </ol> <p>(b) Aggravated indecent assault of a child.--A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.</p> <p>(c) Grading and sentences.--</p> <ol style="list-style-type: none"> <li>(1) An offense under subsection (a) is a felony of the second degree.</li> <li>(2) An offense under subsection (b) is a felony of the first degree.</li> </ol> <p>18 PA. CONS. STAT. ANN. § 3126 (West 2011). <u>Indecent assault</u></p>
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<p>Statute Cont' (Pennsylvania)</p>	<p>(a) Offense defined.--A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:</p> <ol style="list-style-type: none"> <li>(1) the person does so without the complainant's consent;</li> <li>(2) the person does so by forcible compulsion;</li> <li>(3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;</li> <li>(4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;</li> <li>(5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;</li> <li>(6) the complainant suffers from a mental disability which renders the complainant incapable of consent;</li> <li>(7) the complainant is less than 13 years of age; or</li> <li>(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.</li> </ol> <p>(b) Grading.--Indecent assault shall be graded as follows:</p> <ol style="list-style-type: none"> <li>(1) An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.</li> <li>(2) An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.</li> <li>(3) An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree: <ol style="list-style-type: none"> <li>(i) It is a second or subsequent offense.</li> <li>(ii) There has been a course of conduct of indecent assault by the person.</li> <li>(iii) The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.</li> <li>(iv) The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.</li> </ol> </li> </ol> <p>18 PA. CONS. STAT. ANN. § 3127 (West 2011).</p> <p><u>Indecent exposure</u></p> <p>(a) Offense defined.--A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.</p> <p>(b) Grading.--If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the</p>
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	second degree.
Age of Consent♦ ( <i>Pennsylvania</i> )	16
Definitions ( <i>Pennsylvania</i> )	18 PA. CONS. STAT. ANN. § 3101 (West 2011). <u>Definitions</u>
Definitions Cont' ( <i>Pennsylvania</i> )	<p>Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:</p> <p>“Complainant.” An alleged victim of a crime under this chapter.</p> <p>“Deviate sexual intercourse.” Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.</p> <p>“Forcible compulsion.” Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.</p> <p>“Foreign object.” Includes any physical object not a part of the actor's body.</p> <p>“Indecent contact.” Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.</p> <p>“Serious bodily injury.” As defined in section 2301 (relating to definitions).</p> <p>“Sexual intercourse.” In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.</p>
Defenses ( <i>Pennsylvania</i> )	<p>18 PA. CONS. STAT. ANN. § 3102 (West 2011). <u>Mistake as to age</u></p> <p>Except as otherwise provided, whenever in this chapter the criminality of conduct depends on a child being below the age of 14 years, it is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older.</p>

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	When criminality depends on the child's being below a critical age older than 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age.
Penalty ( <i>Pennsylvania</i> )	18 PA. CONS. STAT. ANN. § 3121 (West 2011). <u>Rape</u>
Penalty Cont' ( <i>Pennsylvania</i> )	<p>(b) Additional penalties.--In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.</p> <p>(c) Rape of a child.--A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.</p> <p>(d) Rape of a child with serious bodily injury.--A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.</p> <p>(e) Sentences.<sup>49</sup>--Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:</p> <p>(1) Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.</p> <p>(2) Subsection (d) shall be sentenced up to a maximum term of life imprisonment.</p> <p>18 PA. CONS. STAT. ANN. § 3122.1 (West 2011). <u>Statutory sexual assault</u></p> <p>Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other.</p> <p>18 PA. CONS. STAT. ANN. § 3123 (West 2011).<sup>50</sup> <u>Involuntary deviate sexual intercourse</u></p>

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<p>Penalty Cont' (<i>Pennsylvania</i>)</p>	<p>(d) Sentences.--Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:</p> <p>(1) Subsection (b) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.</p> <p>(2) Subsection (c) shall be sentenced up to a maximum term of life imprisonment.</p> <p>18 PA. CONS. STAT. ANN. § 3125 (West 2011). <u>Aggravated indecent assault</u></p> <p>(c) Grading and sentences.--</p> <p>(1) An offense under subsection (a) is a felony of the second degree.</p> <p>(2) An offense under subsection (b) is a felony of the first degree.</p> <p>18 PA. CONS. STAT. ANN. § 3126 (West 2011). <u>Indecent assault</u></p> <p>(b) Grading.--Indecent assault shall be graded as follows:</p> <p>(1) An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.</p> <p>(2) An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.</p> <p>(3) An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:</p> <p>(i) It is a second or subsequent offense.</p> <p>(ii) There has been a course of conduct of indecent assault by the person.</p> <p>(iii) The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.</p> <p>(iv) The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.</p> <p>18 PA. CONS. STAT. ANN. § 3127 (West 2011). <u>Indecent exposure</u></p> <p>(b) Grading.--If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the</p>
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	second degree.
<b>Puerto Rico<sup>51</sup></b>	
Statute ( <i>Puerto Rico</i> )	P.R. LAWS ANN. tit. 33 § 4770 (West 2011). <u>Sexual assault</u>
Statute Cont' ( <i>Puerto Rico</i> )	<p>Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances shall incur a severe second degree felony:</p> <p>(a) If the victim has not yet reached the age of sixteen (16) at the time of the event.</p> <p>(b) If due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission.</p> <p>(c) If the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm.</p> <p>(d) If the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.</p> <p>(e) When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused.</p> <p>(f) If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused.</p> <p>(g) If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties.</p> <p>(h) If the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.</p> <p>(i) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.</p> <p>If the conduct typified in subsection (a) of this section is committed by a minor who has not yet reached the age of eighteen (18), the offender shall incur a third degree felony if prosecuted as an adult.</p>

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<p>Statute Cont' (Puerto Rico)</p>	<p>P.R. LAWS ANN. tit. 33 § 4771 (West 2011). <u>Essential circumstances of sexual assault crimes</u></p> <p>The crime of sexual assault essentially consists of battery against the bodily or psycho-emotional integrity and dignity of the person. When considering the circumstances of the crime, the point of view of a person of equal age and gender as the victim shall be taken into consideration. Ejaculation is not necessary and any sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental, regardless of how slight, shall be sufficient for the consummation of the crime.</p> <p>P.R. LAWS ANN. tit. 33 § 4772 (West 2011) <u>Lewd acts</u></p> <p>Any person who without the intention to consummate the crime of sexual assault described in § 4770 of this title submits another person to an act that tends to awaken, excite or satisfy the sexual passion or desire of the accused, under any of the following circumstances hereinbelow, shall incur a third degree felony.</p> <p>(a) When the victim has not attained the age of sixteen (16) years at the time of the commission of the crime. (b) When the victim was compelled to the act by means of physical force, violence, the threat of serious and immediate bodily harm or intimidation, or by means of hypnotics, narcotics, depressants or stimulants, or otherwise similar means or substances. (c) When the victim, due to mental disease or a temporary or permanent disability was unable to understand the nature of the act. (d) When the victim was compelled to the act through the use of deceptive means that substantially annulled or impaired his/her capacity to consent. (e) If the accused has kinship with the victim, by reason of being an ascendant or descendant relative, by consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree. (f) When the accused takes advantage of the trust placed upon him/her by the victim because there is a relationship of superiority due to having the victim under his/her custody, guardianship, or primary, middle school or special education, or medical or psychotherapeutic treatment, or any type of counseling, or because there is a religious belief leadership relationship with the victim.</p> <p>P.R. LAWS ANN. tit. 33 § 4774 (West 2011). <u>Sexual harassment</u></p> <p>Any person who in the ambit of a workplace, educational or rendering of services requests sexual favors for him/herself or for a third</p>
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Statute Cont' (Puerto Rico)	<p>party, and conditions the terms of the employment, education and service to its fulfillment, or by means of sexual conduct provokes an intimidating, hostile or humiliating situation for the victim shall incur a misdemeanor.</p> <p>P.R. LAWS ANN. tit. 33 § 4775 (West 2011). <u>Indecent exposure</u></p> <p>Any person who exposes any intimate part of his/her body in any place in which another person is present, including law enforcement officers, who can be offended or upset by such exposure, shall incur a misdemeanor. This conduct does not include the act of breastfeeding an infant.</p>
Age of Consent ♦ (Puerto Rico)	14
Definitions (Puerto Rico)	<p>P.R. LAWS ANN. tit. 33 § 4782 <u>Definitions</u></p> <p>For the purposes of this subchapter, the following terms or phrases shall have the meanings stated below:</p> <p>(a) <i>Indecent behavior</i>.— Means any of the physical activities of the human body, whether performed alone or with other persons, including but not limited to singing, speaking, dancing, acting, simulating, or pantomiming, which could be considered in whole by the average person and, according to contemporary community patterns as:</p> <ol style="list-style-type: none"> <li>(1) Appealing to the lewd interests, that is to say, a morbid interest in nudity, sexuality or physiological functions;</li> <li>(2) representing or describing sexual conduct in a patently offensive manner, and</li> <li>(3) lacking serious literary, artistic, political, religious, scientific or educational value.</li> </ol> <p>The enticement of behavior towards lewd interests shall be judged in the light of the average adult, unless it arises from the nature of such behavior or the circumstances of its production, presentation or exhibition that it is designed for groups of sexual deviates, in which case, the predominant enticement of the behavior shall be judged in the light of the group towards which it is directed.</p> <p>In proceedings for violations to the provisions in this section in which the circumstances of production, presentation or exhibition indicate that the accused is commercially exploiting the obscene behavior for its lewd enticement, such circumstances shall constitute prima facie evidence that it lacks any serious literary, artistic, political, religious, scientific or educational value.</p> <p>When the prohibited behavior is intended for or in the presence of minors, it shall be sufficient that the material is directed to awakening</p>

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<p>Definitions (Puerto Rico)</p>	<p>a lewd interest in sex.</p> <p>(b) <i>Sexual behavior</i>.— Comprises:</p> <p>(1) Patently offensive representations or descriptions of consummated sexual acts, whether normal or perverted, actual or simulated, including sexual relations, sodomy and bestiality, or</p> <p>(2) patently offensive representations or descriptions of masturbation, oral copulation, sexual sadism, sexual masochism, lewd exhibition of the genitalia, stimulation of human genitalia with objects designed for such purposes, or scatological functions, even if such conduct is performed individually or between members of the same sex or of the opposite sex or between humans and animals.</p> <p>(c) <i>Material</i>.— Means any book, magazine, newspaper or any other written or printed material, or any photograph, drawing, caricature, movie film, cinematographic or otherwise graphic representation; or any oral or visual representation transmitted or retransmitted through cables, electromagnetic waves, computers, digital technology or any other electronic media or other means of communication; or any statue, carving or figure, sculpture; or any mechanical, chemical or electric recording, transcription or reproduction of any other article, equipment or machine.</p> <p>(d) <i>Material injurious to minors</i>.— Means any material that explicitly describes the nudity of the human body, manifestations of sexual conduct or sexual excitement, or of such a nature that, upon considering them in whole or in part of their context:</p> <p>(1) It appeals predominantly to prurient, shameful or morbid interest in minors;</p> <p>(2) it is patently offensive according to the contemporary adult community criteria, with regard to the best interest of minors, and</p> <p>(3) it lacks any serious social value for minors.</p> <p>(e) <i>Obscene material</i>.— Means material considered in its entirety by an average person and upon applying contemporary community standards:</p> <p>(1) It appeals to prurient interest, in other words, a morbid interest in nudity, sexuality or physiological functions;</p> <p>(2) it represents or describes sexual behavior in a patently offensive manner, and</p> <p>(3) it lacks any serious literary, artistic, political, religious, scientific or educational value.</p> <p>The enticement of lewd interest in sex in the material is judged in the light of the average adult unless it arises from the nature of the material, or the circumstances of its diffusion, distribution or exhibition that it is designed for groups of sexual deviates, in which case said attraction shall be judged in the light of the group toward which it is directed.</p> <p>In proceedings regarding violations to the provisions of this section in which the circumstances of the production, presentation, sale, dissemination, distribution or advertising indicate that the accused is commercially exploiting the material for its lewd attraction, which proof shall constitute prima facie evidence that it lacks any serious literary, artistic, political, religious, scientific or educational value.</p> <p>When the prohibited behavior is intended for, or is in the presence of minors, it shall be sufficient for the material to be directed to awaken lewd interest in sex.</p> <p>(f) <i>Child pornography</i>.— Means any representation of sexually explicit behavior, any act of masturbation, sadomasochistic abuse, real</p>
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	<p>or simulated sexual relations, deviate sexual relations, bestiality, homosexuality, lesbianism, acts of sodomy or the exhibition of genitalia performed by persons under eighteen (18) years of age.</p> <p>(g) <i>Sadomasochistic abuse</i>.— Means acts of flagellation or torture performed by one person to another or to him/herself, or the condition of being chained, tied or otherwise restricted as an act of sexual gratification or stimulation.</p>
Defenses (Puerto Rico)	None.
Penalty (Puerto Rico)	<p>P.R. LAWS ANN. tit. 33 § 4694 (West 2011).  <u>Applicable penalties</u></p> <p>The penalties established for natural persons by this Code are established according to the classification of the degree of the offense for which the person was convicted, as follows:</p> <p>(a) <i>First degree felony</i>.— Entails a punishment of imprisonment in natural years of ninety-nine (99) years. In such case, the person may be considered for parole by the Parole Board upon having served twenty-five (25) natural years of his sentence, or ten (10) natural years, in the case of a minor who is tried and sentenced as an adult.</p> <p>(b) <i>Second degree felony</i>.— Entails a penalty of imprisonment for a fixed term in calendar years of not less than eight (8) years and one (1) day, nor more than fifteen (15) years. In such a case, the person may be considered for parole by the Parole Board after having served eighty percent (80% ) of the term of imprisonment imposed.</p> <p>(c) <i>Severe second degree felony</i>.— Entails a penalty of imprisonment for a fixed term in calendar years of not less than fifteen (15) years and one (1) day, nor more than twenty-five (25) years. In such case, the person may be considered for parole by the Parole Board after having served eighty percent (80% ) of the term of imprisonment imposed.</p> <p>(d) <i>Third degree felony</i>.— Entails a punishment of imprisonment for a fixed term in natural years which shall not be less than three (3) years and one (1) day, nor more than eight (8) years. In such case, the person may be considered for parole by the Parole Board upon having served sixty percent (60% ) of the term of imprisonment imposed.</p> <p>(e) <i>Fourth degree felony</i>.— Entails a punishment of imprisonment for a fixed term in natural years which shall not be less than six (6) months and one (1) day, nor more than three (3) years. In such case, the person may be considered for parole by the Parole Board upon having served fifty percent (50% ) of the term of imprisonment imposed.</p> <p>(f) <i>Misdemeanor</i>.— Entails a punishment of day-fine according to the financial situation of the convicted person which shall not exceed ninety (90) day-fines, a punishment of daily community services which shall not exceed ninety (90) days, imprisonment or house arrest in natural days of up to ninety (90) days, or a combination of these punishments, the total days of which shall not exceed ninety (90)</p>

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American University, Washington College of Law

Current as of June 2011

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## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (Puerto Rico)</p>	<p>days.</p> <p>P.R. LAWS ANN. tit. 33 § 4695 (West 2011). <u>Special punishment</u></p> <p>In addition to the punishment imposed for the commission of a criminal act, the court shall impose a special punishment of one hundred dollars (\$100) for each misdemeanor and three hundred dollars (\$300) for each felony upon all persons convicted thereof. The punishment set forth herein shall be paid by means of the corresponding internal revenue stamps. The amounts thus collected shall be covered into the Crime Victims' Special Compensation Fund.</p> <p>P.R. LAWS ANN. tit. 33 § 4696 (West 2011). <u>Punishment alternatives to imprisonment</u></p> <p>As an alternative to the punishment of imprisonment, the court may impose one or any combination of the following punishments for third and fourth degree felonies and the attempt thereof, and for attempted second degree felonies: therapeutic confinement, house arrest, probation or community services. Likewise, alternative punishments shall be applicable to accessories after the fact, as defined in § 4672 of this title.</p> <p>If the court combines one or more of these punishments, it shall ensure that the combination thereof shall not exceed the maximum limit of the term of imprisonment established for the corresponding crime.</p> <p>The court shall determine the imposition of a punishment alternative to imprisonment taking into consideration the recommendations of the pre-sentencing report, the requirements of each punishment, the degree of the crime and the consequences thereof, the rehabilitation of the convicted person and the security of the community.</p>
<p style="text-align: center;"><b>Rhode Island<sup>52</sup></b></p>	
<p>Statute (Rhode Island)</p>	<p>R.I. GEN. LAWS § 11-37-2 (West 2011). <u>First degree sexual assault</u></p> <p>A person is guilty of first degree sexual assault if he or she engages in sexual penetration with another person, and if any of the</p>

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<p>Statute Cont' (<i>Rhode Island</i>)</p>	<p>following circumstances exist:            (1) The accused, not being the spouse, knows or has reason to know that the victim is mentally incapacitated, mentally disabled, or physically helpless.            (2) The accused uses force or coercion.            (3) The accused, through concealment or by the element of surprise, is able to overcome the victim.            (4) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification, or stimulation.</p> <p>R.I. GEN. LAWS § 11-37-3.1 (West 2011).  <u>Duty to report sexual assault</u></p> <p>Any person, other than the victim, who knows or has reason to know that a first degree sexual assault or attempted first degree sexual assault is taking place in his or her presence shall immediately notify the state police or the police department of the city or town in which the assault or attempted assault is taking place of the crime.</p> <p>R.I. GEN. LAWS § 11-37-4 (West 2011).  <u>Second degree sexual assault</u></p> <p>A person is guilty of a second degree sexual assault if he or she engages in sexual contact with another person and if any of the following circumstances exist:            (1) The accused knows or has reason to know that the victim is mentally incapacitated, mentally disabled or physically helpless.            (2) The accused uses force or coercion.            (3) The accused engages in the medical treatment or examination of the victim for the purpose of sexual arousal, gratification or stimulation.</p> <p>R.I. GEN. LAWS § 11-37-6 (West 2011).  <u>Third degree sexual assault</u></p> <p>A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.</p>
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<p>Statute Cont' (Rhode Island)</p>	<p>R.I. GEN. LAWS § 11-37-8.1 (West 2011). <u>First degree child molestation sexual assault</u></p> <p>A person is guilty of first degree child molestation sexual assault if he or she engages in sexual penetration with a person fourteen (14) years of age or under.</p> <p>R.I. GEN. LAWS § 11-37-8.3 (West 2011). <u>Second degree child molestation sexual assault</u></p> <p>A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact with another person fourteen (14) years of age or under.</p> <p>R.I. GEN. LAWS § 11-37-8.8 (West 2011). <u>Indecent solicitation of a child</u></p> <p>(a) A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9, 34, or 37 of this title. (b) As used in this section, the word “solicit” or “solicitation” means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.</p> <p>R.I. GEN. LAWS § 11-64-2 (West 2011). <u>Video voyeurism</u></p> <p>(1) A person is guilty of video voyeurism when, for the purpose of sexual arousal, gratification or stimulation, such person: (a) uses, installs or permits the use or installation of an imaging device to capture, record, store or transmit visual images of the intimate areas of another person without that other person's knowledge and consent, and under circumstances in which that other person would have a reasonable expectation of privacy. (b) intentionally, and with knowledge that the image was obtained in violation of subsection (a), disseminates, publishes, or sells such image of the captured representation of another person or persons depicted in the representation or reproduction, and who did not consent to the dissemination, publication or sale.</p>
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	(2) A person is also guilty of video voyeurism when that person, for the purpose of sexual arousal, gratification or stimulation, looks into an occupied dwelling or other building by use of an imaging device that provides images of the interior of a dwelling.
Age of Consent♦ (Rhode Island)	16
Definitions (Rhode Island) Definitions Cont' (Rhode Island)	<p>R.I. GEN. LAWS § 11-37-1 (West 2011). <u>Definitions</u></p> <p>The following words and phrases, when used in this chapter, have the following meanings:</p> <p>(1) “Accused” means a person accused of a sexual assault.</p> <p>(2) “Force or coercion” means when the accused does any of the following:</p> <p>(i) Uses or threatens to use a weapon, or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.</p> <p>(ii) Overcomes the victim through the application of physical force or physical violence.</p> <p>(iii) Coerces the victim to submit by threatening to use force or violence on the victim and the victim reasonably believes that the accused has the present ability to execute these threats.</p> <p>(iv) Coerces the victim to submit by threatening to at some time in the future murder, inflict serious bodily injury upon or kidnap the victim or any other person and the victim reasonably believes that the accused has the ability to execute this threat.</p> <p>(3) “Intimate parts” means the genital or anal areas, groin, inner thigh, or buttock of any person or the breast of a female.</p> <p>(4) “Mentally disabled” means a person who has a mental impairment which renders that person incapable of appraising the nature of the act.</p> <p>(5) “Mentally incapacitated” means a person who is rendered temporarily incapable of appraising or controlling his or her conduct due to the influence of a narcotic, anesthetic, or other substance administered to that person without his or her consent, or who is mentally unable to communicate unwillingness to engage in the act.</p> <p>(6) “Physically helpless” means a person who is unconscious, asleep, or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>(7) “Sexual contact” means the intentional touching of the victim's or accused's intimate parts, clothed or unclothed, if that intentional touching can be reasonably construed as intended by the accused to be for the purpose of sexual arousal, gratification, or assault.</p> <p>(8) “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person's body or by any object into the genital or anal openings of another person's body, or the victim's own body upon</p>

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Definitions Cont' (Rhode Island)	<p>the accused's instruction, but emission of semen is not required.</p> <p>(9) "Spouse" means a person married to the accused at the time of the alleged sexual assault, except that such persons shall not be considered the spouse if the couple are living apart and a decision for divorce has been granted, whether or not a final decree has been entered.</p> <p>(10) "Victim" means the person alleging to have been subjected to sexual assault.</p> <p>R.I. GEN. LAWS § 11-64-1 (West 2011).<sup>53</sup></p> <p><u>Definitions</u></p> <p>(1) For the purposes of this section the following definitions apply:</p> <p>(a) "Disseminate" means to make available by any means to any person.</p> <p>(b) "Imaging Device" means any electronic instrument capable of capturing, recording, storing or transmitting visual images.</p> <p>(c) "Intimate areas" means the naked or undergarment clad genitals, pubic area, buttocks, or any portion of the female breast below the top of the areola of a person which the person intended to be protected from public view.</p> <p>(d) "Legal entity" means any partnership, firm, association, corporation or any agent or servant thereof.</p> <p>(e) "Publish" means to:</p> <p>(i) disseminate with the intent that such image or images be made available by any means to any person or other legal entity;</p> <p>(ii) disseminate with the intent such images be sold by another person or legal entity;</p> <p>(iii) post, present, display, exhibit, circulate, advertise or allow access by any means, so as to make an image or images available to the public; or</p> <p>(iv) disseminate with the intent that an image or images be posted, presented, displayed, exhibited, circulated, advertised or made accessible by any means, and to make such images available to the public.</p> <p>(f) "Sell" means to disseminate to another person, or to publish, in exchange for something of value.</p>
Defenses (Rhode Island)	None.
Penalty (Rhode Island)	<p>R.I. GEN. LAWS § 11-37-3 (West 2011).</p> <p><u>Penalty for first degree sexual assault</u></p> <p>Every person who shall commit sexual assault in the first degree shall be imprisoned for a period not less than ten (10) years and may be</p>

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<p>Penalty Cont' (Rhode Island)</p>	<p>imprisoned for life.</p> <p>R.I. GEN. LAWS § 11-37-3.3 (West 2011). <u>Failure to report--Penalty</u></p> <p>Any person who knowingly fails to report a sexual assault or attempted sexual assault as required under § 11-37-3.1 shall be guilty of a misdemeanor and, upon conviction, shall be punished by imprisonment for not more than one year, or fined not more than five hundred dollars (\$500), or both.</p> <p>R.I. GEN. LAWS § 11-37-5 (West 2011). <u>Penalty for second degree sexual assault</u></p> <p>Every person who shall commit sexual assault in the second degree shall be imprisoned for not less than three (3) years and not more than fifteen (15) years.</p> <p>R.I. GEN. LAWS § 11-37-7 (West 2011). <u>Penalty for third degree sexual assault</u></p> <p>Every person who shall commit sexual assault in the third degree shall be imprisoned for not more than five (5) years.</p> <p>R.I. GEN. LAWS § 11-37-8 (West 2011). <u>Penalty for assault with intent to commit first degree sexual assault</u></p> <p>Every person who shall commit assault with intent to commit first degree sexual assault shall be imprisoned for not less than three (3) years or more than twenty (20) years.</p> <p>R.I. GEN. LAWS § 11-37-8.2 (West 2011). <u>Penalty for first degree child molestation sexual assault</u></p> <p>Every person who shall commit first degree child molestation sexual assault shall be imprisoned for a period of not less than twenty-five (25) years and may be imprisoned for life.</p>
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<p>Penalty Cont' (Rhode Island)</p>	<p>R.I. GEN. LAWS § 11-37-8.2.1 (West 2011). <u>Penalty for first degree child molestation sexual assault--Jessica Lunsford Child Predator Act of 2006</u></p> <p>(a) <i>Title and Legislative Intent.</i> The title of this section shall be “The Jessica Lunsford Child Predator Act of 2006”. In enacting this section the general assembly intends that in order to ensure the safety of victims the most dangerous child predators be electronically monitored via an active global positioning system in order to ensure that their whereabouts can be easily ascertained by law enforcement and other responsible authorities at all times while providing treatment to offenders.</p> <p>(b) Every person who shall violate the provisions of subdivisions 11-37-8.2.1(b)(1) -- 11-37-8.2.1(b)(2) listed herein shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior, as determined by the department of probation and parole. The persons subject to this condition of parole shall include:</p> <p>(1) Persons who commit first degree child molestation sexual assault on or after January 1, 2007 and the victim of the sexual assault is twelve (12) years of age or younger; or</p> <p>(2) Persons who shall violate the conditions of § 11-37-8.1 on or after January 1, 2007 and be determined a high-risk of re-offense (level 3) offender under the conditions of § 11-37.1-12, and the person is deemed a child predator as defined in subsection 11-37-8.2.1(g) or have committed the offense in conjunction with circumstances involving kidnapping, torture or aggravated battery, and provided further that the victim to the offense is fourteen (14) years of age or younger.</p> <p>(3) Any person who violates the terms of the global position monitoring conditions shall be guilty of a misdemeanor.</p> <p>(c) Any costs associated with the requirements of this section shall be borne by the offender and the court is hereby authorized and empowered to utilize all resources available to collect the funds for these costs unless the court finds that the defendant is indigent. In such cases costs shall be waived in order to promote this section's legislative intent.</p> <p>(d) <i>Harboring.</i></p> <p>(1) Any person who has reason to know that a person convicted of first degree child molestation as defined by § 11-37-8.1 or 11-37-8.2.1 is not complying or has not complied with the requirements of this section where applicable and who with the intent to assist the child molester in eluding a law enforcement agency that is seeking to find the child molester to question the child molester about or to arrest the child molester for his or her non-compliance with the requirements of this section and who:</p> <p>(i) knowingly withholds information from or willfully fails to notify the law enforcement agency about the child molester's non-compliance with the requirements of this section; or</p> <p>(ii) harbors or attempts to harbor or assists another person in harboring or attempting to harbor the child molester; or</p>
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<p>Penalty Cont' (Rhode Island)</p>	<p>(iii) knowingly conceals or attempts to conceal or assists another person in concealing or attempting to conceal the child molester; or (iv) provides information to the law enforcement agency regarding the child molester that the person knows to be false information commits a felony and shall be subject to imprisonment for a period of five (5) years. Nothing in this subsection shall be construed as limiting the discretion of the judges to impose additional sanctions authorized in sentencing. (2) Any person who permits a child predator as defined by this section to reside with them knowing that the child predator has failed to comply with the requirements of subsection 11-37-8.2.1(b) commits a felony punishable by up to five (5) years imprisonment and/or a five thousand dollar (\$5,000) fine. (e) Any person who intentionally tampers with damages or destroys any electronic monitoring equipment required by this section pursuant to a court order or parole board order unless such person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs commits a felony and shall be imprisoned for not less than one nor more than five (5) years. (f) The department of corrections, prior to the release from incarceration of any child predator, shall ensure that the child predator's fingerprints are taken and forwarded to the bureau of criminal identification (BCI) division within the department of attorney general within forty-eight (48) hours after release from incarceration. The fingerprint card shall be clearly marked "Child Predator Registration Card". (g) For the purposes of this section "child predator" shall be defined as any person convicted of any violation of § 11-37-8. 1, and who on a prior occasion has been convicted of a violation of § 11-37-8.1 or § 11-37-8.3.</p> <p>R.I. GEN. LAWS § 11-37-8.4 (West 2011). <u>Penalty for second degree child molestation sexual assault</u></p> <p>Every person who shall commit second degree child molestation sexual assault shall be imprisoned for not less than six (6) years nor more than thirty (30) years.</p> <p>R.I. GEN. LAWS § 11-37-8.9 (West 2011). <u>Penalty for indecent solicitation of a child</u></p> <p>Every person who shall commit indecent solicitation of a child shall be imprisoned for not less than five (5) years.</p> <p>R.I. GEN. LAWS § 11-64-2 (West 2011). <u>Video voyeurism</u></p>
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	(3) A person found guilty of the crime of video voyeurism shall be imprisoned for not more than three (3) years in jail and/or fined not more than five thousand dollars (\$5000).
<b>South Carolina<sup>54</sup></b>	
Statute ( <i>South Carolina</i> ) Statute Cont' ( <i>South Carolina</i> )	<p>S.C. CODE ANN. § 16-3-652 (West 2011).  <u>Criminal sexual conduct in the first degree.</u></p> <p>(1) A person is guilty of criminal sexual conduct in the first degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:</p> <ul style="list-style-type: none"> <li>(a) The actor uses aggravated force to accomplish sexual battery.</li> <li>(b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, trafficking in persons, robbery, extortion, burglary, housebreaking, or any other similar offense or act.</li> <li>(c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled substance analogue, or any intoxicating substance.</li> </ul> <p>(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.</p> <p>S.C. CODE ANN. § 16-3-653 (West 2011).  <u>Criminal sexual conduct in the second degree.</u></p> <p>(1) A person is guilty of criminal sexual conduct in the second degree if the actor uses aggravated coercion to accomplish sexual battery.</p> <p>(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.</p> <p>S.C. CODE ANN. § 16-3-654 (West 2011).<sup>55</sup>  <u>Criminal sexual conduct in the third degree.</u></p>

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<p>Statute Cont' (South Carolina)</p>	<p>(1) A person is guilty of criminal sexual conduct in the third degree if the actor engages in sexual battery with the victim and if any one or more of the following circumstances are proven:  (a) The actor uses force or coercion to accomplish the sexual battery in the absence of aggravating circumstances;  (b) The actor knows or has reason to know that the victim is mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery.  (2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.</p> <p>S.C. CODE ANN. § 16-3-655 (West 2011).<sup>56</sup>  <u>Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders</u></p> <p>(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:  (1) the actor engages in sexual battery with a victim who is less than eleven years of age; or  (2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).  (B) A person is guilty of criminal sexual conduct with a minor in the second degree if:  (1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or  (2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.</p> <p>S.C. CODE ANN § 16-3-659 (West 2011).  <u>Criminal sexual conduct: males under fourteen not presumed incapable of committing crime of rape.</u></p> <p>The common law rule that a boy under fourteen years is conclusively presumed to be incapable of committing the crime of rape shall not be enforced in this State. <i>Provided</i>, that any person under the age of 14 shall be tried as a juvenile for any violations of §§ 16-3-651 to 16-3-659.1.</p> <p>S.C. CODE ANN. § 16-3-755.</p>
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<p>Statute Cont' (South Carolina)</p>	<p><u>Sexual battery with a student.</u></p> <p>(B) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is sixteen or seventeen years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.</p> <p>(C) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is eighteen years of age or older, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both.</p> <p>(D) If a person affiliated with a public or private secondary school in an official capacity has direct supervisory authority over a student enrolled in the school who is eighteen years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.</p> <p>(E) This section does not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the act.</p> <p>S.C. CODE ANN. § 16-3-810 (West 2011). <u>Engaging child for sexual performance; penalty</u></p> <p>(a) It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or legal guardian or custodian of a child younger than eighteen years of age to consent to the participation by the child in a sexual performance.</p> <p>(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in § 16-3-653.</p> <p>S.C. CODE ANN. § 16-3-820 (West 2011). <u>Producing, directing or promoting sexual performance by child; penalty</u></p> <p>(a) It is unlawful for any person to produce, direct, or promote a performance that includes sexual conduct by a child younger than</p>
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Statute Cont' (South Carolina)	<p>eighteen years of age.</p> <p>(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in § 16-3-654.S.C. CODE ANN. § 16-3-850 (West 2011).</p> <p><u>Film processor or computer technician to report film or computer images containing sexually explicit pictures of minors</u></p> <p>Any retail or wholesale film processor or photo finisher who is requested to develop film, and any computer technician working with a computer who views an image of a child younger than eighteen years of age or appearing to be younger than eighteen years of age who is engaging in sexual conduct, sexual performance, or a sexually explicit posture must report the name and address of the individual requesting the development of the film, or of the owner or person in possession of the computer to law enforcement officials in the state and county or municipality from which the film was originally forwarded. Compliance with this section does not give rise to any civil liability on the part of anyone making the report.</p>
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Definitions (South Carolina)	<p>S.C. CODE ANN § 16-3-651(West 2011).</p> <p><u>Criminal sexual conduct: definitions</u></p> <p>For the purposes of §§ 16-3-651 to 16-3-659.1:</p> <p>(a) “Actor” means a person accused of criminal sexual conduct.</p> <p>(b) “Aggravated coercion” means that the actor threatens to use force or violence of a high and aggravated nature to overcome the victim or another person, if the victim reasonably believes that the actor has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping or extortion, under circumstances of aggravation, against the victim or any other person.</p> <p>(c) “Aggravated force” means that the actor uses physical force or physical violence of a high and aggravated nature to overcome the victim or includes the threat of the use of a deadly weapon.</p> <p>(d) “Intimate parts” includes the primary genital area, anus, groin, inner thighs, or buttocks of a male or female human being and the breasts of a female human being.</p> <p>(e) “Mentally defective” means that a person suffers from a mental disease or defect which renders the person temporarily or permanently incapable of appraising the nature of his or her conduct.</p> <p>(f) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct</p>

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<p>Definitions Cont' (South Carolina)</p>	<p>whether this condition is produced by illness, defect, the influence of a substance or from some other cause.</p> <p>(g) "Physically helpless" means that a person is unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.</p> <p>(h) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.</p> <p>(i) "Victim" means the person alleging to have been subjected to criminal sexual conduct.</p> <p>S.C. CODE ANN. § 16-3-755 (West 2011). <u>Sexual battery with a student.</u></p> <p>(A) For purposes of this section:</p> <p>(1) "Aggravated coercion" means that the person affiliated with a public or private secondary school in an official capacity threatens to use force or violence of a high and aggravated nature to overcome the student, if the student reasonably believes that the person has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping, or extortion, under circumstances of aggravation, against the student.</p> <p>(2) "Aggravated force" means that the person affiliated with a public or private secondary school in an official capacity uses physical force or physical violence of a high and aggravated nature to overcome the student or includes the threat of the use of a deadly weapon.</p> <p>(3) "Person affiliated with a public or private secondary school in an official capacity" means an administrator, teacher, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.</p> <p>(4) "Secondary school" means either a junior high school or a high school.</p> <p>(5) "Sexual battery" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.</p> <p>(6) "Student" means a person who is enrolled in a school.</p> <p>S.C. CODE ANN § 16-3-800 (West 2011). <u>Definitions</u></p> <p>As used in this article:</p>
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	<p>(1) “Sexual performance” means any performance or part thereof that includes sexual conduct by a child younger than eighteen years of age.</p> <p>(2) “Sexual conduct” means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals.</p> <p>(3) “Performance” means any play, motion picture, photograph, dance, or other visual representation that is exhibited before an audience.</p> <p>(4) “Promote” means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.</p>
<p>Defenses (<i>South Carolina</i>)</p>	<p>S.C. CODE ANN. § 16-3-830 (West 2011).  <u>Reasonable belief as to majority of child as affirmative defense</u></p> <p>It is an affirmative defense to a prosecution under this article that the defendant, in good faith, reasonably believed that the person who engaged in the sexual conduct was eighteen years of age or older.</p>
<p>Penalty (<i>South Carolina</i>)</p>	<p>S.C. CODE ANN. § 16-3-652 (West 2011).  <u>Criminal sexual conduct in the first degree.</u></p> <p>(2) Criminal sexual conduct in the first degree is a felony punishable by imprisonment for not more than thirty years, according to the discretion of the court.</p> <p>S.C. CODE ANN. § 16-3-653 (West 2011).  <u>Criminal sexual conduct in the second degree.</u></p> <p>(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than twenty years according to the discretion of the court.</p> <p>S.C. CODE ANN. § 16-3-654 (West 2011).<sup>57</sup>  <u>Criminal sexual conduct in the third degree.</u></p> <p>(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than ten years, according to the discretion of the court.</p>

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<p>Penalty Cont' (South Carolina)</p>	<p>S.C. CODE ANN. § 16-3-655 (West 2011).<sup>58</sup>  <u>Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders</u></p> <p>(C)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended or probation granted, or must be imprisoned for life. In the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life, as provided by this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out-of-state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided by this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life. For purposes of this subsection, imprisonment for life means imprisonment until death.</p> <p>(2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended or probation granted.</p> <p>(3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years according to the discretion of the court.</p> <p>(D) If the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, a statutory</p>
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<p>Penalty Cont' (South Carolina)</p>	<p>aggravating circumstance is found beyond a reasonable doubt pursuant to subsections (D)(1) and (D)(2), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, "life imprisonment" means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. No person sentenced to life imprisonment, pursuant to this subsection, is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. Under no circumstances may a female who is pregnant be executed, so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death imposed pursuant to this section to life imprisonment under the provisions of Section 14 of Article IV of the Constitution of South Carolina, 1895, the commuttee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection. . No person sentenced to life imprisonment under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant upon conviction or adjudication of guilt of a defendant pursuant to this section, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment, as provided in subsection (D)(4).</p> <p>S.C. CODE ANN. § 16-3-656 (West 2011). <u>Criminal sexual conduct: assaults with intent to commit.</u></p> <p>Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.</p> <p>S.C. CODE ANN. § 16-3-810 (West 2011). <u>Engaging child for sexual performance; penalty</u></p> <p>(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in § 16-3-653.</p>
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	<p>S.C. CODE ANN. § 16-3-820 (West 2011).  <u>Producing, directing or promoting sexual performance by child; penalty</u></p> <p>(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the third degree and upon conviction shall be punished as provided in § 16-3-654.</p>
<b>South Dakota</b>	
<p>Statute  <i>(South Dakota)</i></p>	<p>S.D. CODIFIED LAWS § 22-22-1 (West 2011).  <u>Rape defined--Degrees—Felony</u></p> <p>Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(1) If the victim is less than thirteen years of age; or</li> <li>(2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or</li> <li>(3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or</li> <li>(4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or</li> <li>(5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.</li> </ul> <p>A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding § 23A-42-2 a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.</p> <p>S.D. CODIFIED LAWS § 22-22-7 (West 2011).  <u>Sexual contact with child under sixteen--Felony or misdemeanor</u></p>

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<p>Statute Cont' (South Dakota)</p>	<p>Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the actor is less than five years older than the victim, the actor is guilty of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.</p> <p>S.D. CODIFIED LAWS § 22-22-7.2 (West 2011). <u>Sexual contact with person incapable of consenting--Felony</u></p> <p>Any person, fifteen years of age or older, who knowingly engages in sexual contact with another person, other than his or her spouse if the other person is sixteen years of age or older and the other person is incapable, because of physical or mental incapacity, of consenting to sexual contact, is guilty of a Class 4 felony.</p> <p>S.D. CODIFIED LAWS § 22-22-7.3 (West 2011). <u>Sexual contact with child under sixteen years of age--Violation as misdemeanor</u></p> <p>Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his or her spouse, if such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.</p> <p>S.D. CODIFIED LAWS § 22-22-7.4 (West 2011). <u>Sexual contact without consent with person capable of consenting as misdemeanor</u></p> <p>No person fifteen years of age or older may knowingly engage in sexual contact with another person other than his or her spouse who, although capable of consenting, has not consented to such contact. A violation of this section is a Class 1 misdemeanor.</p> <p>S.D. CODIFIED LAWS § 22-22-7.6 (West 2011). <u>Sexual acts between jail employees and detainees--Felony--Juvenile correctional facility defined</u></p> <p>Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so</p>
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<p>Statute Cont' (<i>South Dakota</i>)</p>	<p>engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony. A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections under § 1-15-1.4.</p> <p>S.D. CODIFIED LAWS § 22-22-24.3 (West 2011). <u>Sexual exploitation of a minor--Felonies--Assessment</u></p> <p>A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity or the simulation of an activity that:</p> <ol style="list-style-type: none"> <li>(1) Is harmful to minors;</li> <li>(2) Involves nudity; or</li> <li>(3) Is obscene.</li> </ol> <p>Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section. A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony. The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.</p> <p>S.D. CODIFIED LAWS § 22-22-28. (West 2011). <u>Sexual contact by psychotherapist--Felony</u></p> <p>Any psychotherapist who knowingly engages in sexual contact, as defined in § 22-22-7.1, with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time of contact, commits a Class 5 felony. Consent by the patient is not a defense.</p> <p>S.D. CODIFIED LAWS § 22-22-29 (West 2011). <u>Sexual penetration by psychotherapist--Felony</u></p> <p>Any psychotherapist who knowingly engages in an act of sexual penetration, as defined in § 22-22-2, with a person who is not his or her spouse and who is a patient who is emotionally dependent on the psychotherapist at the time that the act of sexual penetration is</p>
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<p>Statute Cont' (<i>South Dakota</i>)</p>	<p>committed, commits a Class 4 felony. Consent by the patient is not a defense.</p> <p>S.D. CODIFIED LAWS § 22-22-45 (West 2011). <u>Threatening to commit a sexual offense -- felony</u></p> <p>Any person who has been convicted of a felony sex offense as defined in § 22-24B-1 who directly threatens or communicates specific intent to commit further felony sex offenses is guilty of threatening to commit a sexual offense. Threatening to commit a sexual offense is a Class 4 felony.</p> <p>S.D. CODIFIED LAWS § 22-24A-1 (West 2011). <u>Sale of child pornography--Felony</u></p> <p>Any person who sells, or displays for sale, any book, magazine, pamphlet, slide, photograph, film, or electronic or digital media image depicting a minor engaging in a prohibited sexual act, or engaging in an activity that involves nudity, or in the simulation of any such act is guilty of a Class 6 felony.</p> <p>S.D. CODIFIED LAWS § 22-24A-3 (West 2011). <u>Possessing, manufacturing, or distributing child pornography--Felonies--Assessment</u></p> <p>A person is guilty of possessing, manufacturing, or distributing child pornography if the person:</p> <ol style="list-style-type: none"> <li>(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;</li> <li>(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or</li> <li>(3) Knowingly possesses, distributes, or otherwise disseminates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act.</li> </ol> <p>Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.</p> <p>A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony.</p> <p>The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.</p>
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<p>Statute Cont' (<i>South Dakota</i>)</p>	<p>S.D. CODIFIED LAWS § 22-24A-5 (West 2011). <u>Solicitation of a minor--Felony--Assessment</u></p> <p>A person is guilty of solicitation of a minor if the person eighteen years of age or older:</p> <p>(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or</p> <p>(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.</p> <p>The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.</p> <p>Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.</p> <p>A violation of this section is a Class 4 felony. The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.</p> <p>S.D. CODIFIED LAWS § 22-24A-16 (West 2011). <u>Internet service providers to report suspected violations of child pornography laws--Permitting subscriber to use service for child pornography prohibited--Misdemeanor</u></p> <p>Any person working at or for an internet service provider or other electronic communication service who has knowledge of or observes, within the scope of the person's professional capacity or employment, a visual depiction that depicts a minor whom the person knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The provider need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a provider to review all visual depictions received by subscribers or handled by the provider within the provider's professional capacity or employment.</p> <p>It is unlawful for any owner or operator of a computer on-line service, internet service, or local internet bulletin board service knowingly to permit a subscriber to utilize the service to produce or reproduce visual depictions of prohibited sexual acts with a minor.</p> <p>A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.</p>
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<p>Statute Cont' (<i>South Dakota</i>)</p>	<p>S.D. CODIFIED LAWS § 22-24A-17 (West 2011).  <u>Film processors to report suspected violations of child pornography laws--Permitting use of services for child pornography prohibited--Misdemeanor</u></p> <p>Any person working at or for a commercial film and photograph print processor who has knowledge of or observes, within the scope of the processor's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction that depicts a minor whom the processor knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to his or her employer or supervisor. The depiction shall then be reported to an appropriate law enforcement agency as soon as reasonably possible. The processor need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a processor to review all films, photographs, videotapes, negatives, or slides delivered to the processor within the processor's professional capacity or employment.</p> <p>It is unlawful for any owner or operator of a photography or film studio, photograph or film developing service, photograph or film reproducing service, or video to film reproducing service knowingly to permit any person to utilize photograph or film reproduction or development services to produce or reproduce visual depictions of prohibited sexual acts with a minor.</p> <p>A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.</p> <p>S.D. CODIFIED LAWS § 22-24A-18 (West 2011).  <u>Computer repair technicians to report suspected violations of child pornography laws--Misdemeanor</u></p> <p>Any commercial computer repair technician who has knowledge of or observes, within the scope of the technician's professional capacity or employment, a film, photograph, video tape, negative, slide or other visual depiction of a minor whom the technician knows or reasonably should know to be under the age of eighteen, engaged in prohibited sexual acts or in the simulation of prohibited sexual acts, shall report the depiction to an appropriate law enforcement agency as soon as reasonably possible. The computer repair technician need not report to law enforcement depictions involving mere nudity of the minor, but shall report visual depictions involving prohibited sexual acts. This section may not be construed to require a computer repair technician to review all data, disks, or tapes delivered to the computer repair technician within the computer repair technician's professional capacity or employment.</p> <p>A violation of this section is a Class 1 misdemeanor. However, a violation of this section does not constitute grounds for a civil action for damages against any person.</p>
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	his or her genitals to a child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure involving a child. Indecent exposure involving a child is a Class 6 felony. A second or subsequent conviction for indecent exposure involving a child is a Class 5 felony.
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Definitions (South Dakota)	<p>S.D. CODIFIED LAWS § 22-22-2 (West 2011).  <u>Sexual penetration defined--Acts constituting sodomy--Medical practitioners excepted</u></p> <p>Sexual penetration means an act, however slight, of sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of the body or of any object into the genital or anal openings of another person's body. All of the foregoing acts of sexual penetration, except sexual intercourse, are also defined as sodomy. Practitioners of the healing arts lawfully practicing within the scope of their practice, which determination shall be conclusive as against the state and shall be made by the court prior to trial, are not included within the provisions of this section. In any pretrial proceeding under this section, the prosecution has the burden of establishing probable cause.</p> <p>S.D. CODIFIED LAWS § 22-22-27 (West 2011).  <u>Definition of terms--Sex offenses by psychotherapists</u></p> <p>Terms used in §§ 22-22-28 and 22-22-29 mean:</p> <ol style="list-style-type: none"> <li>1) "Emotional dependency," a condition of the patient brought about by the nature of the patient's own emotional condition or the nature of the treatment provided by the psychotherapist which is characterized by significant impairment of the patient's ability to withhold consent to sexual acts or contact with the psychotherapist and which the psychotherapist knows or has reason to know exists;</li> <li>2) "Patient," any person who seeks or obtains psychotherapeutic services from a psychotherapist on a regular and ongoing basis;</li> <li>3) "Psychotherapist," any physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, or other person, whether or not licensed or certified by the state, who performs or purports to perform psychotherapy; and</li> <li>4) "Psychotherapy," the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.</li> </ol>

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<p>Definitions Cont' (South Dakota)</p>	<p>S.D. CODIFIED LAWS § 22-24A-2 (West 2011). <u>Definitions</u></p> <p>Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:</p> <ol style="list-style-type: none"> <li>(1) "Adult," any person eighteen years of age or older;</li> <li>(2) "Child pornography," any image or visual depiction of a minor engaged in prohibited sexual acts;</li> <li>(3) "Child" or "minor," any person under the age of eighteen years;</li> <li>(4) "Computer," any electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, including wireless communication devices such as cellular phones. The term also includes any on-line service, internet service, or internet bulletin board;</li> <li>(5) Deleted by SL 2005, ch 120, § 408</li> <li>(6) "Digital media," any electronic storage device, including a floppy disk or other magnetic storage device or any compact disc that has memory and the capacity to store audio, video, or written materials;</li> <li>(7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it: <ol style="list-style-type: none"> <li>(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;</li> <li>(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and</li> <li>(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.</li> </ol> <p>This term does not include a mother's breast-feeding of her baby;</p> </li> <li>(8) "Masochism," sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture, or death;</li> <li>(9) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;</li> <li>(10) "Obscene," the status of material which: <ol style="list-style-type: none"> <li>(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and</li> </ol> </li> </ol>
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<p>Definitions Cont' (South Dakota)</p>	<p>(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. This term does not include a mother's breast-feeding of her baby; (11) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations; (12) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death; (13) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself; (14) "Sexual battery," 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. This term does not include an act done for a bona fide medical purpose; (15) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other; (16) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby; (17) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal; (18) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered; (19) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus; (20) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.</p>
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	<p>S.D. CODIFIED LAWS § 22-24A-4 (West 2011).  <u>Minor and solicit defined</u></p> <p>Terms used in § 22-24A-5 mean:</p> <ol style="list-style-type: none"> <li>1) “Minor,” a person fifteen years of age or younger; and</li> <li>2) “Solicit,” to seduce, lure, entice or persuade, or attempt to seduce, lure, entice or persuade a specific person by telephone, in person, by letter, by using a computer or any other electronic means.</li> </ol>
<p>Defenses  <i>(South Dakota)</i></p>	<p>None.</p>
<p>Penalty  <i>(South Dakota)</i></p>	<p>S.D. CODIFIED LAWS § 22-6-1 (West 2011).  <u>Felony classes and penalties--Restitution--Habitual criminal sentences</u></p> <p>Except as otherwise provided by law, felonies are divided into the following nine classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:</p> <ol style="list-style-type: none"> <li>(1) Class A felony: death or life imprisonment in the state penitentiary. A lesser sentence than death or life imprisonment may not be given for a Class A felony. In addition, a fine of fifty thousand dollars may be imposed;</li> <li>(2) Class B felony: life imprisonment in the state penitentiary. A lesser sentence may not be given for a Class B felony. In addition, a fine of fifty thousand dollars may be imposed;</li> <li>(3) Class C felony: life imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;</li> <li>(4) Class 1 felony: fifty years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;</li> <li>(5) Class 2 felony: twenty-five years imprisonment in the state penitentiary. In addition, a fine of fifty thousand dollars may be imposed;</li> <li>(6) Class 3 felony: fifteen years imprisonment in the state penitentiary. In addition, a fine of thirty thousand dollars may be imposed;</li> <li>(7) Class 4 felony: ten years imprisonment in the state penitentiary. In addition, a fine of twenty thousand dollars may be imposed;</li> <li>(8) Class 5 felony: five years imprisonment in the state penitentiary. In addition, a fine of ten thousand dollars may be imposed; and</li> <li>(9) Class 6 felony: two years imprisonment in the state penitentiary or a fine of four thousand dollars, or both.</li> </ol> <p>The court, in imposing sentence on a defendant who has been found guilty of a felony, shall order in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.</p> <p>Nothing in this section limits increased sentences for habitual criminals under §§ 22-7-7, 22-7-8, and 22-7-8.1.</p>

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<p>Penalty Cont' (South Dakota)</p>	<p>S.D. CODIFIED LAWS § 22-6-1.2 (West 2011). <u>Minimum sentence for subsequent felony sex crime conviction</u></p> <p>If an adult has a previous conviction for a felony sex crime as defined by § 22-24B-1, any subsequent felony conviction for a sex crime as defined by subdivisions 22-24B-1(1) to (15), inclusive, and (19) shall result in a minimum sentence of imprisonment equal to the maximum term allowable under § 22-6-1, up to twenty-five years. The court may suspend a portion of the prison sentence required under this section.</p> <p>S.D. CODIFIED LAWS § 22-6-2 (West 2011). <u>Misdemeanor classes and penalties--Restitution--Misdemeanor when no penalty imposed</u></p> <p>Misdemeanors are divided into two classes which are distinguished from each other by the following maximum penalties which are authorized upon conviction:</p> <p>(1) Class 1 misdemeanor: one year imprisonment in a county jail or two thousand dollars fine, or both;</p> <p>(2) Class 2 misdemeanor: thirty days imprisonment in a county jail or five hundred dollars fine, or both.</p> <p>The court, in imposing sentence on a defendant who has been found guilty of a misdemeanor, shall order, in addition to the sentence that is imposed pursuant to the provisions of this section, that the defendant make restitution to any victim in accordance with the provisions of chapter 23A-28.</p> <p>Except in Titles 1 to 20, inclusive, 22, 25 to 28, inclusive, 32 to 36, inclusive, 40 to 42, inclusive, 47 to 54, inclusive, and 58 to 62, inclusive, if the performance of an act is prohibited by a statute, and no penalty for the violation of such statute is imposed by a statute, the doing of such act is a Class 2 misdemeanor.</p> <p>S.D. CODIFIED LAWS § 22-22-1.2 (West 2011). <u>Minimum sentences for rape or sexual contact with child</u></p> <p>If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:</p> <p>(1) For a violation of subdivision 22-22-1(1), fifteen years for a first offense; and</p> <p>(2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ten years for a first offense.</p>
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Tennessee	
Statute ( <i>Tennessee</i> )	TENN. CODE ANN. § 39-13-502 (West 2011). <u>Aggravated rape</u>
Statute Cont' ( <i>Tennessee</i> )	<p>(a) Aggravated rape is unlawful sexual penetration of a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;</p> <p>(2) The defendant causes bodily injury to the victim;</p> <p>(3) The defendant is aided or abetted by one (1) or more other persons; and</p> <p>(A) Force or coercion is used to accomplish the act; or</p> <p>(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.</p> <p>(b) Aggravated rape is a Class A felony.</p> <p>TENN. CODE ANN. § 39-13-503 (West 2011). <u>Rape</u></p> <p>(a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:</p> <p>(1) Force or coercion is used to accomplish the act;</p> <p>(2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;</p> <p>(3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or</p> <p>(4) The sexual penetration is accomplished by fraud.</p> <p>(b) Rape is a Class B felony.</p> <p>TENN. CODE ANN. § 39-13-504 (West 2011). <u>Aggravated sexual battery</u></p>

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<p>Statute Cont' (Tennessee)</p>	<p>(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:            (1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;            (2) The defendant causes bodily injury to the victim;            (3) The defendant is aided or abetted by one (1) or more other persons; and            (A) Force or coercion is used to accomplish the act; or            (B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or            (4) The victim is less than thirteen (13) years of age.            (b) Aggravated sexual battery is a Class B felony.</p> <p>TENN. CODE ANN. § 39-13-505 (West 2011).  <u>Sexual battery</u></p> <p>(a) Sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:            (1) Force or coercion is used to accomplish the act;            (2) The sexual contact is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the contact that the victim did not consent;            (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or            (4) The sexual contact is accomplished by fraud.            (b) As used in this section, “coercion” means the threat of kidnapping, extortion, force or violence to be performed immediately or in the future.            (c) Sexual battery is a Class E felony.</p> <p>TENN. CODE ANN. § 39-13-506 (West 2011).  <u>Mitigated statutory rape; statutory rape; aggravated statutory rape; penalties</u></p> <p>(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.</p>
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<p>Statute Cont' (Tennessee)</p>	<p>(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:</p> <p>(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or</p> <p>(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.</p> <p>(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.</p> <p>(d)(1) Mitigated statutory rape is a Class E felony.</p> <p>(2) Statutory rape is a Class E felony.</p> <p>(3) Aggravated statutory rape is a Class D felony.</p> <p>TENN. CODE ANN. § 39-13-522 (West 2011). <u>Rape of a child</u></p> <p>(a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.</p> <p>(b)(1) Rape of a child is a Class A felony.</p> <p>(2)(A) Notwithstanding title 40, chapter 35, a person convicted of a first or subsequent violation of this section shall be punished by a minimum period of imprisonment of twenty-five (25) years. The sentence imposed upon any such person may, if appropriate, exceed twenty-five (25) years, but in no case shall it be less than the minimum period of twenty-five (25) years. ).<sup>59</sup></p> <p>(B) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2)</p> <p>(C) Notwithstanding any law to the contrary, the board of probation and parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.</p> <p>TENN. CODE ANN. § 39-13-527 (West 2011). <u>Authority figure; sexual battery; penalty</u></p> <p>(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:</p> <p>(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less then eighteen (18) years of age; or</p>
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<p>Statute Cont' (Tennessee)</p>	<p>(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and, (3)(A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or (B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact. (b) Sexual battery by an authority figure is a Class C felony.</p> <p>TENN. CODE ANN. § 39-13-528 (West 2011). <u>Solicitation of person under 18 years of age</u></p> <p>(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses: (1) Rape of a child, pursuant to § 39-13-522; (2) Aggravated rape, pursuant to § 39-13-502; (3) Rape, pursuant to § 39-13-503; (4) Aggravated sexual battery, pursuant to § 39-13-504; (5) Sexual battery by an authority figure, pursuant to § 39-13-527; (6) Sexual battery, pursuant to § 39-13-505; (7) Statutory rape, pursuant to § 39-13-506; (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or (9) Sexual activity involving a minor, pursuant to § 39-13-529. (b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited. (c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.</p>
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<p>Statute Cont' (Tennessee)</p>	<p>(d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.</p> <p>TENN. CODE ANN. § 39-13-529 (West 2011). <u>Solicitation of minor to observe sexual conduct</u></p> <p>(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet service, including webcam communications, directly or through another, to intentionally command, hire, persuade, induce or cause a minor to engage in sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where such sexual activity or simulated sexual activity is observed by that person or by another.</p> <p>(b) It is unlawful for any person eighteen (18) years of age or older, directly or by means of electronic communication, electronic mail or Internet service, including webcam communications, to intentionally:</p> <p>(1) Engage in sexual activity, or simulated sexual activity, that is patently offensive, as defined in § 39-17-1002, for the purpose of having the minor view the sexual activity or simulated sexual activity, including circumstances where the minor is in the presence of the person, or where the minor views such activity via electronic communication, including electronic mail, Internet service and webcam communications;</p> <p>(2) Display to a minor, or expose a minor to, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the minor or the person displaying the material; and</p> <p>(3) Display to a law enforcement officer posing as a minor, and whom the person making the display reasonably believes to be less than eighteen (18) years of age, any material containing sexual activity or simulated sexual activity that is patently offensive, as defined in § 39-17-1002, where the purpose of the display can reasonably be construed as being for the sexual arousal or gratification of the intended minor or the person displaying the material.</p> <p>(c) The statute of limitations for the offenses in this section shall be the applicable statute for the class of the offense, or until the child reaches the age of eighteen (18), whichever is greater.</p> <p>(d) A person is subject to prosecution in this state under this statute for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the conduct involved a minor located in this state.</p> <p>(e)(1) A violation of subsection (a) is a Class B felony.</p> <p>(2) A violation of subsection (b) is a Class E felony; provided, that, if the minor is less than thirteen (13) years of age, the violation is a Class C felony.</p>
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<p>Statute Cont' (Tennessee)</p>	<p>TENN. CODE ANN. § 39-13-531 (West 2011). <u>Aggravated rape of a child</u></p> <p>(a) Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is three (3) years of age or less. (b) Aggravated rape of a child is a Class A felony and shall be sentenced within Range III, as set forth in Title 40, Chapter 35.</p> <p>TENN. CODE ANN. § 39-13-532 (West 2011). <u>Statutory rape by an authority figure; penalty</u></p> <p>(a) Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when: (1) The victim is at least thirteen (13) but less than eighteen (18) years of age; (2) The defendant is at least four (4) years older than the victim; and (3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration; or (4) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual penetration. (b) Statutory rape by an authority figure is a Class C felony and no person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to § 40-35-303 or judicial diversion pursuant to § 40-35-313.</p> <p>TENN. CODE ANN. § 39-17-1003 (West 2011). <u>Sexual exploitation</u></p> <p>(a) It is unlawful for any person to knowingly possess material that includes a minor engaged in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive. (b) A person possessing material that violates subsection (a) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials possessed</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Tennessee)</p>	<p>is greater than fifty (50), the person may be charged in a single count to enhance the class of offense under subsection (d).</p> <p>(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly possessed the material, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.</p> <p>(d) A violation of this section is a Class D felony; however, if the number of individual images, materials, or combination of images and materials, that are possessed is more than fifty (50), then the offense shall be a Class C felony. If the number of individual images, materials, or combination of images and materials, exceeds one hundred (100), the offense shall be a Class B felony.</p> <p>(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.</p> <p>TENN. CODE ANN. § 39-17-1004 (West 2011). <u>Aggravated sexual exploitation</u></p> <p>(a)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material, or possess with the intent to promote, sell, distribute, transport, purchase or exchange material, that includes a minor engaged in:</p> <p>(A) Sexual activity; or</p> <p>(B) Simulated sexual activity that is patently offensive.</p> <p>(2) A person who violates subdivision (a)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (a)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (a)(4).</p> <p>(3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.</p> <p>(4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony.</p> <p>(b)(1) It is unlawful for a person to knowingly promote, sell, distribute, transport, purchase or exchange material that is obscene, as defined in § 39-17-901(10), or possess material that is obscene, with the intent to promote, sell, distribute, transport, purchase or exchange the material, which includes a minor engaged in:</p>
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Current as of June 2011

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<p>Statute Cont' (Tennessee)</p>	<p>(A) Sexual activity; or (B) Simulated sexual activity that is patently offensive. (2) A person who violates subdivision (b)(1) may be charged in a separate count for each individual image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. Where the number of materials involved in a violation under subdivision (b)(1) is greater than twenty-five (25), the person may be charged in a single count to enhance the class of offense under subdivision (b)(4). (3) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, sold, distributed, transported, purchased, exchanged or possessed the material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor. (4) A violation of this section is a Class C felony; however, if the number of individual images, materials, or combination of images and materials, that are promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange, is more than twenty-five (25), then the offense shall be a Class B felony. (c) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor. (d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, sold, distributed, transported, purchased, exchanged or possessed, with intent to promote, sell, distribute, transport, purchase or exchange material within this state.</p> <p>TENN. CODE ANN. § 39-17-1005 (West 2011). <u>Especially aggravated sexual exploitation</u></p> <p>(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in: (1) Sexual activity; or (2) Simulated sexual activity that is patently offensive. (b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation. (c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise</p>
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Statute Cont' (Tennessee)	<p>represents or depicts that a participant is a minor.</p> <p>(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.</p> <p>(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.</p> <p>(f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.</p>
Age of Consent ♦ (Tennessee)	18
Definitions (Tennessee)	<p>TENN. CODE ANN. § 39-13-501 (West 2011)</p> <p><u>Definitions</u></p> <p>As used in §§ 39-13-501 -- 39-13-511, except as specifically provided in § 39-13-505, unless the context otherwise requires:</p> <p>(1) "Coercion" means threat of kidnapping, extortion, force or violence to be performed immediately or in the future or the use of parental, custodial, or official authority over a child less than fifteen (15) years of age;</p> <p>(2) "Intimate parts" includes the primary genital area, groin, inner thigh, buttock or breast of a human being;</p> <p>(3) "Mentally defective" means that a person suffers from a mental disease or defect which renders that person temporarily or permanently incapable of appraising the nature of the person's conduct;</p> <p>(4) "Mentally incapacitated" means that a person is rendered temporarily incapable of appraising or controlling the person's conduct due to the influence of a narcotic, anesthetic or other substance administered to that person without the person's consent, or due to any other act committed upon that person without the person's consent;</p> <p>(5) "Physically helpless" means that a person is unconscious, asleep or for any other reason physically or verbally unable to communicate unwillingness to do an act;</p> <p>(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 intimate parts, if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification;</p>

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<p>Definitions Cont' (<i>Tennessee</i>)</p>	<p>(7) "Sexual penetration" means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of the victim's, the defendant's, or any other person's body, but emission of semen is not required; and</p> <p>(8) "Victim" means the person alleged to have been subjected to criminal sexual conduct and includes the spouse of the defendant.</p> <p>TENN. CODE ANN. § 39-13-523 (West 2011).  <u>Child sexual predators, multiple rapists, and child rapists; sentencing</u></p> <p>(a) As used in this section, unless the context otherwise requires:</p> <p>(1) "Child rapist" means a person convicted one (1) or more times of rape of a child as defined by § 39-13-522;</p> <p>(2) "Child sexual predator" means a person who:</p> <p>(A) Is convicted in this state of committing an offense on or after July 1, 2007, that is classified in subdivision (a)(4) as a predatory offense; and</p> <p>(B) Has one (1) or more prior convictions for an offense classified in subdivision (a)(4) as a predatory offense;</p> <p>(3) "Multiple rapist" means a person convicted two (2) or more times of violating § 39-13-502 or § 39-13-503, or a person convicted at least one (1) time of violating § 39-13-502 and at least one (1) time of violating § 39-13-503;</p> <p>(4) "Predatory offenses" means:</p> <p>(A) Aggravated sexual battery under § 39-13-504(a)(4);</p> <p>(B) Statutory rape by an authority figure under § 39-13-532;</p> <p>(C) Sexual battery by an authority figure under § 39-13-527;</p> <p>(D) Solicitation of a minor to commit a sex offense under § 39-13-528;</p> <p>(E) Solicitation of a minor to perform sex acts under § 39-13-529; and</p> <p>(F) Aggravated statutory rape under § 39-13-506(c);</p> <p>(5)(A) "Prior convictions" means that the person serves and is released or discharged from a separate period of incarceration or supervision for the commission of a predatory offense classified in subdivision (a)(4) prior to committing another predatory offense classified in subdivision (a)(4).</p> <p>(B) "Prior convictions" includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a predatory offense as classified in subdivision (a)(4). If a felony from a jurisdiction other than Tennessee is not a named predatory offense as classified in subdivision (a)(4) in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for an offense classified as a predatory offense; and</p> <p>(6) "Separate period of incarceration or supervision" includes a sentence to any of the sentencing alternatives set out in § 40-35-</p>
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<p>Definitions Cont' (Tennessee)</p>	<p>104(c)(3)-(9). Any offense designated as a predatory offense pursuant to subdivision (a)(4) shall be considered as having been committed after a separate period of incarceration or supervision if the predatory offense was committed while the person was:</p> <p>(A) On probation, parole or community correction supervision for a predatory offense;</p> <p>(B) Incarcerated for a predatory offense;</p> <p>(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a predatory offense; or</p> <p>(D) On escape status from any correctional institution when incarcerated for a predatory offense.</p> <p>(b) Notwithstanding any other law to the contrary, a child sexual predator, multiple rapist or a child rapist shall be required to serve the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. A child sexual predator, multiple rapist or a child rapist shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.</p> <p>(c) Title 40, chapter 35, part 5, regarding release eligibility status and parole, shall not apply to or authorize the release of a child sexual predator, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.</p> <p>(d) Nothing in title 41, chapter 1, part 5 shall give either the governor or the board of probation and parole the authority to release or cause the release of a child sexual predator, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.</p> <p>(e)(1) The provisions of this section requiring child sexual predators to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 2007.</p> <p>(2) The provisions of this section requiring multiple rapists to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 1992.</p> <p>TENN. CODE ANN. § 39-17-1002 (West 2011).</p> <p><u>Definitions</u></p> <p>The following definitions apply in §§ 39-7-1002 -- 39-17-1007, unless the context otherwise requires:</p> <p>(1) "Community" means the judicial district, as defined by § 16-2-506, in which a violation is alleged to have occurred;</p> <p>(2) "Material" means:</p> <p>(A) Any picture, drawing, photograph, undeveloped film or film negative, motion picture film, videocassette tape or other pictorial representation;</p> <p>(B) Any statue, figure, theatrical production or electrical reproduction;</p> <p>(C) Any image stored on a computer hard drive, a computer disk of any type, or any other medium designed to store information for</p>
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Definitions Cont' (Tennessee)	<p>later retrieval; or</p> <p>(D) Any image transmitted to a computer or other electronic media or video screen, by telephone line, cable, satellite transmission, or other method that is capable of further transmission, manipulation, storage or accessing, even if not stored or saved at the time of transmission;</p> <p>(3) "Minor" means any person who has not reached eighteen (18) years of age;</p> <p>(4) "Patently offensive" means that which goes substantially beyond customary limits of candor in describing or representing such matters;</p> <p>(5) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one (1) or more persons;</p> <p>(6) "Promote" means to finance, produce, direct, manufacture, issue, publish, exhibit or advertise, or to offer or agree to do those things;</p> <p>(7) "Prurient interest" means a shameful or morbid interest in sex; and</p> <p>(8) "Sexual activity" means any of the following acts:</p> <p>(A) Vaginal, anal or oral intercourse, whether done with another person or an animal;</p> <p>(B) Masturbation, whether done alone or with another human or an animal;</p> <p>(C) Patently offensive, as determined by contemporary community standards, physical contact with or touching of a person's clothed or unclothed genitals, pubic area, buttocks or breasts in an act of apparent sexual stimulation or sexual abuse;</p> <p>(D) Sadomasochistic abuse, including flagellation, torture, physical restraint, domination or subordination by or upon a person for the purpose of sexual gratification of any person;</p> <p>(E) The insertion of any part of a person's body or of any object into another person's anus or vagina, except when done as part of a recognized medical procedure by a licensed professional;</p> <p>(F) Patently offensive, as determined by contemporary community standards, conduct, representations, depictions or descriptions of excretory functions; or</p> <p>(G) Lascivious exhibition of the female breast or the genitals, buttocks, anus or pubic or rectal area of any person.</p>
Defenses (Tennessee)	None.
Penalty (Tennessee)	<p>TENN. CODE ANN. § 40-35-112 (West 2011).</p> <p><u>Sentence ranges</u></p> <p>(a) A Range I sentence is as follows:</p>

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<p>Penalty Cont' (Tennessee)</p>	<p>(1) For a Class A felony, not less than fifteen (15) nor more than twenty-five (25) years;  (2) For a Class B felony, not less than eight (8) nor more than twelve (12) years;  (3) For a Class C felony, not less than three (3) nor more than six (6) years;  (4) For a Class D felony, not less than two (2) nor more than four (4) years; and  (5) For a Class E felony, not less than one (1) nor more than two (2) years.  (b) A Range II sentence is as follows:  (1) For a Class A felony, not less than twenty-five (25) nor more than forty (40) years;  (2) For a Class B felony, not less than twelve (12) nor more than twenty (20) years;  (3) For a Class C felony, not less than six (6) nor more than ten (10) years;  (4) For a Class D felony, not less than four (4) nor more than eight (8) years; and  (5) For a Class E felony, not less than two (2) nor more than four (4) years.  (c) A Range III sentence is as follows:  (1) For a Class A felony, not less than forty (40) nor more than sixty (60) years;  (2) For a Class B felony, not less than twenty (20) nor more than thirty (30) years;  (3) For a Class C felony, not less than ten (10) nor more than fifteen (15) years;  (4) For a Class D felony, not less than eight (8) nor more than twelve (12) years; and  (5) For a Class E felony, not less than four (4) nor more than six (6) years.</p> <p>TENN. CODE ANN. § 39-13-522 (West 2011).  <u>Rape of a child</u></p> <p>(2)(A) Notwithstanding title 40, chapter 35, a person convicted of a first or subsequent violation of this section shall be punished by a minimum period of imprisonment of twenty-five (25) years. The sentence imposed upon any such person may, if appropriate, exceed twenty-five (25) years, but in no case shall it be less than the minimum period of twenty-five (25) years.<sup>60</sup>  (B) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2).  (C) Notwithstanding any law to the contrary, the board of probation and parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.</p>
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Texas	
Statute (Texas)	TEX. PENAL CODE ANN § 21.02 (West 2011). <sup>61</sup> <u>Continuous Sexual Abuse of Young Child or Children</u>
Statute Cont' (Texas)	<p>(a) In this section, “child” has the meaning assigned by Section 22.011(c).</p> <p>(b) A person commits an offense if:</p> <p>(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and</p> <p>(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.</p> <p>(c) For purposes of this section, “act of sexual abuse” means any act that is a violation of one or more of the following penal laws:</p> <p>(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;</p> <p>(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;</p> <p>(3) sexual assault under Section 22.011;</p> <p>(4) aggravated sexual assault under Section 22.021;</p> <p>(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4); and</p> <p>(6) sexual performance by a child under Section 43.25;</p> <p>(7) trafficking of persons under Section 20A.02(a)(7) or (8); and</p> <p>(8) compelling prostitution under Section 43.05(a)(2).</p> <p>(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.</p> <p>(e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):</p> <p>(1) is charged in the alternative;</p> <p>(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or</p>

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<p>Statute Cont' (Texas)</p>	<p>(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).  (f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.  (g) It is an affirmative defense to prosecution under this section that the actor:  (1) was not more than five years older than:  (A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or  (B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;  (2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and  (3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:  (A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or  (B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).  (h) An offense under this section is a felony of the first degree.</p> <p>TEX. PENAL CODE ANN. § 21.07 (West 2011).  <u>Public Lewdness</u></p> <p>(a) A person commits an offense if he knowingly engages in any of the following acts in a public place or, if not in a public place, he is reckless about whether another is present who will be offended or alarmed by his:  (1) act of sexual intercourse;  (2) act of deviate sexual intercourse;  (3) act of sexual contact; or  (4) act involving contact between the person's mouth or genitals and the anus or genitals of an animal or fowl.  (b) An offense under this section is a Class A misdemeanor.</p> <p>TEX. PENAL CODE ANN § 21.08 (West 2011).  <u>Indecent Exposure</u></p> <p>(a) A person commits an offense if he exposes his anus or any part of his genitals with intent to arouse or gratify the sexual desire of any</p>
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<p>Statute Cont' (Texas)</p>	<p>person, and he is reckless about whether another is present who will be offended or alarmed by his act. (b) An offense under this section is a Class B misdemeanor.<sup>62</sup></p> <p>TEX. PENAL CODE ANN § 21.11 (West 2011). <u>Indecency With a Child</u></p> <p>(a) A person commits an offense if, with a child younger than 17 years of age , whether the child is of the same or opposite sex, the person: (1) engages in sexual contact with the child or causes the child to engage in sexual contact; or (2) with intent to arouse or gratify the sexual desire of any person: (A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or (B) causes the child to expose the child's anus or any part of the child's genitals. (c) In this section, “sexual contact” means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person: (1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or (2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person. (d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.</p> <p>TEX. PENAL CODE ANN § 21.12 (West 2011).<sup>63</sup> <u>Improper Relationship Between Educator and Student</u></p> <p>(a) An employee of a public or private primary or secondary school commits an offense if the employee engages in: (1) sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works ; or (2) conduct described by Section 33.021, with a person described by Subdivision (1), regardless of the age of that person. (b) An offense under this section is a felony of the second degree. (c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections. (d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship</p>
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<p>Statute Cont' (Texas)</p>	<p>with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.</p> <p>TEX. PENAL CODE ANN § 21.15 (West 2011). <u>Improper Photography or Visual Recording</u></p> <p>(a) In this section, “promote” has the meaning assigned by Section 43.21. (b) A person commits an offense if the person: (1) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is not a bathroom or private dressing room: (A) without the other person's consent; and (B) with intent to arouse or gratify the sexual desire of any person; (2) photographs or by videotape or other electronic means records, broadcasts, or transmits a visual image of another at a location that is a bathroom or private dressing room: (A) without the other person's consent; and (B) with intent to: (i) invade the privacy of the other person; or (ii) arouse or gratify the sexual desire of any person; or (3) knowing the character and content of the photograph, recording, broadcast, or transmission, promotes a photograph, recording, broadcast, or transmission described by Subdivision (1) or (2). (c) An offense under this section is a state jail felony. (d) If conduct that constitutes an offense under this section also constitutes an offense under any other law, the actor may be prosecuted under this section or the other law. (e) For purposes of Subsection (b)(2), a sign or signs posted indicating that the person is being photographed or that a visual image of the person is being recorded, broadcast, or transmitted is not sufficient to establish the person's consent under that subdivision.</p> <p>TEX. PENAL CODE ANN § 22.011 (West 2011).<sup>64</sup> <u>Sexual Assault</u></p> <p>(a) A person commits an offense if the person: (1) intentionally or knowingly:</p>
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<p>Statute Cont' (Texas)</p>	<p>(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;          (B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or          (C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or          (2) intentionally or knowingly:          (A) causes the penetration of the anus or sexual organ of a child by any means;          (B) causes the penetration of the mouth of a child by the sexual organ of the actor;          (C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;          (D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or          (E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.          (b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:          (1) the actor compels the other person to submit or participate by the use of physical force or violence;          (2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;          (3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;          (4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;          (5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;          (6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;          (7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;          (8) the actor is a public servant who coerces the other person to submit or participate;          (9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;          (10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or          (11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.          (c) In this section:          (1) "Child" means a person younger than 17 years of age .</p>
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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Texas)</p>	<p>(2) "Spouse" means a person who is legally married to another.</p> <p>(3) "Health care services provider" means:</p> <p>(A) a physician licensed under Subtitle B, Title 3, Occupations Code; [FN1]</p> <p>(B) a chiropractor licensed under Chapter 201, Occupations Code;</p> <p>(C) a physical therapist licensed under Chapter 453, Occupations Code;</p> <p>(D) a physician assistant licensed under Chapter 204, Occupations Code; or</p> <p>(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.</p> <p>(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:</p> <p>(A) licensed social worker as defined by Section 505.002, Occupations Code;</p> <p>(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;</p> <p>(C) licensed professional counselor as defined by Section 503.002, Occupations Code;</p> <p>(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;</p> <p>(E) member of the clergy;</p> <p>(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or</p> <p>(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.</p> <p>(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.</p> <p>(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.</p> <p>TEX. PENAL CODE ANN § 22.021 (West 2011).</p> <p><u>Aggravated Sexual Assault</u></p> <p>(a) A person commits an offense:</p> <p>(1) if the person:</p> <p>(A) intentionally or knowingly:</p> <p>(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;</p> <p>(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or</p> <p>(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of</p>
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<p>Statute Cont' (Texas)</p>	<p>another person, including the actor; or (B) intentionally or knowingly: (i) causes the penetration of the anus or sexual organ of a child by any means; (ii) causes the penetration of the mouth of a child by the sexual organ of the actor; (iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; (iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or (v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and (2) if: (A) the person: (i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode; (ii) by acts or words places the victim in fear that any person will become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or that death, serious bodily injury, or kidnapping will be imminently inflicted on any person; (iii) by acts or words occurring in the presence of the victim threatens to cause any person to become the victim of an offense under Section 20A.02(a)(3), (4), (7), or (8) or to cause the death, serious bodily injury, or kidnapping of any person; (iv) uses or exhibits a deadly weapon in the course of the same criminal episode; (v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or (vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense; (B) the victim is younger than 14 years of age; or (C) the victim is an elderly individual or a disabled individual. (b) In this section: (1) "Child" has the meaning assigned by Section 22.011(c). (2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c). (c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b). (d) The defense provided by Section 22.011(d) applies to this section. (e) An offense under this section is a felony of the first degree. (f) The minimum term of imprisonment for an offense under this section is increased to 25 years if: (1) the victim of the offense is younger than six years of age at the time the offense is committed; or (2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a</p>
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<p>Statute Cont' (Texas)</p>	<p>manner described by Subsection (a)(2)(A).</p> <p>TEX. PENAL CODE ANN § 43.25 (West 2011). <u>Sexual Performance by a Child</u></p> <p>(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.</p> <p>(c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed.</p> <p>(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.</p> <p>(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed.</p> <p>(g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:</p> <ol style="list-style-type: none"> <li>(1) personal inspection of the child;</li> <li>(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;</li> <li>(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;</li> <li>(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or</li> <li>(5) any other method authorized by law or by the rules of evidence at common law.</li> </ol> <p>TEX. PENAL CODE ANN § 43.26 (West 2011). <u>Possession or Promotion of Child Pornography</u></p> <p>(a) A person commits an offense if:</p> <ol style="list-style-type: none"> <li>(1) the person knowingly or intentionally possesses visual material that visually depicts a child younger than 18 years of age at the time the image of the child was made who is engaging in sexual conduct; and</li> <li>(2) the person knows that the material depicts the child as described by Subdivision (1).</li> </ol> <p>(b) In this section:</p> <ol style="list-style-type: none"> <li>(1) "Promote" has the meaning assigned by Section 43.25.</li> </ol>
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## NIC/WCL Project on Addressing Prison Rape

Statute Cont' (Texas)	<p>(2) “Sexual conduct” has the meaning assigned by Section 43.25.</p> <p>(3) “Visual material” means:</p> <p>(A) any film, photograph, videotape, negative, or slide or any photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or</p> <p>(B) any disk, diskette, or other physical medium that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.</p> <p>(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.</p> <p>(d) An offense under Subsection (a) is a felony of the third degree.</p> <p>(e) A person commits an offense if:</p> <p>(1) the person knowingly or intentionally promotes or possesses with intent to promote material described by Subsection (a)(1); and</p> <p>(2) the person knows that the material depicts the child as described by Subsection (a)(1).</p> <p>(f) A person who possesses visual material that contains six or more identical visual depictions of a child as described by Subsection (a)(1) is presumed to possess the material with the intent to promote the material.</p> <p>(g) An offense under Subsection (e) is a felony of the second degree.</p>
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Definitions (Texas)	<p>TEX. PENAL CODE ANN § 21.01 (West 2011).</p> <p><u>Definitions</u></p> <p>In this chapter:</p> <p>(1) “Deviate sexual intercourse” means:</p> <p>(A) any contact between any part of the genitals of one person and the mouth or anus of another person; or</p> <p>(B) the penetration of the genitals or the anus of another person with an object.</p> <p>(2) “Sexual contact” means, except as provided by Section 21.11, any touching of the anus, breast, or any part of the genitals of another person with intent to arouse or gratify the sexual desire of any person.</p> <p>(3) “Sexual intercourse” means any penetration of the female sex organ by the male sex organ.</p> <p>(4) “Spouse” means a person to whom a person is legally married under Subtitle A, Title 1, Family Code, or a comparable law of another jurisdiction.</p>

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<p>Definitions Cont' (Texas)</p>	<p>TEX. PENAL CODE ANN § 21.02 (West 2011). <u>Continuous Sexual Abuse of Young Child or Children</u></p> <p>(a) In this section, “child” has the meaning assigned by Section 22.011(c).</p> <p>TEX. PENAL CODE ANN § 21.15 (West 2011). <u>Improper Photography or Visual Recording</u></p> <p>(a) In this section, “promote” has the meaning assigned by Section 43.21.</p> <p>TEX. PENAL CODE ANN § 22.011 (West 2011). <u>Sexual Assault</u></p> <p>(c) In this section:</p> <p>(1) “Child” means a person younger than 17 years of age .</p> <p>(2) “Spouse” means a person who is legally married to another.</p> <p>(3) “Health care services provider” means:</p> <p>(A) a physician licensed under Subtitle B, Title 3, Occupations Code; [FN1]</p> <p>(B) a chiropractor licensed under Chapter 201, Occupations Code;</p> <p>(C) a physical therapist licensed under Chapter 453, Occupations Code;</p> <p>(D) a physician assistant licensed under Chapter 204, Occupations Code; or</p> <p>(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.</p> <p>(4) “Mental health services provider” means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:</p> <p>(A) licensed social worker as defined by Section 505.002, Occupations Code;</p> <p>(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;</p> <p>(C) licensed professional counselor as defined by Section 503.002, Occupations Code;</p> <p>(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;</p> <p>(E) member of the clergy;</p> <p>(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or</p> <p>(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (Texas)</p>	<p>(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.</p> <p>TEX. PENAL CODE ANN § 22.021 (West 2011). <u>Aggravated Sexual Assault</u></p> <p>(b) In this section:</p> <p>(1) "Child" has the meaning assigned by Section 22.011(c).</p> <p>(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).</p> <p>TEX. PENAL CODE ANN § 43.25 (West 2011). <u>Sexual Performance by a Child</u></p> <p>(a) In this section:</p> <p>(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.</p> <p>(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.</p> <p>(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.</p> <p>(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.</p> <p>(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.</p> <p>(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.</p> <p>(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.</p>
<p>Defenses (Texas)</p>	<p>TEX. PENAL CODE ANN § 21.02 (West 2011). <u>Continuous Sexual Abuse of Young Child or Children</u></p>

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<p>Defenses Cont' (Texas)</p>	<p>(g) It is an affirmative defense to prosecution under this section that the actor:</p> <ul style="list-style-type: none"> <li>(1) was not more than five years older than:</li> <li>(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or</li> <li>(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;</li> <li>(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and</li> <li>(3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:</li> <li>(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or</li> <li>(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).</li> </ul> <p>TEX. PENAL CODE ANN § 21.11 (West 2011). <u>Indecency With a Child</u></p> <p>(b) It is an affirmative defense to prosecution under this section that the actor:</p> <ul style="list-style-type: none"> <li>(1) was not more than three years older than the victim and of the opposite sex<sup>65</sup>;</li> <li>(2) did not use duress, force, or a threat against the victim at the time of the offense; and</li> <li>(3) at the time of the offense:</li> <li>(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or</li> <li>(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.</li> </ul> <p>(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.</p> <p>TEX. PENAL CODE ANN § 21.12 (West 2011). <u>Improper Relationship Between Educator and Student</u></p> <p>(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the enrolled person at the time of the offense.<sup>66</sup></p> <p>TEX. PENAL CODE ANN § 22.011 (West 2011). <u>Sexual Assault</u></p>
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<p>Defenses Cont' (Texas)</p>	<p>(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.</p> <p>(e) It is an affirmative defense to prosecution under Subsection (a)(2):</p> <p>(1) that the actor was the spouse of the child at the time of the offense; or</p> <p>(2) that:</p> <p>(A) the actor was not more than three years older than the victim and at the time of the offense:</p> <p>(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or</p> <p>(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and</p> <p>(B) the victim:</p> <p>(i) was a child of 14 years of age or older; and</p> <p>(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.</p> <p>TEX. PENAL CODE ANN § 43.25 (West 2011). <u>Sexual Performance by a Child</u></p> <p>(f) It is an affirmative defense to a prosecution under this section that:</p> <p>(1) the defendant was the spouse of the child at the time of the offense;</p> <p>(2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or</p> <p>(3) the defendant is not more than two years older than the child.</p> <p>TEX. PENAL CODE ANN § 43.26 (West 2011). <u>Possession or Promotion of Child Pornography</u></p> <p>(c) The affirmative defenses provided by Section 43.25(f) also apply to a prosecution under this section.</p>
<p>Penalty (Texas)</p>	<p>TEX. PENAL CODE ANN § 21.02 (West 2011). <u>Continuous Sexual Abuse of Young Child or Children</u></p> <p>(h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.</p>

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<p>Penalty Cont' (Texas)</p>	<p>TEX. PENAL CODE ANN § 22.021 (West 2011). <u>Aggravated Sexual Assault</u></p> <p>(f) The minimum term of imprisonment for an offense under this section is increased to 25 years if: (1) the victim of the offense is younger than six years of age at the time the offense is committed; or (2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).</p> <p>TEX. PENAL CODE ANN § 12.21(West 2011). <u>Class A Misdemeanor</u></p> <p>An individual adjudged guilty of a Class A misdemeanor shall be punished by: (1) a fine not to exceed \$4,000; (2) confinement in jail for a term not to exceed one year; or (3) both such fine and confinement.</p> <p>TEX. PENAL CODE ANN § 12.22 (West 2011). <u>Class B Misdemeanor</u></p> <p>An individual adjudged guilty of a Class B misdemeanor shall be punished by: (1) a fine not to exceed \$2,000; (2) confinement in jail for a term not to exceed 180 days; or (3) both such fine and confinement.</p> <p>TEX. PENAL CODE ANN § 12.23 (West 2011). <u>Class C Misdemeanor</u></p> <p>An individual adjudged guilty of a Class C misdemeanor shall be punished by a fine not to exceed \$500.</p>
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<p>Penalty Cont' (Texas)</p>	<p>TEX. PENAL CODE ANN § 12.32 (West 2011). <u>First Degree Felony Punishment</u></p> <p>(a) An individual adjudged guilty of a felony of the first degree shall be punished by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 5 years. (b) In addition to imprisonment, an individual adjudged guilty of a felony of the first degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN § 12.33 (West 2011). <u>Second Degree Felony Punishment</u></p> <p>(a) An individual adjudged guilty of a felony of the second degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 20 years or less than 2 years. (b) In addition to imprisonment, an individual adjudged guilty of a felony of the second degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN § 12.34 (West 2011). <u>Third Degree Felony Punishment</u></p> <p>(a) An individual adjudged guilty of a felony of the third degree shall be punished by imprisonment in the Texas Department of Criminal Justice for any term of not more than 10 years or less than 2 years. (b) In addition to imprisonment, an individual adjudged guilty of a felony of the third degree may be punished by a fine not to exceed \$10,000.</p> <p>TEX. PENAL CODE ANN § 12.35 (West 2011). <u>State Jail Felony Punishment</u></p> <p>(a) Except as provided by Subsection (c), an individual adjudged guilty of a state jail felony shall be punished by confinement in a state jail for any term of not more than two years or less than 180 days. (b) In addition to confinement, an individual adjudged guilty of a state jail felony may be punished by a fine not to exceed \$10,000. (c) An individual adjudged guilty of a state jail felony shall be punished for a third degree felony if it is shown on the trial of the offense</p>
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	<p>that:</p> <p>(1) a deadly weapon as defined by Section 1.07 was used or exhibited during the commission of the offense or during immediate flight following the commission of the offense, and that the individual used or exhibited the deadly weapon or was a party to the offense and knew that a deadly weapon would be used or exhibited; or</p> <p>(2) the individual has previously been finally convicted of any felony:</p> <p>(A) under Section 20A.03 or 21.02 or listed in Section 3g(a)(1), Article 42.12, Code of Criminal Procedure; or</p> <p>(B) for which the judgment contains an affirmative finding under Section 3g(a)(2), Article 42.12, Code of Criminal Procedure.</p>
<b>Utah</b>	
Statute ( <i>Utah</i> )	<p>UTAH CODE ANN. § 76-5-401 (West 2011).</p> <p><u>Unlawful sexual activity with a minor--Elements--Penalties--Evidence of age raised by defendant</u></p> <p>(1) For purposes of this section “minor” is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.</p> <p>(2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:</p> <p>(a) has sexual intercourse with the minor;</p> <p>(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or</p> <p>(c) causes the penetration, however slight, of the genital or anal opening of the minor 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 or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.</p> <p>(3) A violation of Subsection (2) is a third degree felony unless the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.</p>

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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Utah)</p>	<p>UTAH CODE ANN. § 76-5-401.1 (West 2011). <u>Sexual abuse of a minor</u></p> <p>(1) For purposes of this section “minor” is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.</p> <p>(2) A person commits sexual abuse of a minor if the person is seven years or more older than the minor and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.</p> <p>(3) A violation of this section is a class A misdemeanor.</p> <p>UTAH CODE ANN. § 76-5-401.2 (West 2011). <u>Unlawful sexual conduct with a 16 or 17 year old</u></p> <p>(1) As used in this section, “minor” means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct described in Subsection (2) occurred.</p> <p>(2) A person commits unlawful sexual conduct with a minor if, under circumstances not amounting to an offense listed under Subsection (3), an actor who is ten<sup>67</sup> or more years older than the minor at the time of the sexual conduct:</p> <p>(a) has sexual intercourse with the minor;</p> <p>(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;</p> <p>(c) causes the penetration, however slight, of the genital or anal opening of the minor 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 or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or</p> <p>(d) touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.</p>
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American University, Washington College of Law

Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Utah)</p>	<p>(3) The offenses referred to in Subsection (2) are:            (a)(i) rape, in violation of Section 76-5-402;            (ii) object rape, in violation of Section 76-5-402.2;            (iii) forcible sodomy, in violation of Section 76-5-403;            (iv) forcible sexual abuse, in violation of Section 76-5-404; or            (v) aggravated sexual assault, in violation of Section 76-5-405; or            (b) an attempt to commit any offense under Subsection (3)(a).            (4) A violation of Subsection (2)(a), (b), or (c) is a third degree felony.            (5) A violation of Subsection (2)(d) is a class A misdemeanor.</p> <p>UTAH CODE ANN. § 76-5-402 (West 2008).  <u>Rape</u></p> <p>(1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent.            (2) This section applies whether or not the actor is married to the victim.</p> <p>UTAH CODE ANN. § 76-5-402.1 (West 2011).  <u>Rape of a child</u></p> <p>(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.</p> <p>UTAH CODE ANN. § 76-5-402.2 (West 2011).  <u>Object rape</u></p> <p>(1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is a first degree felony. . . .</p> <p>UTAH CODE ANN. § 76-5-402.3 (West 2011).  <u>Object rape of a child--Penalty</u></p>
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<p>Statute Cont' (Utah)</p>	<p>(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.</p> <p>UTAH CODE ANN. § 76-5-403 (West 2011). <u>Sodomy--Forcible sodomy</u></p> <p>(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant. (2) A person commits forcible sodomy when the actor commits sodomy upon another without the other's consent. (3) Sodomy is a class B misdemeanor.</p> <p>UTAH CODE ANN. § 76-5-403.1 (West 2011). <u>Sodomy on a child</u></p> <p>(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.</p> <p>UTAH CODE ANN. § 76-5-404 (West 2011). <u>Forcible sexual abuse</u></p> <p>(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.</p> <p>UTAH CODE ANN. § 76-5-404.1 (West 2011). <u>Sexual abuse of a child--Aggravated sexual abuse of a child</u></p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Utah)</p>	<p>(1) As used in this section, “child” means a person under the age of 14.</p> <p>(2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.</p> <p>(3) Sexual abuse of a child is punishable as a second degree felony.</p> <p>(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:</p> <p>(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnaping;</p> <p>(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;</p> <p>(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;</p> <p>(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;</p> <p>(e) the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;</p> <p>(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;</p> <p>(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;</p> <p>(h) the offense was committed by a person who occupied a position of special trust in relation to the victim; “position of special trust” means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, baby-sitter, adult scout leader, natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;</p> <p>(i) the accused encouraged, aided, allowed, or benefited from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person; or</p> <p>(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body</p>
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<p>Statute Cont' (Utah)</p>	<p>other than the genitals or mouth.</p> <p>UTAH CODE ANN. § 76-5-405 (West 2011). <u>Aggravated sexual assault—Penalty</u></p> <p>(1) A person commits aggravated sexual assault if:</p> <p>(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:</p> <p>(i) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;</p> <p>(ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnapping, death, or serious bodily injury to be inflicted imminently on any person; or</p> <p>(iii) is aided or abetted by one or more persons;</p> <p>(b) in the course of an attempted rape, attempted object rape, or attempted forcible sodomy, the actor:</p> <p>(i) causes serious bodily injury to any person;</p> <p>(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;</p> <p>(iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or</p> <p>(iv) is aided or abetted by one or more persons ; or</p> <p>(c) in the course of an attempted forcible sexual abuse, the actor:</p> <p>(i) causes serious bodily injury to any person;</p> <p>(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;</p> <p>(iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or</p> <p>(iv) is aided or abetted by one or more persons.</p> <p>UTAH CODE ANN. § 76-5-406 (West 2011). <u>Sexual offenses against the victim without consent of victim--Circumstances</u></p> <p>An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy upon a child, attempted sodomy upon a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is</p>
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<p>Statute Cont' (Utah)</p>	<p>without consent of the victim under any of the following circumstances:</p> <ul style="list-style-type: none"> <li>(1) the victim expresses lack of consent through words or conduct;</li> <li>(2) the actor overcomes the victim through the actual application of physical force or violence;</li> <li>(3) the actor is able to overcome the victim through concealment or by the element of surprise;</li> <li>(4)(a)(i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or</li> <li>(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;</li> <li>(b) as used in this Subsection (4) “to retaliate” includes but is not limited to threats of physical force, kidnaping, or extortion;</li> <li>(5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;</li> <li>(6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;</li> <li>(7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;</li> <li>(8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;</li> <li>(9) the victim is younger than 14 years of age;</li> <li>(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Subsection 76-5-404.1(4)(h);</li> <li>(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or</li> <li>(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested. For purposes of this Subsection (12):</li> <li>(a) “health professional” means an individual who is licensed or who holds himself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental</li> </ul>
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<p>Statute Cont' (Utah)</p>	<p>(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) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):</p> <p>(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and</p> <p>(ii)(A) the actor knows that the individual is a person in custody; or</p> <p>(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.</p> <p>(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>(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.</p> <p>(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:</p> <p>(a) touching the anus, buttocks, or any part of the genitals of a person in custody;</p> <p>(b) touching the breast of a female person in custody;</p> <p>(c) otherwise taking indecent liberties with a person in custody; or</p> <p>(d) causing a person in custody to take indecent liberties with the actor or another person.</p> <p>(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:</p> <p>(a) Section 76-5-401, unlawful sexual activity with a minor;</p> <p>(b) Section 76-5-402, rape;</p> <p>(c) Section 76-5-402.1, rape of a child;</p> <p>(d) Section 76-5-402.2, object rape;</p> <p>(e) Section 76-5-402.3, object rape of a child;</p> <p>(f) Section 76-5-403, forcible sodomy;</p> <p>(g) Section 76-5-403.1, sodomy on a child;</p> <p>(h) Section 76-5-404, forcible sexual abuse;</p> <p>(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or</p> <p>(j) Section 76-5-405, aggravated sexual assault.</p> <p>(7)(a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:</p>
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<p>Statute Cont' (Utah)</p>	<p>(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.</p> <p>(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.</p> <p>(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.</p> <p>(3) Acts referred to in Subsection (2)(a) are:</p> <p>(a) having sexual intercourse with a youth receiving state services;</p> <p>(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or</p> <p>(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services 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 or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.</p> <p>(4)(a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):</p> <p>(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and</p> <p>(ii)(A) the actor knows that the individual is a youth receiving state services; or</p> <p>(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.</p> <p>(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.</p> <p>(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.</p> <p>(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:</p> <p>(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;</p> <p>(b) touching the breast of a female youth receiving state services;</p> <p>(c) otherwise taking indecent liberties with a youth receiving state services; or</p> <p>(d) causing a youth receiving state services to take indecent liberties with the actor or another person.</p> <p>(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:</p>
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<p>Statute Cont' (Utah)</p>	<p>(a) Section 76-5-401, unlawful sexual activity with a minor;  (b) Section 76-5-402, rape;  (c) Section 76-5-402.1, rape of a child;  (d) Section 76-5-402.2, object rape;  (e) Section 76-5-402.3, object rape of a child;  (f) Section 76-5-403, forcible sodomy;  (g) Section 76-5-403.1, sodomy on a child;  (h) Section 76-5-404, forcible sexual abuse;  (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or  (j) Section 76-5-405, aggravated sexual assault.  (7)(a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:  (i) mistakenly believed the youth receiving state services 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 youth receiving state services.  (b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).  (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).</p> <p>UTAH CODE ANN. § 76-5b-3 (West 2011).  <u>Sexual exploitation of a minor--Offenses</u></p> <p>(1) A person is guilty of sexual exploitation of a minor:  (a) when the person:  (i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or  (ii) intentionally distributes or views child pornography; or  (b) if the person is a minor's parent or legal guardian and knowingly consents to or permits that minor to be sexually exploited under Subsection (1)(a).  (2) Sexual exploitation of a minor is a felony of the second degree.  (3) It is a separate offense under this section:  (a) for each minor depicted, and if more than one minor is depicted in the child pornography in violation of this section, the depiction of</p>
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American University, Washington College of Law

Current as of June 2011



# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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Statute Cont' (Utah)	<p>each individual minor in the child pornography is a separate offense; and</p> <p>(b) each time the same minor is depicted in different child pornography.</p> <p>(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.</p> <p>(5) This section may not be construed to impose criminal or civil liability on:</p> <p>(a) any entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:</p> <p>(i) reporting or data preservation duties required under any federal or state law; or</p> <p>(ii) implementing a policy of attempting to prevent the presence of child pornography on any tangible or intangible property, or of detecting and reporting the presence of child pornography on the property; or</p> <p>(b) any law enforcement officer acting within the scope of a criminal investigation.</p>
Age of Consent ♦ (Utah)	18
Definitions (Utah)	<p>UTAH CODE ANN. § 76-5a-103 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in this chapter:</p> <p>(1) “Child pornography” means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:</p> <p>(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;</p> <p>(b) the visual depiction is of a minor engaging in sexually explicit conduct; or</p> <p>(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.</p> <p>(2) “Distribute” means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child pornography with or without consideration.</p> <p>(3) “Identifiable minor”:</p> <p>(a) means a person:</p> <p>(i)(A) who was a minor at the time the visual depiction was created, adapted, or modified; or</p>

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Definitions Cont' (Utah)	<p>(B) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and</p> <p>(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature; and</p> <p>(b) does not require proof of the actual identity of the identifiable minor.</p> <p>(4) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.</p> <p>(5) "Minor" means a person younger than 18 years of age.</p> <p>(6) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.</p> <p>(7) "Produce" means the photographing, filming, taping, directing, producing, creating, designing, or composing of child pornography or the securing or hiring of persons to engage in the production of child pornography.</p> <p>(8) "Sexually explicit conduct" means actual or simulated:</p> <p>(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;</p> <p>(b) masturbation;</p> <p>(c) bestiality;</p> <p>(d) sadistic or masochistic activities;</p> <p>(e) lascivious exhibition of the genitals or pubic area of any person;</p> <p>(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;</p> <p>(g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or</p> <p>(h) the explicit representation of the defecation or urination functions.</p> <p>(9) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.</p>
Defenses (Utah)	<p>UTAH CODE ANN. § 76-5-412 (West 2011).  <u>Custodial sexual relations--Custodial sexual misconduct--Definitions--Penalties--Defenses</u></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> <p>UTAH CODE ANN. § 76-5-413 (West 2011).  <u>Custodial sexual relations or misconduct with youth receiving state services--Definitions--Penalties--Defenses</u></p>

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	<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> <p>UTAH CODE ANN. § 76-5a-3 (West 2011).  <u>Sexual exploitation of a minor--Offenses</u></p> <p>(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.</p>
Penalty (Utah)	<p>UTAH CODE ANN. § 76-5-402 (West 2011).  <u>Rape</u></p> <p>(3) Rape is a felony of the first degree, punishable by a term of imprisonment of:</p> <ul style="list-style-type: none"> <li>(a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;</li> <li>(b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the rape the defendant caused serious bodily injury to another; or</li> <li>(c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.</li> </ul> <p>(4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:</p> <ul style="list-style-type: none"> <li>(a) ten years and which may be for life; or</li> <li>(b) six years and which may be for life.</li> </ul> <p>(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(a) or (c).</p> <p>(6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-402.1 (West 2011).  <u>Rape of a child</u></p> <p>(2) Rape of a child is a first degree felony punishable by a term of imprisonment of:</p> <ul style="list-style-type: none"> <li>(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or</li> </ul>

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<p>Penalty Cont' (Utah)</p>	<p>(b) life without parole, if the trier of fact finds that:            (i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or            (ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.            (3) Imprisonment under this section is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-402.2 (West 2011).  <u>Object rape</u></p> <p>(1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is a first degree felony, punishable by a term of imprisonment of:            (a) except as provided in Subsection (1)(b) or (c), not less than five years and which may be for life;            (b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the object rape the defendant caused serious bodily injury to another; or            (c) life without parole, if the trier of fact finds that at the time of the commission of the object rape, the defendant was previously convicted of a grievous sexual offense.            (2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser term than the term described in Subsection (1)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:            (a) ten years and which may be for life; or            (b) six years and which may be for life.            (3) The provisions of Subsection (2) do not apply when a person is sentenced under Subsection (1)(a) or (c).            (4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-402.3 (West 2011).  <u>Object rape of a child--Penalty</u></p> <p>(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:            (a) except as provided in Subsection (2)(b) not less than 25 years and which may be for life; or            (b) life without parole, if the trier of fact finds that:</p>
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<p>Penalty Cont' (Utah)</p>	<p>(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or (ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense. (3) Imprisonment under this section is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-403 (West 2011). <u>Sodomy--Forcible sodomy</u></p> <p>(3) Sodomy is a class B misdemeanor. (4) Forcible sodomy is a felony of the first degree, punishable by a term of imprisonment of: (a) except as provided in Subsection (4)(b) or (c), not less than five years and which may be for life; (b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to another; or (c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense. (5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser term than the term described in Subsection (4)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than: (a) ten years and which may be for life; or (b) six years and which may be for life. (6) The provisions of Subsection (5) do not apply when a person is sentenced under Subsection (4)(a) or (c). (7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-403.1 (West 2011). <u>Sodomy on a child</u></p> <p>(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of: (a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or (b) life without parole, if the trier of fact finds that: (i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or (ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense. (3) Imprisonment under this section is mandatory in accordance with Section 76-3-406.</p>
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<p>Penalty Cont' (Utah)</p>	<p>UTAH CODE ANN. § 76-5-404 (West 2011). <u>Forcible sexual abuse</u></p> <p>(2) Forcible sexual abuse is:  (a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or  (b) except as provided in Subsection (3), a felony of the first degree, punishable by imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.  (3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:  (a) ten years and which may be for life; or  (b) six years and which may be for life.  (4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-404.1 (West 2011). <u>Sexual abuse of a child--Aggravated sexual abuse of a child</u></p> <p>(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:  (a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;  (b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or  (c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.  (6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:  (a) for purposes of Subsection (5)(b), 15 years and which may be for life; or  (b) for purposes of Subsection (5)(a) or (b):</p>
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<p>Penalty Cont' (Utah)</p>	<p>(i) ten years and which may be for life; or (ii) six years and which may be for life. (7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c). (8) Imprisonment under this section is mandatory in accordance with Section 76-3-406.</p> <p>UTAH CODE ANN. § 76-5-405 (West 2011). <u>Aggravated sexual assault—Penalty</u></p> <p>(2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of: (a) for an aggravated sexual assault described in Subsection (1)(a): (i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and which may be for life; or (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense ; (b) for an aggravated sexual assault described in Subsection (1)(b): (i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than ten years and which may be for life; or (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or (c) for an aggravated sexual assault described in Subsection (1)(c): (i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and which may be for life; or (ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense. (3)(a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than: (i) ten years and which may be for life; or (ii) six years and which may be for life. (b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under Subsection (2) (a)(ii). (4)(a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(b)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life. (b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).</p>
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	<p>(5)(a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.</p> <p>(b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).</p> <p>(6) Imprisonment under this section is mandatory in accordance with Section 76-3-406.</p>
<b>Vermont<sup>68</sup></b>	
Statute (Vermont)	<p>VT. STAT. ANN. tit. 13, § 2602 (West 2011).  <u>Lewd or lascivious conduct with child</u></p> <p>(a)(1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.</p> <p>(2) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.</p> <p>VT. STAT. ANN. tit. 13, § 2605 (West 2011).  <u>Voyeurism</u></p> <p>(a) As used in this section:</p> <p>(1) “Bona fide private investigator or bona fide security guard” means an individual lawfully providing services, whether licensed or unlicensed, pursuant to sections 3151 and 3151a of Title 26.</p> <p>(2) “Female breast” means any portion of the female breast below the top of the areola.</p> <p>(3) “Circumstances in which a person has a reasonable expectation of privacy” means circumstances in which a reasonable person would believe that his or her intimate areas would not be visible to the public, regardless of whether that person is in a public or private area. This definition includes circumstances in which a person knowingly disrobes in front of another, but does not expect nor give consent for the other person to photograph, film, or record his or her intimate areas.</p> <p>(4) “Intimate areas” means the naked or undergarment-clad genitals, pubic area, buttocks, or female breast of a person.</p> <p>(5) “Place where a person has a reasonable expectation of privacy” means:</p>

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<p>Statute Cont' (Vermont)</p>	<p>or sado-masochistic abuse and which, taken as a whole, is harmful to minors.</p> <p>(b) No person may, with actual knowledge that the recipient or viewer is a minor, and with knowledge of the character and content of a motion picture, show or other presentation, including any such motion picture, show or presentation which is communicated, transmitted, or stored electronically, which, in whole or in part, depicts nudity, sexual conduct or sado-masochistic abuse, and which is harmful to minors:</p> <p>(1) exhibit such a motion picture, show or other presentation to a minor; or</p> <p>(2) sell or give away to a minor an admission ticket or pass to premises whereon there is exhibited or to be exhibited such a motion picture, show or other presentation.</p> <p>(c) This section shall only apply to acts occurring outside the presence of the minor.</p> <p>VT. STAT. ANN. tit. 13, § 2803 (West 2011). <u>Distribution of indecent material</u></p> <p>No person may hire, employ or permit a minor to sell, lend, distribute or give away material, the sale, lending, distribution or giving away of which to minors is prohibited by section 2802.</p> <p>VT. STAT. ANN. tit. 13, § 2804 (West 2011). <u>Exhibition of motion pictures</u></p> <p>No person may, with knowledge of the character and content, exhibit a motion picture, show or other presentation, harmful to minors as defined in section 2801(6) of this title, which in whole or part depicts nudity and sexual conduct, as defined in section 2801, such that it may be viewed by minors from public property or private property not under the control of the person exhibiting the motion picture, show or other presentation.</p> <p>VT. STAT. ANN. tit. 13, § 2804a (West 2011). <u>Publicly displaying sex or nudity for advertising purposes</u></p> <p>No person may knowingly, publicly display nudity or sex for advertising purposes. A violation of this section occurs if a person:</p> <p>(1) Displays publicly or causes to be displayed publicly for advertising purposes a picture, photograph, drawing, sculpture or other visual representation or image, including any such representation or image which is communicated, transmitted, or stored electronically, of a person or portion of the human body that depicts nudity, sado-masochistic abuse, sexual conduct or sexual excitement, which is</p>
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<p>Statute Cont' (Vermont)</p>	<p>harmful to minors, or any page, poster or other written or printed matter bearing such representation or a verbal description or narrative account of such items or activities; or (2) Permits any public display described in this section on premises owned, rented or operated by him or her; or (3) For advertising purposes, purchases space in any newspaper, magazine or other circular, printed in this state, in order to insert any article or advertisement which contains material harmful to minors.</p> <p>VT. STAT. ANN. tit. 13, § 2804b (West 2011). <u>Displaying obscene materials to minors</u></p> <p>A person commits the crime of displaying obscene materials to minors if, being the owner, operator or manager of a business or acting in a managerial capacity, he knowingly or recklessly permits a minor who is not accompanied by his parent or lawful guardian to enter or remain on the premises, if in that part of the premises where the minor is so permitted to be, there is visibly displayed: (1) Any picture, photograph, drawing, sculpture or other visual representation or image of a person or portion of the human body that depicts nudity, sexual conduct, sexual excitement or sadomasochistic abuse which is harmful to minors; or (2) Any book, magazine, paperback, pamphlet or other written or printed matter, however reproduced, that pictorially reveals a person or portion of the human body, depicts nudity, sexual conduct, sexual excitement, or sado-masochistic abuse, which is harmful to minors.</p> <p>VT. STAT. ANN. tit. 13, § 2822 (West 2011). <u>Use of a child in a sexual performance</u></p> <p>(a) No person shall, with knowledge of the character and content, promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.</p> <p>VT. STAT. ANN. tit. 13, § 2823 (West 2011). <u>Consenting to a sexual performance</u></p> <p>No person who is the parent, legal guardian, or custodian of a child may, with knowledge of the character and content, consent to the participation of that child in a sexual performance or a performance including a lewd exhibition of the genitals by that child.</p> <p>VT. STAT. ANN. tit. 13, § 2824 (West 2011).</p>
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<p>Statute Cont' (Vermont)</p>	<p><u>Promoting a recording of sexual conduct</u></p> <p>(a) No person may, with knowledge of the character and content, promote any photograph, film or visual recording of sexual conduct by a child, or of a lewd exhibition of a child's genitals or anus. This subsection does not apply to paintings, drawings, or to non-visual or written descriptions of sexual conduct.</p> <p>VT. STAT. ANN. tit. 13, § 2827 (West 2011).</p> <p><u>Possession of child pornography</u></p> <p>(a) No person shall, with knowledge of the character and content, possess any photograph, film or visual depiction, including any depiction which is stored electronically, of sexual conduct by a child or of a clearly lewd exhibition of a child's genitals or anus.</p> <p>(b) This section does not apply:</p> <p>(1) if the depiction was possessed for a bona fide medical, psychological, social work, legislative, judicial or law enforcement purpose, by a physician, psychologist, social worker, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter;</p> <p>(2) if the person was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum or library;</p> <p>(3) to paintings, drawings, or nonvisual or written descriptions of sexual conduct.</p> <p>VT. STAT. ANN. tit. 13, § 2828 (West 2011).</p> <p><u>Luring a child</u></p> <p>(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.</p> <p>(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.</p> <p>(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.</p>
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<p>Statute Cont' (Vermont)</p>	<p>VT. STAT. ANN. tit. 13, § 3252 (West 2011). <u>Sexual assault</u></p> <p>(a) No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act:</p> <ol style="list-style-type: none"> <li>(1) without the consent of the other person; or</li> <li>(2) by threatening or coercing the other person; or</li> <li>(3) by placing the other person in fear that any person will suffer imminent bodily injury.</li> </ol> <p>(b) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person.</p> <p>(c) No person shall engage in a sexual act with a child who is under the age of 16, except:</p> <ol style="list-style-type: none"> <li>(1) where the persons are married to each other and the sexual act is consensual; or</li> <li>(2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.</li> </ol> <p>(d) No person shall engage in a sexual act with a child who is under the age of 18 and is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild.</p> <p>(e) No person shall engage in a sexual act with a child under the age of 16 if:</p> <ol style="list-style-type: none"> <li>(1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or</li> <li>(2) the actor is at least 18 years of age, resides in the victim's household, and serves in a parental role with respect to the victim.</li> </ol> <p>VT. STAT. ANN. tit. 13, § 3253 (West 2011). <u>Aggravated sexual assault</u></p> <p>(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:</p> <ol style="list-style-type: none"> <li>(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.</li> <li>(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.</li> <li>(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.</li> <li>(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed in this state.</li> </ol>
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<p>Statute Cont' (Vermont)</p>	<p>(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.</p> <p>(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.</p> <p>(7) At the time of the sexual assault, the actor applies deadly force to the victim.</p> <p>(8) The victim is under the age of 13 and the actor is at least 18 years of age.</p> <p>(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.</p> <p>VT. STAT. ANN. tit. 13, § 3253a (West 2011). <u>Aggravated sexual assault of a child</u></p> <p>(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in violation of section 3252 of this title and at least one of the following circumstances exists:</p> <p>(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.</p> <p>(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.</p> <p>(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.</p> <p>(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.</p> <p>(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.</p> <p>(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.</p> <p>(7) At the time of the sexual assault, the actor applies deadly force to the victim.</p> <p>(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.</p>
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<p>Statute Cont' (Vermont)</p>	<p>VT. STAT. ANN. tit. 13, § 3253 (West 2011). <u>Aggravated sexual assault</u></p> <p>(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:</p> <ol style="list-style-type: none"> <li>(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.</li> <li>(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.</li> <li>(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.</li> <li>(4) The actor has previously been convicted in this state of sexual assault under subdivision 3252(a)(1) or (2) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subdivision 3252(a)(1) or (2) of this title or aggravated sexual assault if committed in this state.</li> <li>(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.</li> <li>(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.</li> <li>(7) At the time of the sexual assault, the actor applies deadly force to the victim.</li> <li>(8) The victim is under the age of 10 and the actor is at least 18 years of age.</li> <li>(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.</li> </ol> <p>VT. STAT. ANN. tit. 13, § 3257 (West 2011). <u>Sexual exploitation of an inmate</u></p> <p>(a) No correctional employee, contractor, or other person providing services to offenders on behalf of the department of corrections or pursuant to a court order or in accordance with a condition of parole, probation, supervised community sentence, or furlough shall engage in a sexual act with a person who the employee, contractor, or other person providing services knows:</p> <ol style="list-style-type: none"> <li>(1) is confined to a correctional facility; or</li> <li>(2) is being supervised by the department of corrections while on parole, probation, supervised community sentence, or furlough, where the employee, contractor, or other service provider is currently engaged in a direct supervisory relationship with the person being supervised. For purposes of this subdivision, a person is engaged in a direct supervisory relationship with a supervisee if the supervisee is assigned to the caseload of that person.</li> </ol>
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Definitions (Vermont)	VT. STAT. ANN. tit. 13, § 2801 (West 2011). <u>Definitions</u>
Definitions Cont' (Vermont)	<p>As used in this act:</p> <p>(1) “Minor” means any person less than eighteen years old.</p> <p>(2) “Nudity” means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernably turgid state.</p> <p>(3) “Sexual conduct” means acts of masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.</p> <p>(4) “Sexual excitement” means the condition of human male or female genitals when in a state of sexual stimulation or arousal.</p> <p>(5) “Sado-masochistic abuse” means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.</p> <p>(6) “Harmful to minors” means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:</p> <p>(A) Predominantly appeals to the prurient, shameful or morbid interest of minors; and</p> <p>(B) Is patently offensive to prevailing standards in the adult community in the state of Vermont as a whole with respect to what is suitable material for minors; and</p> <p>(C) Is taken as a whole, lacks serious literary, artistic, political, or scientific value, for minors.</p> <p>(7) “Advertising purposes” means purposes of propagandizing in connection with the commercial sale of a product or type of product, the commercial offering of a service, or the commercial exhibition of an entertainment.</p> <p>(8) “Displays publicly” means the exposing, placing, posting, exhibiting, or in any fashion displaying in any location, whether public or private, an item in such a manner that it may be readily seen and its content or character distinguished by normal unaided vision viewing it from a street, highway, sidewalk, or lobby of a building which has unrestricted access by the public.</p> <p>VT. STAT. ANN. tit. 13, § 2821 (West 2011). <u>Definitions</u></p>

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<p>Definitions Cont' (Vermont)</p>	<p>As used in this chapter:</p> <p>(1) "Child" means any person under the age of 16 years.</p> <p>(2) "Sexual conduct" means any of the following:</p> <p>(A) any conduct involving contact between the penis and the vulva, the penis and the penis, the penis and the anus, the mouth and the penis, the mouth and the anus, the vulva and the vulva or the mouth and the vulva;</p> <p>(B) any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;</p> <p>(C) any intentional touching, not through the clothing, of the genitals, anus or breasts of another with the intent of arousing, appealing to, or gratifying the lust, passions or sexual desire of any person;</p> <p>(D) masturbation;</p> <p>(E) bestiality; or</p> <p>(F) sadomasochistic abuse for sexual purposes.</p> <p>(3) "Performance" means:</p> <p>(A) an event which is photographed, filmed or visually recorded; or</p> <p>(B) a play, dance or other visual presentation or exhibition before an audience.</p> <p>(4) "Sexual performance" means any performance or any part of a performance, which includes sexual conduct by a child.</p> <p>(5) "Promote" means to procure, issue, manufacture, publish, sell, give, provide, lend, mail, deliver, distribute, disseminate, circulate, present, exhibit, advertise, or offer to do the same, by any means, including electronic transmission.</p> <p>VT. STAT. ANN. tit. 13, § 3251 (West 2011).</p> <p><u>Definitions</u></p> <p>As used in this chapter:</p> <p>(1) A "sexual act" means conduct between persons consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any intrusion, however slight, by any part of a person's body or any object into the genital or anal opening of another.</p> <p>(2) "Sexual conduct" means any conduct or behavior relating to sexual activities of the complaining witness, including but not limited to prior experience of sexual acts, use of contraceptives, living arrangement and mode of living.</p> <p>(3) "Consent" means words or actions by a person indicating a voluntary agreement to engage in a sexual act.</p> <p>(4) "Serious bodily injury" shall have the same meaning as in subdivision 1021(2) of this title;</p>
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Definitions Cont' (Vermont)	<p>(5) “Bodily injury” means physical pain, illness or any impairment of physical condition.</p> <p>(6) “Actor” means a person charged with sexual assault or aggravated sexual assault.</p> <p>(7) “Deadly force” means physical force which a person uses with the intent of causing, or which the person knows or should have known would create a substantial risk of causing, death or serious bodily injury.</p> <p>(8) “Deadly weapon” means</p> <p>(A) any firearm; or</p> <p>(B) any weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used, is known to be capable of producing death or serious bodily injury.</p> <p>VT. STAT. ANN. tit. 13, §1021(2)</p> <p><u>Definitions</u></p> <p>For the purpose of this chapter:</p> <p>(2) “Serious bodily injury” means:</p> <p>(A) bodily injury which creates any of the following:</p> <p>(i) a substantial risk of death;</p> <p>(ii) a substantial loss or impairment of the function of any bodily member or organ;</p> <p>(iii) a substantial impairment of health; or</p> <p>(iv) substantial disfigurement; or</p> <p>(B) strangulation by intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person.</p>
Defenses (Vermont)	<p>VT. STAT. ANN. tit. 13, § 2605 (West 2011).</p> <p><u>Voyeurism</u></p> <p>(i) It shall be an affirmative defense to a violation of subsection (b) of this section that the defendant was a bona fide private investigator or bona fide security guard conducting surveillance in the ordinary course of business, and the violation was unintentional and incidental to otherwise legal surveillance. However, an unintentional and incidental violation of subsection (b) of this section shall not be a defense to a violation of subsection (c).</p> <p>VT. STAT. ANN. tit. 13, § 2805 (West 2011).</p>

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<p>Defenses Cont' (Vermont)</p>	<p><u>Presumption and defense</u></p> <p>(a) A person who engages in conduct prohibited by sections 2802, 2802a, 2803, 2804, 2804a, or 2804b is presumed to do so with knowledge of the character and content of the material, or the motion picture, show or presentation exhibited or to be exhibited.</p> <p>(b) In any prosecution arising under section 2802, 2802a, 2803 or 2804, it is an affirmative defense:</p> <p>(1) That the minor as to whom the offense is alleged to have been committed exhibited to the accused a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the minor was 18 years of age or older; or</p> <p>(2) That the defendant was in a parental or guardianship relationship with the minor; or that the minor was accompanied by a parent or legal guardian; or</p> <p>(3) That the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization;</p> <p>(c) In any prosecution arising out of sections 2804a and 2804b, it shall be an affirmative defense for the defendant to prove:</p> <p>(1) That the public display, even though in connection with a commercial venture, was primarily for literary, political, scientific or artistic purposes; or</p> <p>(2) That the public display was exhibited by a bona fide art, antique or similar gallery or exhibition, and visible in a normal display setting; or</p> <p>(3) That the defendant was a bona fide school, museum, or public library, or was a person acting in the course of employment as an employee or official of such organization or of a retail outlet affiliated with and serving the educational purpose of such organization.</p> <p>VT. STAT. ANN. tit. 13, § 2822 (West 2011).</p> <p><u>Use of a child in a sexual performance</u></p> <p>(b) In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained the age of 16; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.</p> <p>VT. STAT. ANN. tit. 13, § 2824 (West 2011).</p> <p><u>Promoting a recording of sexual conduct</u></p> <p>(b) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses:</p> <p>(1) that the recording was promoted for a bona fide medical, psychological, social work, legislative, judicial or law enforcement</p>
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<p>Defenses Cont' (Vermont)</p>	<p>purpose, by or to a physician, psychologist, social worker, legislator, judge, prosecutor, law enforcement officer, or other person having such a bona fide interest in the subject matter.</p> <p>(2) that the defendant was a bona fide school, museum or public library, or was a person acting in the course of employment as an employee or official of such an organization or of a retail outlet affiliated with and serving the educational or intended purpose of that school, museum or library.</p> <p>(3) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the recording was made.</p> <p>VT. STAT. ANN. tit. 13, § 2827 (West 2011). <u>Possession of child pornography</u></p> <p>(c) In any prosecution arising under this section, the defendant may raise any of the following affirmative defenses, which shall be proven by a preponderance of the evidence:</p> <p>(1) that the defendant in good faith had a reasonable basis to conclude that the child in fact had attained the age of 16 when the depiction was made;</p> <p>(2) that the defendant in good faith took reasonable steps, whether successful or not, to destroy or eliminate the depiction.</p>
<p>Penalty (Vermont)</p>	<p>VT. STAT. ANN. tit. 13, § 2825 (West 2011). <u>Penalties</u></p> <p>(a) A person who violates sections 2822, 2823, or 2824 of this title shall be imprisoned not more than 10 years or fined not more than \$20,000.00, or both.</p> <p>(b) Upon conviction for a violation of sections 2822, 2823, or 2824 of this title of a person who has earlier been convicted under any of those sections, the person shall be imprisoned not less than one year nor more than 15 years or fined not more than \$50,000.00, or both.</p> <p>(c) A person who violates section 2827 of this title by possessing a photograph, film or visual depiction, including a depiction stored electronically, which constitutes:</p> <p>(1) a clearly lewd exhibition of a child's genitals or anus, other than a depiction of sexual conduct by a child, shall be imprisoned not more than two years or fined not more than \$5,000.00, or both;</p> <p>(2) sexual conduct by a child, shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.</p> <p>(d) A person who violates section 2827 of this title after being convicted of a previous violation of the same section shall be imprisoned not more than 10 years or fined not more than \$50,000.00, or both.</p>

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<p>Penalty Cont' (Vermont)</p>	<p>(e) A person who violates section 2828 of this title shall be imprisoned not more than five years or fined not more than \$10,000.00, or both.</p> <p>VT. STAT. ANN. tit. 13, § 2602 (West 2011). <u>Lewd or lascivious conduct with child</u></p> <p>(b) A person who violates subsection (a) of this section shall be:</p> <p>(1) For a first offense, imprisoned not less than two years and not more than 15 years, and, in addition, may be fined not more than \$5,000.00, or both.</p> <p>(2) For a second offense, imprisoned not less than five years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both.</p> <p>(3) For a third or subsequent offense, imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$25,000.00, or both.</p> <p>(c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subdivision (b)(2) of this section shall include at least a five-year term of imprisonment and a sentence ordered pursuant to subdivision (b)(3) of this section shall include at least a ten-year term of imprisonment. The five-year and ten-year terms of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.</p> <p>(2) The court may depart downwardly from the five-year and ten-year terms of imprisonment required by subdivisions (b)(2) and (3) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety.</p> <p>(d) A person convicted of violating subdivision (b)(2) or (3) of this section shall be sentenced under section 3271 of this title.</p> <p>(e) Any prior conviction for sexual assault or aggravated sexual assault shall be considered a prior offense for purposes of sentencing enhancement. This section shall not apply to a person who was convicted of sexual assault committed when the person was younger than 19 years of age and which involved consensual sex with a child at least 15 years of age.</p> <p>VT. STAT. ANN. tit. 13, § 2605 (West 2011). <u>Voyeurism</u></p> <p>(j) For a first offense, a person who violates subsection (b), (d), or (e) of this section shall be imprisoned not more than two years or fined not more than \$1,000.00, or both. For a second or subsequent offense, a person who violates subsection (b), (d) or (e) of this</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Penalty Cont' (Vermont)</p>	<p>section shall be imprisoned not more than three years or fined not more than \$5,000.00, or both. A person who violates subsection (c) of this section shall be imprisoned not more than five years or fined not more than \$5,000.00, or both.</p> <p>VT. STAT. ANN. tit. 13, § 3252 (West 2011). <u>Sexual assault</u></p> <p>(f)(1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$25,000.00. (2) A person who violates subsection (c) of this section shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$10,000.00. (g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title.</p> <p>VT. STAT. ANN. tit. 13, § 3253 (West 2011). <u>Aggravated sexual assault</u></p> <p>(b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$50,000.00. (c)(1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment. (2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years. (d) A person convicted of violating this section shall be sentenced under section 3271 of this title.</p> <p>VT. STAT. ANN. tit. 13, § 3253a (West 2011). <u>Aggravated sexual assault of a child</u></p> <p>(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this</p>
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	<p>subsection shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.</p> <p>VT. STAT. ANN. tit. 13, § 3257 (West 2011).  <u>Sexual exploitation of an inmate</u></p> <p>(b) A person who violates subsection (a) of this section shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.</p>
<b>Virginia</b>	
Statute (Virginia)	<p>VA. CODE ANN. § 18.2-61 (West 2011).  <u>Rape</u></p> <p>A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.</p> <p>VA. CODE ANN. § 18.2-63 (West 2011).  <u>Carnal knowledge of child between thirteen and fifteen years of age</u></p> <p>A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.          B. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age who consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.</p>

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<p>Statute Cont' (Virginia)</p>	<p>In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.</p> <p>C. For the purposes of this section, (i) a child under the age of thirteen years shall not be considered a consenting child and (ii) “carnal knowledge” includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.</p> <p>VA. CODE ANN. § 18.2-64.1 (West 2011). <u>Carnal knowledge of certain minors</u></p> <p>If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Juvenile Justice, carnally knows, without the use of force, any minor fifteen years of age or older, when such minor is confined or detained in jail, is detained in any facility mentioned in § 16.1-249, or has been committed to the custody of the Department of Juvenile Justice pursuant to § 16.1-278.8, knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Juvenile Justice, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a Class 6 felony.</p> <p>For the purposes of this section, “carnal knowledge” includes the acts of sexual intercourse, cunnilingus, fellatio, anallings, anal intercourse, and animate and inanimate object sexual penetration.</p> <p>VA. CODE ANN. § 18.2-64.2 (West 2011). <u>Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty</u></p> <p>An accused shall be guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he or she is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency or a pretrial services agency; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial defendant 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, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (Virginia)</p>	<p>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 defendant or posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program or agency. Such offense is a Class 6 felony.</p> <p>For the purposes of this section, “carnal knowledge” includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.</p> <p>VA. CODE ANN. § 18.2-67.1 (West 2011). <u>Forcible sodomy</u></p> <p>A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and</p> <ol style="list-style-type: none"> <li>1. The complaining witness is less than 13 years of age, or</li> <li>2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.</li> </ol> <p>VA. CODE ANN. § 18.2-67.2 (West 2011). <u>Object sexual penetration; penalty</u></p> <p>A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and</p> <ol style="list-style-type: none"> <li>1. The complaining witness is less than 13 years of age, or</li> <li>2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.</li> </ol> <p>VA. CODE ANN. § 18.2-67.3 (West 2011). <u>Aggravated sexual battery; penalty</u></p>
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<p>Statute Cont' (Virginia)</p>	<p>A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and</p> <ol style="list-style-type: none"> <li>1. The complaining witness is less than 13 years of age, or</li> <li>2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or</li> <li>3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or</li> <li>4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and <ol style="list-style-type: none"> <li>a. The complaining witness is at least 13 but less than 15 years of age, or</li> <li>b. The accused causes serious bodily or mental injury to the complaining witness, or</li> <li>c. The accused uses or threatens to use a dangerous weapon.</li> </ol> </li> </ol> <p>VA. CODE ANN. § 18.2-67.4 (West 2011). <u>Sexual battery</u></p> <p>A. An accused is guilty of sexual battery if he sexually abuses, as defined in § 18.2-67.10, (i) the complaining witness against the will of the complaining witness, by force, threat, intimidation, or ruse, (ii) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail, and the accused is an employee or contractual employee of, or a volunteer with, the state or local correctional facility or regional jail; is in a position of authority over the inmate; and knows that the inmate is under the jurisdiction of the state or local correctional facility or regional jail, or (iii) a probationer, parolee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services or agency and the accused is an employee or contractual employee of, or a volunteer with, the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail; is in a position of authority over an offender; and knows that the offender is under the jurisdiction of the Department of Corrections, a local community-based probation services agency, a pretrial services agency or a local or regional jail.</p> <p>B. Sexual battery is a Class 1 misdemeanor.</p> <p>VA. CODE ANN. § 18.2-67.4:2 (West 2011). <u>Sexual abuse of a child under 15 years of age; penalty</u></p> <p>Any adult who, with lascivious intent, commits an act of sexual abuse, as defined in § 18.2-67.10, with any child 13 years of age or</p>
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<p>Statute Cont' (Virginia)</p>	<p>older but under 15 years of age is guilty of a Class 1 misdemeanor.</p> <p>VA. CODE ANN. § 18.2-67.5 (West 2011). <u>Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery</u></p> <p>A. An attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration shall be punishable as a Class 4 felony.</p> <p>B. An attempt to commit aggravated sexual battery shall be a felony punishable as a Class 6 felony.</p> <p>C. An attempt to commit sexual battery is a Class 1 misdemeanor.</p> <p>VA. CODE ANN. § 18.2-370 (West 2011). <u>Taking indecent liberties with children; penalties</u></p> <p>A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:</p> <ol style="list-style-type: none"> <li>(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or</li> <li>(2) Repealed.</li> <li>(3) Propose that any such child feel or fondle the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or</li> <li>(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or</li> <li>(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.</li> </ol> <p>B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 5 felony.</p> <p>C. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.</p>
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<p>Statute Cont' (Virginia)</p>	<p>D. Any parent, step-parent, grandparent or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild or step-grandchild less than 15 years of age is guilty of a Class 4 felony.</p> <p>VA. CODE ANN. § 18.2-370.01 (West 2011). <u>Indecent liberties by children; penalty</u></p> <p>Any child over the age of thirteen years but under the age of eighteen who, with lascivious intent, knowingly and intentionally exposes his or her sexual or genital parts to any other child under the age of fourteen years who, measured by actual dates of birth, is five or more years the accused's junior, or proposes that any such child expose his or her sexual or genital parts to such person, shall be guilty of a Class 1 misdemeanor.</p> <p>VA. CODE ANN. § 18.2-370.1 (West 2011). <u>Taking indecent liberties with child by person in custodial or supervisory relationship; penalties</u></p> <p>A. Any person 18 years of age or older who, except as provided in § 18.2-370, maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in § 18.2-67.10 (6), shall be guilty of a Class 6 felony.</p> <p>B. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.</p> <p>VA. CODE ANN. § 18.2-370.6 (West 2011). <u>Penetration of mouth of child with lascivious intent; penalty</u></p>
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## NIC/WCL Project on Addressing Prison Rape

	Any person 18 years of age or older who, with lascivious intent, kisses a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of such child with his tongue is guilty of a Class 1 misdemeanor.
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Definitions (Virginia) Definitions Cont' (Virginia)	<p>VA. CODE ANN. § 18.2-67.10 (West 2011).  <u>General definitions</u></p> <p>As used in this article:</p> <ol style="list-style-type: none"> <li>1. "Complaining witness" means the person alleged to have been subjected to rape, forcible sodomy, inanimate or animate object sexual penetration, marital sexual assault, aggravated sexual battery, or sexual battery.</li> <li>2. "Intimate parts" means the genitalia, anus, groin, breast, or buttocks of any person.</li> <li>3. "Mental incapacity" means that condition of the complaining witness existing at the time of an offense under this article which prevents the complaining witness from understanding the nature or consequences of the sexual act involved in such offense and about which the accused knew or should have known.</li> <li>4. "Physical helplessness" means unconsciousness or any other condition existing at the time of an offense under this article which otherwise rendered the complaining witness physically unable to communicate an unwillingness to act and about which the accused knew or should have known.</li> <li>5. The complaining witness's "prior sexual conduct" means any sexual conduct on the part of the complaining witness which took place before the conclusion of the trial, excluding the conduct involved in the offense alleged under this article.</li> <li>6. "Sexual abuse" means an act committed with the intent to sexually molest, arouse, or gratify any person, where: <ol style="list-style-type: none"> <li>a. The accused intentionally touches the complaining witness's intimate parts or material directly covering such intimate parts;</li> <li>b. The accused forces the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts;</li> <li>c. If the complaining witness is under the age of 13, the accused causes or assists the complaining witness to touch the accused's, the witness's own, or another person's intimate parts or material directly covering such intimate parts; or</li> <li>d. The accused forces another person to touch the complaining witness's intimate parts or material directly covering such intimate parts.</li> </ol> </li> </ol>
Defenses	None.

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(Virginia)	
Penalty (Virginia)	VA. CODE ANN. § 18.2-61 (West 2011). <u>Rape</u>
Penalty Cont' (Virginia)	<p>B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; the penalty for a violation of subdivision A (iii), where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any violation of subdivision A (iii), where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.</p> <p>There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.</p> <p>C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.</p> <p>VA. CODE ANN. § 18.2-67.1 (West 2011). <u>Forcible sodomy</u></p>

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<p>Penalty Cont' (Virginia)</p>	<p>B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years. The penalty for a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.</p> <p>In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.</p> <p>C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.</p> <p>VA. CODE ANN. § 18.2-67.2 (West 2011). <u>Object sexual penetration; penalty</u></p> <p>B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years. The penalty for a violation of subdivision A 1 where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or 18.2-48, (ii) § 18.2-89, 18.2-90 or 18.2-91, or (iii) § 18.2-51.2, shall include a mandatory minimum term of confinement of 25 years. If the term of confinement imposed for any violation of subdivision A 1, where the offender</p>
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<p>Penalty Cont' (Virginia)</p>	<p>is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.</p> <p>In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.</p> <p>C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.</p> <p>VA. CODE ANN. § 18.2-67.3 (West 2011). <u>Aggravated sexual battery; penalty</u></p> <p>B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$100,000.</p> <p>VA. CODE ANN. § 18.2-10 (West 2011). <u>Punishment for conviction of felony; penalty</u></p> <p>The authorized punishments for conviction of a felony are:</p> <p>(a) For Class 1 felonies, death, if the person so convicted was 18 years of age or older at the time of the offense and is not determined to be mentally retarded pursuant to § 19.2-264.3:1.1, or imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000. If the person was under 18 years of age at the time of the offense or is determined to be mentally retarded pursuant to § 19.2-264.3:1.1, the punishment shall be imprisonment for life and, subject to subdivision (g), a fine of not more than \$100,000.</p>
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<p>Penalty Cont' (Virginia)</p>	<p>(b) For Class 2 felonies, imprisonment for life or for any term not less than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.</p> <p>(c) For Class 3 felonies, a term of imprisonment of not less than five years nor more than 20 years and, subject to subdivision (g), a fine of not more than \$100,000.</p> <p>(d) For Class 4 felonies, a term of imprisonment of not less than two years nor more than 10 years and, subject to subdivision (g), a fine of not more than \$100,000.</p> <p>(e) For Class 5 felonies, a term of imprisonment of not less than one year nor more than 10 years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.</p> <p>(f) For Class 6 felonies, a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.</p> <p>(g) Except as specifically authorized in subdivision (e) or (f), or in Class 1 felonies for which a sentence of death is imposed, the court shall impose either a sentence of imprisonment together with a fine, or imprisonment only. However, if the defendant is not a natural person, the court shall impose only a fine.</p> <p>For any felony offense committed (i) on or after January 1, 1995, the court may, and (ii) on or after July 1, 2000, shall, except in cases in which the court orders a suspended term of confinement of at least six months, impose an additional term of not less than six months nor more than three years, which shall be suspended conditioned upon successful completion of a period of post-release supervision pursuant to § 19.2-295.2 and compliance with such other terms as the sentencing court may require. However, such additional term may only be imposed when the sentence includes an active term of incarceration in a correctional facility.</p> <p>For a felony offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in that section in addition to any other penalty provided by law.</p> <p>VA. CODE ANN. § 18.2-11 (West 2011).<sup>70</sup></p> <p><u>Punishment for conviction of misdemeanor</u></p> <p>The authorized punishments for conviction of a misdemeanor are:</p> <p>(a) For Class 1 misdemeanors, confinement in jail for not more than twelve months and a fine of not more than \$2,500, either or both.</p> <p>(b) For Class 2 misdemeanors, confinement in jail for not more than six months and a fine of not more than \$1,000, either or both.</p> <p>(c) For Class 3 misdemeanors, a fine of not more than \$500.</p> <p>(d) For Class 4 misdemeanors, a fine of not more than \$250.</p> <p>For a misdemeanor offense prohibiting proximity to children as described in subsection A of § 18.2-370.2, the sentencing court is authorized to impose the punishment set forth in subsection B of that section in addition to any other penalty provided by law.</p>
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	<p>VA. CODE ANN. § 18.2-12 (West 2011).  <u>Same; where no punishment or maximum punishment prescribed</u></p> <p>A misdemeanor for which no punishment or no maximum punishment is prescribed by statute shall be punishable as a Class 1 misdemeanor.</p>
<b>Virgin Islands</b>	
<p>Statute  <i>(Virgin Islands)</i></p>	<p>14 V.I.C. § 488 (West 2011).  <u>Visual medium depicting sexually explicit conduct, prohibitions; penalties</u></p> <p>(a)(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor or assist any other person to employ, use, persuade, induce, entice, or coerce any minor to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.</p> <p>(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.</p> <p>(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.</p> <p>(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any another person to engage in sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.</p> <p>(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to</p>

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<p>Statute Cont' (<i>Virgin Islands</i>)</p>	<p>sell or distribute any visual medium that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct. (6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any material or information whether it be printed, verbal, audio or digital which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased. (7) It is unlawful for any person knowingly to bring or cause to be brought into the Virgin Islands any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct. (8) It is unlawful for any person knowingly to possess or control any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.</p> <p>14 V.I.C. § 490 (West 2011). <u>Obscene Internet contact with a minor</u></p> <p>(a) It is unlawful for any person intentionally or willfully to use a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice a minor or another person believed by such person to be a minor, to commit any illegal act described in sections 488, 489 and 490 of this chapter or to engage in any conduct that by its nature is an unlawful sexual offense against a minor. (b) A person commits the offense of obscene Internet contact with a minor if the person has contact with someone the person knows to be a minor or with someone the person believes to be a minor via a computer on-line service or Internet service, including a local bulletin board service, Internet chat room, e-mail, or on-line messaging service, and the contact involves any matter containing explicit verbal descriptions or narrative accounts of sexually explicit nudity, sexual conduct, sexual excitement, or sadomasochistic abuse that is intended to arouse or satisfy the sexual desire of either the minor or the person, except that no conviction may be had for a violation of this subsection on the unsupported testimony of a minor. (c)(1) It is unlawful for any owner or operator of a computer on-line service, Internet service, or local bulletin board service intentionally or willfully to permit a subscriber to use the service to commit a violation of this section, knowing that the person intended to use the service to violate this section. No owner or operator of a public computer on-line service, internet service, or local bulletin board service may be held liable on account of any action taken in good faith in providing the aforementioned services. (2) Any person who violates paragraph (1) of this subsection is guilty of a misdemeanor. (3) The sole fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this chapter does not constitute a defense to prosecution under this section. (4) A person is subject to prosecution in the Virgin Islands pursuant to the Revised Organic Act of the Virgin Islands, section 21(b) relating to jurisdiction over crimes and persons charged with commission of crimes generally, for any conduct made unlawful by this</p>
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<p>Statute Cont' (<i>Virgin Islands</i>)</p>	<p>section which the person engages in while either within or outside of the Virgin Islands if, by such conduct, the person commits a violation of this section which involves a minor who resides in the Virgin Islands or another person believed by such person to be a minor residing in the Virgin Islands.</p> <p>14 V.I.C. § 489 (West 2011). <u>Definitions: computer pornography</u></p> <p>(b)(1) A person commits the offense of computer pornography if the person intentionally or willfully:</p> <p>(A) Compiles, enters into, or transmits by means of computer;</p> <p>(B) Makes, prints, publishes, or reproduces by other computerized means;</p> <p>(C) Causes or allows to be entered into or transmitted by means of computer; or</p> <p>(D) Buys, sells, receives, exchanges, or disseminates any notice, statement, or advertisement, or any minor's name, telephone number, place of residence, physical characteristics, or other descriptive or identifying information for the purpose of offering or soliciting sexual conduct of or with a minor or the visual depiction of such conduct.</p> <p>14 V.I.C § 1700 (West 2011). <u>Aggravated rape in the first degree</u></p> <p>(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person not the perpetrator's spouse:</p> <p>(1) Who is under the age of thirteen, or...</p> <p>(2) who is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act; or</p> <p>(b) Whoever causes personal injury to a victim as the result of an act of rape as set forth in section 1701 of this title; or</p> <p>(c) Whoever uses a deadly weapon during the commission of an act of rape as set forth in section 1701- is guilty of aggravated rape in the first degree. . . .</p> <p>14 V.I.C. § 1700a (West 2011). <u>Aggravated rape in the second degree</u></p> <p>(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person who is under eighteen years but thirteen years or older and not the perpetrator's spouse, or by force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish</p>
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<p>Statute Cont' (<i>Virgin Islands</i>)</p>	<p>the sexual act, is guilty of aggravated rape in the second degree and shall be imprisoned for life or for any term in years, but not less than 10 years. 'Position of authority' shall include, but not be exclusive to the following: an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, baby sitter, or substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor..</p> <p>14 V.I.C. § 1701 (West 2011). <u>Rape in the first degree</u></p> <p>Whoever perpetrates an act of sexual intercourse or sodomy with a person-</p> <p>(1) when through idiocy, imbecility or any unsoundness of mind, either temporary or permanent, the person is incapable of giving consent, or, by reason of mental or physical weakness or immaturity or any bodily ailment, the person does not offer resistance;</p> <p>(2) when the person's resistance is forcibly overcome;</p> <p>(3) when the person's resistance is prevented by fear of immediate and great bodily harm which the person has reasonable cause to believe will be inflicted upon the person;</p> <p>(4) when the person's resistance is prevented by stupor or weakness of mind produced by an intoxicating, narcotic or anaesthetic agent, or when the person is known by the defendant to be in such state of stupor or weakness of mind from any cause; or</p> <p>(5) when the person is, at the time, unconscious of the nature of the act and this is known to the defendant-</p> <p>is guilty of rape in the first degree</p> <p>14 V.I.C. § 1702 (West 2011). <u>Rape in the second degree</u></p> <p>(a) Any person over 18 years of age who perpetrates under circumstances not amounting to rape in the first degree, an act of sexual intercourse or sodomy with a person not the perpetrator's spouse who is at least 16 years but less than 18 years of age, and the perpetrator is 5 years or older than the victim, is guilty of rape in the second degree and shall be imprisoned not more than 10 years.</p> <p>14 V.I.C. § 1703 (West 2011). <u>Rape in the third degree</u></p> <p>Any person under 18 years of age but over 16 years of age who perpetrates an act of sexual intercourse or sodomy with a person not the perpetrator's spouse who is under 16 years of age but over 13 years of age, under circumstances not amounting to rape in the first</p>
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<p>Statute Cont' (<i>Virgin Islands</i>)</p>	<p>degree, is guilty of rape in the third degree and shall be subject to the jurisdiction of the Family Division of the Superior Court pursuant to Title 4, Chapter 11, Virgin Islands Code. In lieu of a term of detention, the court, in its discretion, may recommend appropriate treatment, counseling or family planning.</p> <p>14 V.I.C. § 1704 (West 2011). <u>Penetration necessary to constitute rape</u></p> <p>Any sexual penetration, however slight, is sufficient to complete the crime.</p> <p>14 V.I.C. § 1708 (West 2011). <u>Unlawful sexual contact in the first degree</u></p> <p>A person who engages in sexual contact with a person not the perpetrator's spouse-</p> <ul style="list-style-type: none"> <li>(1) when force or coercion is used to accomplish the sexual contact;</li> <li>(2) when the other person is under thirteen years of age;</li> <li>(3) when the other person is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation or the perpetrator's position of authority over the victim is used to accomplish the sexual contact;</li> <li>(4) when the other person is threatened or placed in fear of imminent and serious bodily injury;</li> <li>(5) when the other person's ability to consent to or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent; or</li> <li>(6) when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the perpetrator</li> </ul> <p>-is guilty of unlawful sexual contact and shall be imprisoned not more than 15 years.</p> <p>14 V.I.C. § 1709 (West 2011). <u>Unlawful sexual contact in the second degree</u></p> <p>A person over eighteen years of age who engages in sexual contact with a person not the perpetrator's spouse who is over thirteen but under sixteen years of age is guilty of unlawful sexual contact in the second degree and shall be imprisoned not more than 1 year.</p>
<p>Age of Consent (<i>Virgin Islands</i>)</p>	<p><u>V.I. Code Ann. §§ 1700-1709</u> 18</p>

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Definitions ( <i>Virgin Islands</i> )	14 V.I.C. § 489 (West 2011). <u>Definitions; computer pornography</u>
Definitions Cont' ( <i>Virgin Islands</i> )	<p>(a) As used in this section, the term:</p> <p>(1) 'Minor' means any person under the age of 18 years.</p> <p>(2) 'Identifiable minor' means an individual:</p> <p>(A) Who was a minor at the time the visual depiction was created, adapted, or modified or whose image as a minor was used in creating, adapting, or modifying the visual depiction; and</p> <p>(B) Who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature or by electronic or scientific means as may be available.</p> <p>(C) The term may not be construed to require proof of the actual identity of the minor.</p> <p>(3) 'Visual depiction' means any image and includes photographs, undeveloped film and video tape and data stored on computer disk or by electronic means which is capable of conversion into a visual image or which has been created, adapted, or modified to show an identifiable minor engaged in sexually explicit conduct.</p> <p>(4) 'Sexually explicit conduct' means actual or simulated:</p> <p>(A) Sexual intercourse;</p> <p>(B) Deviate sexual activity;</p> <p>(C) Bestiality;</p> <p>(D) Masturbation;</p> <p>(E) Sadomasochistic abuse for the purpose of sexual stimulation; or</p> <p>(F) Lewd exhibition of the:</p> <p>(i) Genitals or pubic area of any person;</p> <p>(ii) Breast of a female; or</p> <p>(iii) Buttocks of a minor.</p> <p>(5) 'Visual medium' means any material that records, holds and communicates information in a primarily visual manner</p> <p>14 V.I.C. § 1699 (West 2011). <u>Definition</u></p> <p>As used in this chapter, unless the context clearly indicates otherwise:</p>

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Definitions Cont' (Virgin Islands)	<p>(a) 'perpetrator' means a person accused of rape or unlawful sexual contact.</p> <p>(b) 'personal injury' means serious bodily injury, disfigurement, chronic pain, disease, or loss or impairment of a sexual or reproductive organ.</p> <p>(c) 'sexual contact' means the intentional touching of a person's intimate parts, whether directly or through clothing, to arouse or to gratify the sexual desires of any person. The term 'intimate parts' means the primary genital area, groin, inner thighs, buttocks, or breasts of a person.</p> <p>(d) 'sexual intercourse' means vaginal intercourse or any insertion, however slight, of a hand, finger or object into the vagina, vulva, or labia, excluding such insertion for medical treatment or examination.</p> <p>(e) 'sodomy' means carnal knowledge of any person by the mouth, i.e., cunnilingus or fellatio; or by the anus; or by submission to the same; or by any insertion, however slight, of any object into a person's anus, excluding such insertion for medical treatment or examination.</p> <p>(f) 'victim' means the person alleging to have been subjected to rape or unlawful sexual contact.</p>
Defenses (Virgin Islands)	None.
Penalty (Virgin Islands)	<p>14 V.I.C. § 488 (West 2011). <u>Visual medium depicting sexually explicit conduct, prohibitions; penalties</u></p> <p>(b) Any person who violates the provision of this section is guilty of a felony punishable upon conviction by imprisonment for not less than five years or more than 20 years and by a fine of not more than \$100,000.</p> <p>14 V.I.C. § 489 (West 2011). <u>Definitions; computer pornography</u></p> <p>(2) Any person convicted of violating this chapter shall be punished by a fine of not more than \$10,000 or by imprisonment for not less than one or more than 20 years, or by both such fine and imprisonment.</p> <p>14 V.I.C. § 1700 (West 2011). <u>Aggravated rape in the first degree</u></p>

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<p>Penalty Cont' (<i>Virgin Islands</i>)</p>	<p>Whoever [violates this section] is guilty of aggravated rape in the first degree and shall be imprisoned for life or for any term of years, but not less than 15 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provisions of law, imposition or execution of the fifteen-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.</p> <p>Whoever is convicted of a second or subsequent offense of aggravated rape in the first degree shall be punished by imprisonment for life or for any term of years, but not less than 25 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of the twenty-five year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.</p> <p>(d) Whoever is convicted of attempted aggravated rape in the first degree shall be punished by imprisonment for not more than 25 years, but not less than 7 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the seven-year period of incarceration shall not be suspended, nor shall probation, parole or another form of release be granted for this minimum period of incarceration.</p> <p>(e) Whoever is found guilty of an offense in this section shall receive a psychiatric evaluation and participate in psychosocial counseling.</p> <p>14 V.I.C § 1700a (West 2011). <u>Aggravated rape in the second degree</u></p> <p>(a) Whoever [violates this section] is guilty of aggravated rape in the second degree and shall be imprisoned for life or for any term in years, but not less than 10 years. (b) Whoever is convicted of a second or subsequent offense of aggravated rape in the second degree shall be punished by imprisonment for life or for any term of years, but not less than 20 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407 of this Code, or of any other law, imposition or execution of the twenty-year minimum period of incarceration shall not be suspended; nor shall probation, parole, or any other form of release be granted for the minimum period of incarceration prescribed in this section.</p> <p>(c) Whoever is convicted of attempted aggravated rape in the second degree shall be punished by imprisonment for not more than 25 years, but not less than 5 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the five-year minimum period of incarceration shall not be suspended, nor shall probation, parole or any other form of release be granted for this minimum period of incarceration.</p> <p>14 V.I.C. § 1701 (West 2011). <u>Rape in the first degree</u></p>
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<p>Penalty Cont' (<i>Virgin Islands</i>)</p>	<p>Whoever [violates this section] is guilty of rape in the first degree and shall be imprisoned not less than 10 years nor more than 30 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of this ten-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.</p> <p>Whoever is convicted of a second or subsequent offense of rape in the first degree shall be punished by imprisonment for life or for any term of years, but not less than 10 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of the ten-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.</p> <p>14 V.I.C. § 1702 (West 2011). <u>Rape in the second degree</u></p> <p>(a) Any person [who violates this section] is guilty of rape in the second degree and shall be imprisoned not more than 10 years. (b) Whoever is convicted of any offense under this section shall receive a psychiatric evaluation and participate in psychosocial counseling.</p> <p>14 V.I.C. § 1703 (West 2011). <u>Rape in the third degree</u></p> <p>Any person [who violates this section] shall be subject to the jurisdiction of the Family Division of the Superior Court pursuant to Title 4, Chapter 11, Virgin Islands Code. In lieu of a term of detention, the court, in its discretion, may recommend appropriate treatment, counseling or family planning.</p> <p>14 V.I.C. § 1708 (West 2011). <u>Unlawful sexual contact in the first degree</u></p> <p>A person who [violates this section] is guilty of unlawful sexual contact and shall be imprisoned not more than 15 years. 14 V.I.C. § 1709 (West 2011). <u>Unlawful sexual contact in the second degree</u></p> <p>A person [who violates this section] is guilty of unlawful sexual contact in the second degree and shall be imprisoned not more than 1</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

	year.
<b>Washington</b>	
Statute (Washington)	WASH. REV. CODE ANN. § 9.68A.040 (West 2011). <u>Sexual exploitation of a minor--Elements of crime--Penalty</u>
Statute Cont' (Washington)	<p>(1) A person is guilty of sexual exploitation of a minor if the person:</p> <p>(a) Compels a minor by threat or force to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance;</p> <p>(b) Aids, invites, employs, authorizes, or causes a minor to engage in sexually explicit conduct, knowing that such conduct will be photographed or part of a live performance; or</p> <p>(c) Being a parent, legal guardian, or person having custody or control of a minor, permits the minor to engage in sexually explicit conduct, knowing that the conduct will be photographed or part of a live performance.</p> <p>(2) Sexual exploitation of a minor is a class B felony punishable under chapter 9A.20 RCW.</p> <p>WASH. REV. CODE ANN. § 9.68A.100 (West 2011). <u>Commercial sexual abuse of a minor--Penalties</u></p> <p>(1) A person is guilty of commercial sexual abuse of a minor if:</p> <p>(a) He or she pays a fee to a minor or a third person as compensation for a minor having engaged in sexual conduct with him or her;</p> <p>(b) He or she pays or agrees to pay a fee to a minor or a third person pursuant to an understanding that in return therefore such minor will engage in sexual conduct with him or her; or</p> <p>(c) He or she solicits, offers, or requests to engage in sexual conduct with a minor in return for a fee.</p> <p>(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.</p> <p>(4) For purposes of this section, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.</p> <p>WASH. REV. CODE ANN. § 9.68A.102 (West 2011). <u>Promoting travel for commercial sexual abuse of a minor--Penalty</u></p>

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<p>Statute Cont' (Washington)</p>	<p>(1) A person commits the offense of promoting travel for commercial sexual abuse of a minor if he or she knowingly sells or offers to sell travel services that include or facilitate travel for the purpose of engaging in what would be commercial sexual abuse of a minor or promoting commercial sexual abuse of a minor, if occurring in this state.</p> <p>(2) Promoting travel for commercial sexual abuse of a minor is a class C felony.</p> <p>(3) For purposes of this section, "travel services" has the same meaning as defined in RCW 19.138.021.</p> <p>WASH. REV. CODE ANN. § 9.68A.103 (West 2011). <u>Permitting commercial sexual abuse of a minor--Penalty</u></p> <p>(1) A person is guilty of permitting commercial sexual abuse of a minor if, having possession or control of premises which he or she knows are being used for the purpose of commercial sexual abuse of a minor, he or she fails without lawful excuse to make reasonable effort to halt or abate such use and to make a reasonable effort to notify law enforcement of such use.</p> <p>(2) Permitting commercial sexual abuse of a minor is a gross misdemeanor.</p> <p>WASH. REV. CODE ANN. § 9A.44.040 (West 2011). <u>Rape in the first degree</u></p> <p>(1) A person is guilty of rape in the first degree when such person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:</p> <p>(a) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or</p> <p>(b) Kidnaps the victim; or</p> <p>(c) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or</p> <p>(d) Feloniously enters into the building or vehicle where the victim is situated.</p> <p>(2) Rape in the first degree is a class A felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.050 (West 2011). <u>Rape in the second degree</u></p> <p>(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:</p>
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<p>Statute Cont' (Washington)</p>	<p>(a) By forcible compulsion;  (b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;  (c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:  (i) Has supervisory authority over the victim; or  (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense;  (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;  (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or  (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who:  (i) Has a significant relationship with the victim; or  (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense.  (2) Rape in the second degree is a class A felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.060 (West 2011).  <u>Rape in the third degree</u></p> <p>(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:  (a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct, or  (b) Where there is threat of substantial unlawful harm to property rights of the victim.  (2) Rape in the third degree is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.073 (West 2011).  <u>Rape of a child in the first degree</u></p> <p>(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Washington)</p>	<p>years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim. (2) Rape of a child in the first degree is a class A felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.076 (West 2011). <u>Rape of a child in the second degree</u></p> <p>(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim. (2) Rape of a child in the second degree is a class A felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.079 (West 2011). <u>Rape of a child in the third degree</u></p> <p>(1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim. (2) Rape of a child in the third degree is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.083 (West 2011). <u>Child molestation in the first degree</u></p> <p>(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim. (2) Child molestation in the first degree is a class A felony.</p> <p>WASH. REV. CODE ANN. §9A.44.086 (West 2011). <u>Child molestation in the second degree</u></p>
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<p>Statute Cont' (Washington)</p>	<p>(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim. (2) Child molestation in the second degree is a class B felony.</p> <p>WASH. REV. CODE ANN. §9A.44.089 (West 2011). <u>Child molestation in the third degree</u></p> <p>(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim. (2) Child molestation in the third degree is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.093 (West 2011). <u>Sexual misconduct with a minor in the first degree</u></p> <p>(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen. (2) Sexual misconduct with a minor in the first degree is a class C felony. (3) For the purposes of this section: (a) “Enrolled student” means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW. (b) “School employee” means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve</p>
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<p>Statute Cont' (Washington)</p>	<p>employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.</p> <p>WASH. REV. CODE ANN. § 9A.44.096 (West 2011). <u>Sexual misconduct with a minor in the second degree</u></p> <p>(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.</p> <p>(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.</p> <p>(3) For the purposes of this section:</p> <p>(a) “Enrolled student” means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.</p> <p>(b) “School employee” means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.</p> <p>WASH. REV. CODE ANN. § 9A.44.100 (West 2011). <u>Indecent liberties</u></p> <p>(1) A person is guilty of indecent liberties when he or she knowingly causes another person who is not his or her spouse to have sexual contact with him or her or another:</p> <p>(a) By forcible compulsion;</p> <p>(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless;</p> <p>(c) When the victim is a person with a developmental disability and the perpetrator is a person who is not married to the victim and who:</p>
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American University, Washington College of Law

Current as of June 2011



# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Washington)</p>	<p>(i) Has supervisory authority over the victim; or (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense; (d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment; (e) When the victim is a resident of a facility for persons with a mental disorder or chemical dependency and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or (f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who: (i) Has a significant relationship with the victim; or (ii) Was providing transportation, within the course of his or her employment, to the victim at the time of the offense. (2)(a) Except as provided in (b) of this subsection, indecent liberties is a class B felony. (b) Indecent liberties by forcible compulsion is a class A felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.115 (West 2011). <u>Voyeurism</u></p> <p>(1) As used in this section: (a) “Intimate areas” means any portion of a person's body or undergarments that is covered by clothing and intended to be protected from public view; (b) “Photographs” or “films” means the making of a photograph, motion picture film, videotape, digital image, or any other recording or transmission of the image of a person; (c) “Place where he or she would have a reasonable expectation of privacy” means: (i) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or (ii) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance; (d) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person; (e) “Views” means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuity. (2) A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she</p>
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<p>Statute Cont' (Washington)</p>	<p>knowingly views, photographs, or films:</p> <p>(a) Another person without that person's knowledge and consent while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy; or</p> <p>(b) The intimate areas of another person without that person's knowledge and consent and under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.</p> <p>(3) Voyeurism is a class C felony.</p> <p>(4) This section does not apply to viewing, photographing, or filming by personnel of the department of corrections or of a local jail or correctional facility for security purposes or during investigation of alleged misconduct by a person in the custody of the department of corrections or the local jail or correctional facility.</p> <p>(5) If a person is convicted of a violation of this section, the court may order the destruction of any photograph, motion picture film, digital image, videotape, or any other recording of an image that was made by the person in violation of this section.</p> <p>WASH. REV. CODE ANN. § 9A.44.160 (West 2011). <u>Custodial sexual misconduct in the first degree</u></p> <p>(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:</p> <p>(a) When:</p> <p>(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and</p> <p>(ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or</p> <p>(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>(2) Consent of the victim is not a defense to a prosecution under this section.</p> <p>(3) Custodial sexual misconduct in the first degree is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.44.170 (West 2011). <u>Custodial sexual misconduct in the second degree</u></p> <p>(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:</p> <p>(a) When:</p>
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## NIC/WCL Project on Addressing Prison Rape

<p>Statute Cont' (Washington)</p>	<p>(i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and (ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or (b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer. (2) Consent of the victim is not a defense to a prosecution under this section. (3) Custodial sexual misconduct in the second degree is a gross misdemeanor.</p> <p>WASH. REV. CODE ANN. § 9A.44.196 (West 2011). <u>Criminal trespass against children</u></p> <p>(1) A person is guilty of the crime of criminal trespass against children if he or she: (a) Is a covered offender as defined in RCW 9A.44.190; and (b)(i) Is personally served with written notice complying with the requirements of RCW 9A.44.193 that excludes the covered offender from the legal premises of the covered entity and remains upon or reenters the legal premises of the covered entity; or (ii) Is personally served with written notice complying with the requirements of RCW 9A.44.193 that imposes conditions of entry and use on the covered offender and violates the conditions of entry and use. (2) Criminal trespass against children is a class C felony.</p> <p>WASH. REV. CODE ANN. § 9A.88.010 (West 2011). <u>Indecent exposure</u></p> <p>(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure. (2)(a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor. (b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years. (c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in RCW 9.94A.030.</p>
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Age of Consent♦ (Washington)	16
Definitions (Washington)	<p>WASH. REV. CODE ANN. § 9.68A.011 (West 2011). <u>Definitions</u></p> <p>Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.</p> <p>(1) An “internet session” means a period of time during which an internet user, using a specific internet protocol address, visits or is logged into an internet site for an uninterrupted period of time.</p> <p>(2) To “photograph” means to make a print, negative, slide, digital image, motion picture, or videotape. A “photograph” means anything tangible or intangible produced by photographing.</p> <p>(3) “Visual or printed matter” means any photograph or other material that contains a reproduction of a photograph.</p> <p>(4) “Sexually explicit conduct” means actual or simulated:</p> <p>(a) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals;</p> <p>(b) Penetration of the vagina or rectum by any object;</p> <p>(c) Masturbation;</p> <p>(d) Sadomasochistic abuse;</p> <p>(e) Defecation or urination for the purpose of sexual stimulation of the viewer;</p> <p>(f) Depiction of the genitals or unclothed pubic or rectal areas of any minor, or the unclothed breast of a female minor, for the purpose of sexual stimulation of the viewer. For the purposes of this subsection (4)(f), it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it; and</p> <p>(g) Touching of a person's clothed or unclothed genitals, pubic area, buttocks, or breast area for the purpose of sexual stimulation of the viewer.</p> <p>(5) “Minor” means any person under eighteen years of age.</p> <p>(6) “Live performance” means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, with or without consideration.</p> <p>WASH. REV. CODE ANN. § 9A.44.010 (West 2011). <u>Definitions</u></p>
Definitions Cont' (Washington)	

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<p>Definitions Cont' (Washington)</p>	<p>As used in this chapter:</p> <p>(1) "Sexual intercourse" (a) has its ordinary meaning and occurs upon any penetration, however slight, and (b) Also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and (c) Also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.</p> <p>(2) "Sexual contact" means any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party.</p> <p>(3) "Married" means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and who has filed in an appropriate court for legal separation or for dissolution of his or her marriage.<sup>71</sup></p> <p>(4) "Mental incapacity" is that condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.</p> <p>(5) "Physically helpless" means a person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.</p> <p>(6) "Forcible compulsion" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.</p> <p>(7) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.</p> <p>(8) "Significant relationship" means a situation in which the perpetrator is:</p> <p>(a) A person who undertakes the responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities principally for minors;</p> <p>(b) A person who in the course of his or her employment supervises minors; or</p> <p>(c) A person who provides welfare, health or residential assistance, personal care, or organized recreational activities to frail elders or vulnerable adults, including a provider, employee, temporary employee, volunteer, or independent contractor who supplies services to long-term care facilities licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW, but not including a consensual sexual partner.</p> <p>(9) "Abuse of a supervisory position" means:</p>
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Current as of June 2011

# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

## NIC/WCL Project on Addressing Prison Rape

<p>Definitions Cont' (Washington)</p>	<p>(a) To use a direct or indirect threat or promise to exercise authority to the detriment or benefit of a minor; or (b) To exploit a significant relationship in order to obtain the consent of a minor. (10) "Person with a developmental disability," for purposes of RCW 9A.44.050(1)(c) and 9A.44.100(1)(c), means a person with a developmental disability as defined in RCW 71A.10.020. (11) "Person with supervisory authority," for purposes of RCW 9A.44.050(1)(c) or (e) and 9A.44.100(1)(c) or (e), means any proprietor or employee of any public or private care or treatment facility who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons at the facility. (12) "Person with a mental disorder" for the purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person with a "mental disorder" as defined in RCW 71.05.020. (13) "Person with a chemical dependency" for purposes of RCW 9A.44.050(1)(e) and 9A.44.100(1)(e) means a person who is "chemically dependent" as defined in RCW 70.96A.020(4). (14) "Health care provider" for purposes of RCW 9A.44.050 and 9A.44.100 means a person who is, holds himself or herself out to be, or provides services as if he or she were: (a) A member of a health care profession under chapter 18.130 RCW; or (b) registered under chapter 18.19 RCW or licensed under chapter 18.225 RCW, regardless of whether the health care provider is licensed, certified, or registered by the state. (15) "Treatment" for purposes of RCW 9A.44.050 and 9A.44.100 means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out to be qualified to provide. (16) "Frail elder or vulnerable adult" means a person sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself. "Frail elder or vulnerable adult" also includes a person found incapacitated under chapter 11.88 RCW, a person over eighteen years of age who has a developmental disability under chapter 71A.10 RCW, a person admitted to a long-term care facility that is licensed or required to be licensed under chapter 18.20, 18.51, 72.36, or 70.128 RCW, and a person receiving services from a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW.</p> <p>WASH. REV. CODE ANN. § 9A.44.190 (West 2011). <u>Criminal trespass against children--Definitions</u></p> <p>As used in this section and RCW 9A.44.193 and 9A.44.196: (1) "Covered entity" means any public facility or private facility whose primary purpose, at any time, is to provide for the education, care, or recreation of a child or children, including but not limited to community and recreational centers, playgrounds, schools, swimming pools, and state or municipal parks. (2) "Child" means a person under the age of eighteen, unless the context clearly indicates that the term is otherwise defined in statute.</p>
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<p>Definitions Cont' (Washington)</p>	<p>(3) "Public facility" means a facility operated by a unit of local or state government, or by a nonprofit organization.</p> <p>(4) "Schools" means public and private schools, but does not include home-based instruction as defined in RCW 28A.225.010.<sup>72</sup></p> <p>(5) "Covered offender" means a person required to register under RCW 9A.44.130 who is eighteen years of age or older, who is not under the jurisdiction of the juvenile rehabilitation authority or currently serving a special sex offender disposition alternative, whose risk level classification has been assessed at a risk level II or a risk level III pursuant to RCW 72.09.345, and who, at any time, has been convicted of one or more of the following offenses:</p> <p>(a) Rape of a child in the first, second, and third degree; child molestation in the first, second, and third degree; indecent liberties against a child under age fifteen; sexual misconduct with a minor in the first and second degree; incest in the first and second degree; luring with sexual motivation; possession of depictions of minors engaged in sexually explicit conduct; dealing in depictions of minors engaged in sexually explicit conduct; bringing into the state depictions of minors engaged in sexually explicit conduct; sexual exploitation of a minor; communicating with a minor for immoral purposes; *patronizing a juvenile prostitute<sup>73</sup>;</p> <p>(b) Any felony in effect at any time prior to March 20, 2006, that is comparable to an offense listed in (a) of this subsection, including, but not limited to, statutory rape in the first and second degrees [degree] and carnal knowledge;</p> <p>(c) Any felony offense for which:</p> <p>(i) There was a finding that the offense was committed with sexual motivation; and</p> <p>(ii) The victim of the offense was less than sixteen years of age at the time of the offense;</p> <p>(d) An attempt, conspiracy, or solicitation to commit any of the offenses listed in (a) through (c) of this subsection;</p> <p>(e) Any conviction from any other jurisdiction which is comparable to any of the offenses listed in (a) through (d) of this subsection.</p>
<p>Defenses (Washington)</p>	<p>WASH. REV. CODE ANN. § 9A.44.030 (West 2011). <u>Defenses to prosecution under this chapter</u></p> <p>(1) In any prosecution under this chapter in which lack of consent is based solely upon the victim's mental incapacity or upon the victim's being physically helpless, it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed that the victim was not mentally incapacitated and/or physically helpless.</p> <p>(2) In any prosecution under this chapter in which the offense or degree of the offense depends on the victim's age, it is no defense that the perpetrator did not know the victim's age, or that the perpetrator believed the victim to be older, as the case may be: PROVIDED, That it is a defense which the defendant must prove by a preponderance of the evidence that at the time of the offense the defendant reasonably believed the alleged victim to be the age identified in subsection (3) of this section based upon declarations as to age by the alleged victim.</p> <p>(3) The defense afforded by subsection (2) of this section requires that for the following defendants, the reasonable belief be as</p>

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<p>Defenses Cont' (Washington)</p>	<p>indicated:</p> <p>(a) For a defendant charged with rape of a child in the first degree, that the victim was at least twelve, or was less than twenty-four months younger than the defendant;</p> <p>(b) For a defendant charged with rape of a child in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;</p> <p>(c) For a defendant charged with rape of a child in the third degree, that the victim was at least sixteen, or was less than forty-eight months younger than the defendant;</p> <p>(d) For a defendant charged with sexual misconduct with a minor in the first degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant;</p> <p>(e) For a defendant charged with child molestation in the first degree, that the victim was at least twelve, or was less than thirty-six months younger than the defendant;</p> <p>(f) For a defendant charged with child molestation in the second degree, that the victim was at least fourteen, or was less than thirty-six months younger than the defendant;</p> <p>(g) For a defendant charged with child molestation in the third degree, that the victim was at least sixteen, or was less than thirty-six months younger than the defendant;</p> <p>(h) For a defendant charged with sexual misconduct with a minor in the second degree, that the victim was at least eighteen, or was less than sixty months younger than the defendant.</p> <p>WASH. REV. CODE ANN. § 9A.44.100 (West 2011). <u>Indecent liberties</u></p> <p>It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;</p> <p>WASH. REV. CODE ANN. § 9A.44.180 (West 2011). <u>Custodial sexual misconduct--Defense</u></p> <p>It is an affirmative defense to prosecution under RCW 9A.44.160 or 9A.44.170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.</p>
<p>Penalty</p>	<p>WASH. REV. CODE ANN. § 9.68A.100 (West 2011).</p>

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(Washington)	<p><u>Commercial sexual abuse of a minor--Penalties</u></p> <p>(2) Commercial sexual abuse of a minor is a class B felony punishable under chapter 9A.20 RCW.</p> <p>(3) In addition to any other penalty provided under chapter 9A.20 RCW, a person guilty of commercial sexual abuse of a minor is subject to the provisions under RCW 9A.88.130 and 9A.88.140.</p> <p>WASH. REV. CODE ANN. § 9.92.010 (West 2011).</p> <p><u>Punishment of felony when not fixed by statute</u></p> <p>Every person convicted of a felony for which no maximum punishment is specially prescribed by any statutory provision in force at the time of conviction and sentence, shall be punished by confinement or fine which shall not exceed confinement in a state correctional institution for a term of ten years, or by a fine in an amount fixed by the court of not more than twenty thousand dollars, or by both such confinement and fine and the offense shall be classified as a class B felony.</p> <p>WASH. REV. CODE ANN. § 9.92.020 (West 2011).</p> <p><u>Punishment of a gross misdemeanor when not fixed by statute</u></p> <p>Every person convicted of a gross misdemeanor for which no punishment is prescribed in any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of up to three hundred sixty-four days, or by a fine in an amount fixed by the court of not more than five thousand dollars, or by both such imprisonment and fine.</p> <p>WASH. REV. CODE ANN. § 9.92.030 (West 2011).</p> <p><u>Punishment of misdemeanor when not fixed by statute</u></p> <p>Every person convicted of a misdemeanor for which no punishment is prescribed by any statute in force at the time of conviction and sentence, shall be punished by imprisonment in the county jail for a maximum term fixed by the court of not more than ninety days, or by a fine in an amount fixed by the court of not more than one thousand dollars or both such imprisonment and fine.</p>
Penalty Cont' (Washington)	

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West Virginia	
Statute (West Virginia)	W. VA. CODE ANN. § 61-8B-3 (West 2011). <u>Sexual assault in the first degree</u>
Statute Cont' (West Virginia)	<p>(a) A person is guilty of sexual assault in the first degree when:</p> <p>(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:</p> <p>(i) Inflicts serious bodily injury upon anyone; or</p> <p>(ii) Employs a deadly weapon in the commission of the act; or</p> <p>(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.</p> <p>W. VA. CODE ANN. § 61-8B-4 (West 2011). <u>Sexual assault in the second degree</u></p> <p>(a) A person is guilty of sexual assault in the second degree when:</p> <p>(1) Such person engages in sexual intercourse or sexual intrusion with another person without the person's consent, and the lack of consent results from forcible compulsion; or</p> <p>(2) Such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.</p> <p>W. VA. CODE ANN. § 61-8B-5 (West 2011). <u>Sexual assault in the third degree</u></p> <p>(a) A person is guilty of sexual assault in the third degree when:</p> <p>(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or</p> <p>(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.</p> <p>W. VA. CODE ANN. § 61-8B-8 (West 2011).</p>

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<p>Statute Cont' (West Virginia)</p>	<p><u>Sexual abuse in the second degree</u></p> <p>(a) A person is guilty of sexual abuse in the second degree when such person subjects another person to sexual contact who is mentally defective or mentally incapacitated.</p> <p>W. VA. CODE ANN. § 61-8B-9 (West 2011).</p> <p><u>Sexual abuse in the third degree</u></p> <p>(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.</p> <p>W. VA. CODE ANN. § 61-8B-10 (West 2011).<sup>74</sup></p> <p><u>Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties</u></p> <p>(a) Any person employed by the Division of Corrections, any person working at a correctional facility managed by the Commissioner of Corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the Division of Juvenile Services pursuant to contract or as an employee of a state agency, any person employed by a jail or by the Regional Jail and Correctional Facility Authority, any person working at a facility managed by the Regional Jail and Correctional Facility Authority or a jail or any person employed by, or acting pursuant to, the authority of any sheriff, county commission or court to ensure compliance with the provisions of article eleven-b, chapter sixty-two of this code who engages in sexual intercourse or sexual intrusion with a person who is incarcerated in this state is guilty of a felony. . . . (b) Any person employed by the Division of Corrections as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse or sexual intrusion with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony. . . . (c) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article eleven-b, chapter sixty-two of this code.</p> <p>W. VA. CODE ANN. § 61-8C-2 (West 2011).</p> <p><u>Use of minors in filming sexually explicit conduct prohibited; penalty</u></p> <p>(a) Any person who causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct shall be guilty of a felony when such person has knowledge that any such act is</p>
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<p>Statute Cont' (West Virginia)</p>	<p>being photographed or filmed. (b) Any person who photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony. . . .(c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed.</p> <p>W. VA. CODE ANN. § 61-8C-3 (West 2011). <u>Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty</u></p> <p>Any person who, with knowledge, sends or causes to be sent, or distributes, exhibits, possesses or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony. . . .</p> <p>W. VA. CODE ANN. § 61-8D-5 (West 2011). <u>Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties</u></p> <p>(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony. . . .(b) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than sixteen years of age, notwithstanding the fact that the child may have willingly participated in such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony. . . . (c) If any parent, guardian, custodian or other person in a position of trust in relation to the child shall knowingly procure another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control</p>
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Definitions (West Virginia)	<p>W. VA. CODE ANN. § 61-8B-1 (West 2011).  <u>Definition of terms</u></p> <p>In this article, unless a different meaning plainly is required:</p> <p>(1) “Forcible compulsion” means:</p> <p>(a) Physical force that overcomes such earnest resistance as might reasonably be expected under the circumstances; or</p> <p>(b) Threat or intimidation, expressed or implied, placing a person in fear of immediate death or bodily injury to himself or herself or another person or in fear that he or she or another person will be kidnapped; or</p> <p>(c) Fear by a person under sixteen years of age caused by intimidation, expressed or implied, by another person who is at least four years older than the victim.</p> <p>For the purposes of this definition “resistance” includes physical resistance or any clear communication of the victim's lack of consent.</p> <p>(2) “Married”, for the purposes of this article in addition to its legal meaning, includes persons living together as husband and wife regardless of the legal status of their relationship.</p> <p>(3) “Mentally defective” means that a person suffers from a mental disease or defect which renders that person incapable of appraising</p>

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<p>Definitions Cont' (West Virginia)</p>	<p>the nature of his or her conduct.</p> <p>(4) “Mentally incapacitated” means that a person is rendered temporarily incapable of appraising or controlling his or her conduct as a result of the influence of a controlled or intoxicating substance administered to that person without his or her consent or as a result of any other act committed upon that person without his or her consent.</p> <p>(5) “Physically helpless” means that a person is unconscious or for any reason is physically unable to communicate unwillingness to an act.</p> <p>(6) “Sexual contact” means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person's body by the actor's sex organs, where the victim is not married to the actor<sup>75</sup> and the touching is done for the purpose of gratifying the sexual desire of either party.</p> <p>(7) “Sexual intercourse” means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.</p> <p>(8) “Sexual intrusion” means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.</p> <p>(9) “Bodily injury” means substantial physical pain, illness or any impairment of physical condition.</p> <p>(10) “Serious bodily injury” means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.</p> <p>(11) “Deadly weapon” means any instrument, device or thing capable of inflicting death or serious bodily injury, and designed or specially adapted for use as a weapon, or possessed, carried or used as a weapon.</p> <p>(12) “Forensic medical examination” means an examination provided to a possible victim of a violation of the provisions of this article by medical personnel qualified to gather evidence of the violation in a manner suitable for use in a court of law, to include: An examination for physical trauma; a determination of penetration or force; a patient interview; and the collection and evaluation of other evidence that is potentially relevant to the determination that a violation of the provisions of this article occurred and to the determination of the identity of the assailant.</p> <p>W. VA. CODE ANN. § 61-8C-1 (West 2011).</p> <p><u>Definitions</u></p> <p>For the purposes of this article:</p> <p>(a) “Minor” means any child under eighteen years of age.</p> <p>(b) “Knowledge” means knowing or having reasonable cause to know which warrants further inspection or inquiry.</p>
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Definitions Cont' (West Virginia)	<p>(c) "Sexually explicit conduct" includes any of the following, whether actually performed or simulated:</p> <ol style="list-style-type: none"> <li>(1) Genital to genital intercourse;</li> <li>(2) Fellatio;</li> <li>(3) Cunnilingus;</li> <li>(4) Anal intercourse;</li> <li>(5) Oral to anal intercourse;</li> <li>(6) Bestiality;</li> <li>(7) Masturbation;</li> <li>(8) Sadomasochistic abuse, including, but not limited to, flagellation, torture or bondage;</li> <li>(9) Excretory functions in a sexual context; or</li> <li>(10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context.</li> </ol> <p>(d) "Person" means an individual, partnership, firm, association, corporation or other legal entity.</p>
Defenses (West Virginia)	<p>W. VA. CODE ANN. § 61-8B-9 (West 2011).  <u>Sexual abuse in the third degree</u></p> <p>(b) In any prosecution under this section it is a defense that:</p> <ol style="list-style-type: none"> <li>(1) The defendant was less than sixteen years old; or</li> <li>(2) The defendant was less than four years older than the victim.</li> </ol> <p>W. VA. CODE ANN. § 61-8B-12 (West 2011).  <u>Same - - Defense</u></p> <p>(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, mentally defective, mentally incapacitated or physically helpless, it is an affirmative defense that the defendant at the time he or she engaged in the conduct constituting the offense did not know of the facts or conditions responsible for such incapacity to consent, unless the defendant is reckless in failing to know such facts or conditions.</p> <p>(b) The affirmative defense provided in subsection (a) of this section shall not be available in any prosecution under subdivision (2), subsection (a), section three, and under subdivision (3), subsection (a), section seven of this article.</p>
Penalty (West Virginia)	<p>W. VA. CODE ANN. § 61-8B-9a (West 2011).  <u>Mandatory sentence for person committing certain sex offenses against children</u></p>

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<p>Penalty Cont' (West Virginia)</p>	<p>(a) Notwithstanding the provisions of section one-a, article eleven-a, section four, article eleven-b and section two, article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three, four, five, seven, eight or nine, article eight-b, chapter sixty-one of this code, are eighteen years of age or older, the victim is younger than twelve years of age and the finder of fact determines that one of the following aggravating circumstances exists:</p> <p>(1) The person employed forcible compulsion in commission of the offense;</p> <p>(2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two, article twelve, chapter fifteen of this code;</p> <p>(3) The person was armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or</p> <p>(4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, "release the victim in a safe place" means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.</p> <p>(b)(1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.</p> <p>(2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.</p> <p>W. VA. CODE ANN. § 61-8B-9b (West 2011).</p> <p><u>Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children</u></p> <p>(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, against a victim under the age of twelve years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:</p> <p>(1) For a violation of section three of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;</p>
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<p>Penalty Cont' (West Virginia)</p>	<p>(2) For a violation of section four of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;</p> <p>(3) For a violation of section five of this article, the penalty shall be imprisonment in a state correctional facility for not less than five nor more than twenty-five years;</p> <p>(4) For a violation of section seven of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten nor more than thirty-five years; and</p> <p>(5) Notwithstanding the penalty provisions of section eight of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two, article twelve, chapter fifteen of this code, shall be a felony and the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.</p> <p>(b) Notwithstanding the provisions of section two, article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.</p> <p>(c) Notwithstanding the provisions of section one-a, article eleven-a and section four, article eleven-b of chapter sixty-two of this code, a person sentenced under this section shall not be eligible for home incarceration or an alternative sentence.</p> <p>W. VA. CODE ANN. § 61-8B-3 (West 2011). <u>Sexual assault in the first degree</u></p> <p>(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.</p> <p>(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.</p> <p>W. VA. CODE ANN. § 61-8B-4 (West 2011). <u>Sexual assault in the second degree</u></p> <p>(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in the penitentiary not less than ten nor more than twenty-five years.</p>
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<p>Penalty Cont' (West Virginia)</p>	<p>W. VA. CODE ANN. § 61-8B-5 (West 2011). <u>Sexual assault in the third degree</u></p> <p>(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.</p> <p>W. VA. CODE ANN. § 61-8B-8 (West 2011). <u>Sexual abuse in the second degree</u></p> <p>(b) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than twelve months, or fined not more than five hundred dollars and confined in the county jail not more than twelve months.</p> <p>W. VA. CODE ANN. § 61-8B-9 (West 2011). <u>Sexual abuse in the third degree</u></p> <p>(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.</p> <p>W. VA. CODE ANN. § 61-8B-10 (West 2011). <u>Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties</u></p> <p>(a) Any person [who violates this section] is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than five thousand dollars.</p> <p>(b) Any person [who violates this section] is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than five thousand dollars, or both.</p>
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<p>Penalty Cont' (West Virginia)</p>	<p>W. VA. CODE ANN. § 61-8C-2 (West 2011). <u>Use of minors in filming sexually explicit conduct prohibited; penalty</u></p> <p>(a) Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.(b) [U]pon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned. (c) Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.</p> <p>W. VA. CODE ANN. § 61-8C-3 (West 2011). <u>Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty</u></p> <p>[U]pon conviction [the offender] shall be imprisoned in the penitentiary not more than two years, and fined not more than two thousand dollars.</p> <p>W. VA. CODE ANN. § 61-8D-5 (West 2011). <u>Sexual abuse by a parent, guardian, custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties</u></p> <p>(a) [U]pon conviction [the offender] shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than ten years nor more than twenty years. (b) [U]pon conviction[the offender] shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than one thousand nor more than ten thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years. (c) [U]pon conviction [the offender] shall be imprisoned in the penitentiary not less than one year nor more than five years.</p> <p>W. VA. CODE ANN. § 61-8D-6 (West 2011). <u>Sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child</u></p>
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	<p><u>engaged in sexually explicit conduct; penalty</u></p> <p>[U]pon conviction[the offender] shall be imprisoned in the penitentiary not more than two years, and fined not less than four hundred dollars nor more than four thousand dollars.</p>
<b>Wisconsin</b>	
<p>Statute (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. § 948.02 (West 2011). <u>Sexual assault of a child</u></p> <p>(1) First degree sexual assault. (am) Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person is guilty of a Class A felony.            (b) Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony.            (c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.            (d) Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs.            (e) Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.            (2) Second degree sexual assault. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.            (3) Failure to act. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.            (4) Marriage not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.            (5) Death of victim. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.</p>

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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. § 948.025 (West 2011). <u>Engaging in repeated acts of sexual assault of the same child</u></p> <p>(1) Whoever commits 3 or more violations under s. 948.02(1) or (2) within a specified period of time involving the same child is guilty of:</p> <p>(a) A Class A felony if at least 3 of the violations were violations of s. 948.02(1)(am).</p> <p>(b) A Class B felony if at least 3 of the violations were violations of s. 948.02(1)(am), (b), or (c).</p> <p>(c) A Class B felony if at least 3 of the violations were violations of s. 948.02(1)(am), (b), (c), or (d).</p> <p>(d) A Class B felony if at least 3 of the violations were violations of s. 948.02(1).</p> <p>(e) A Class C felony if at least 3 of the violations were violations of s. 948.02(1) or (2).</p> <p>(2)(a) If an action under sub. (1)(a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02(1)(am) occurred within the specified period of time but need not agree on which acts constitute the requisite number.</p> <p>(b) If an action under sub. (1)(b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02(1)(am), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02(1)(am), (b), or (c).</p> <p>(c) If an action under sub. (1)(c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02(1)(am), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02(1)(am), (b), (c), or (d).</p> <p>(d) If an action under sub. (1)(d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02(1) occurred within the specified period of time but need not agree on which acts constitute the requisite number.</p> <p>(e) If an action under sub. (1)(e) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of s. 948.02(1) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of s. 948.02(1) or (2).</p> <p>(3) The state may not charge in the same action a defendant with a violation of this section and with a violation involving the same child under s. 948.02 or 948.10, unless the other violation occurred outside of the time period applicable under sub. (1). This subsection does not prohibit a conviction for an included crime under s. 939.66 when the defendant is charged with a violation of this section.</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. § 948.05 (West 2011). <u>Sexual exploitation of a child</u></p> <p>(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child may be penalized under sub. (2p):          (a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.          (b) Records or displays in any way a child engaged in sexually explicit conduct.          (1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized under sub. (2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.          (2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1)(a) or (b) or (1m) may be penalized under sub. (2p).          (2p)(a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.          (b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.</p> <p>WIS. STAT. ANN. § 948.051 (West 2011). <u>Trafficking of a child</u></p> <p>(1) Whoever knowingly recruits, entices, provides, obtains, or harbors, or knowingly attempts to recruit, entice, provide, obtain, or harbor, any child for the purpose of commercial sex acts, as defined in s. 940.302(1)(a), or sexually explicit performance is guilty of a Class C felony.          (2) Whoever benefits in any manner from a violation of sub. (1) is guilty of a Class C felony if the person knows that the benefits come from an act described in sub. (1).          (3) Any person who incurs an injury or death as a result of a violation of sub. (1) or (2) may bring a civil action against the person who committed the violation. In addition to actual damages, the court may award punitive damages to the injured party, not to exceed treble the amount of actual damages incurred, and reasonable attorney fees.</p> <p>WIS. STAT. ANN. § 948.055 (West 2011).<sup>76</sup></p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p><u>Causing a child to view or listen to sexual activity</u></p> <p>(1) Whoever intentionally causes a child who has not attained 18 years of age to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child.</p> <p>(2) Whoever violates sub. (1) is guilty of:</p> <p>(a) A Class F felony if the child has not attained the age of 13 years.</p> <p>(b) A Class H felony if the child has attained the age of 13 years but has not attained the age of 18 years.</p> <p>WIS. STAT. ANN. § 948.06 (West 2011).</p> <p><u>Incest with a child</u></p> <p>Whoever does any of the following is guilty of a Class C felony:</p> <p>(1) Marries or has sexual intercourse or sexual contact with a child he or she knows is related, either by blood or adoption, and the child is related in a degree of kinship closer than 2nd cousin.</p> <p>(1m) Has sexual contact or sexual intercourse with a child if the actor is the child's stepparent.</p> <p>(2) Is a person responsible for the child's welfare and:</p> <p>(a) Has knowledge that another person who is related to the child by blood or adoption in a degree of kinship closer than 2nd cousin or who is a child's stepparent has had or intends to have sexual intercourse or sexual contact with the child;</p> <p>(b) Is physically and emotionally capable of taking action that will prevent the intercourse or contact from occurring or being repeated;</p> <p>(c) Fails to take that action; and</p> <p>(d) The failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.</p> <p>WIS. STAT. ANN. § 948.07 (West 2011).</p> <p><u>Child enticement</u></p> <p>Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:</p> <p>(1) Having sexual contact or sexual intercourse with the child in violation of s. 948.02, 948.085, or 948.095.</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>(2) Causing the child to engage in prostitution.  (3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of s. 948.10.  (4) Recording the child engaging in sexually explicit conduct.  (5) Causing bodily or mental harm to the child.  (6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961.</p> <p>WIS. STAT. ANN. § 948.075 (West 2011).  <u>Use of a computer to facilitate a child sex crime</u></p> <p>(1r) Whoever uses a computerized communication system to communicate with an individual who the actor believes or has reason to believe has not attained the age of 16 years with intent to have sexual contact or sexual intercourse with the individual in violation of s. 948.02(1) or (2) is guilty of a Class C felony.  (2) This section does not apply if, at the time of the communication, the actor reasonably believed that the age of the person to whom the communication was sent was no more than 24 months less than the age of the actor.  (3) Proof that the actor did an act, other than use a computerized communication system to communicate with the individual, to effect the actor's intent under sub. (1r) shall be necessary to prove that intent.</p> <p>WIS. STAT. ANN. § 948.08 (West 2011).  <u>Soliciting a child for prostitution</u>  Whoever intentionally solicits or causes any child to engage in an act of prostitution or establishes any child in a place of prostitution is guilty of a Class D felony.</p> <p>WIS. STAT. ANN. § 948.085 (West 2011).  <u>Sexual assault of a child placed in substitute care</u></p> <p>Whoever does any of the following is guilty of a Class C felony:  (1) Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent or treatment foster parent.  (2) Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it:  (a) A shelter care facility licensed under s. 48.66(1)(a).  (b) A group home licensed under s. 48.625 or 48.66(1).</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>(c) A facility described in s. 940.295(2)(m).</p> <p>WIS. STAT. ANN. § 948.09 (West 2011). <u>Sexual intercourse with a child age 16 or older</u></p> <p>Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.</p> <p>WIS. STAT. ANN. § 948.095 (West 2011). <u>Sexual assault of a child by a school staff person or a person who works or volunteers with children</u></p> <p>(1) In this section:</p> <p>(a) "School" means a public or private elementary or secondary school.</p> <p>(b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.</p> <p>(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:</p> <p>(a) The child is enrolled as a student in a school or a school district.</p> <p>(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.</p> <p>(3)(a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.</p> <p>(b) Whoever violates par. (a) is guilty of a Class H felony.</p> <p>(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.</p> <p>(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:</p> <ol style="list-style-type: none"> <li>1. Teaching children.</li> <li>2. Child care.</li> <li>3. Youth counseling.</li> <li>4. Youth organization.</li> </ol>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>5. Coaching children. 6. Parks or playground recreation. 7. School bus driving.</p> <p>WIS. STAT. ANN. § 948.10 (West 2011). <u>Exposing genitals or pubic area</u></p> <p>(1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of the following: (a) Except as provided in par. (b), a Class I felony. (b) A Class A misdemeanor if any of the following applies: 1. The actor is a child when the violation occurs. 2. At the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child. (2) Subsection (1) does not apply under any of the following circumstances: (a) The child is the defendant's spouse. (b) A mother's breast-feeding of her child.</p> <p>WIS. STAT. ANN. § 948.11 (West 2011). <u>Exposing a child to harmful material or harmful descriptions or narrations</u></p> <p>(1) Definitions. In this section: (ag) "Harmful description or narrative account" means any explicit and detailed description or narrative account of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality that, taken as a whole, is harmful to children. (ar) "Harmful material" means: 1. Any picture, photograph, drawing, sculpture, motion picture film or similar visual representation or image of a person or portion of the human body that depicts nudity, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that is harmful to children; or 2. Any book, pamphlet, magazine, printed matter however reproduced or recording that contains any matter enumerated in subd. 1., or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexually explicit conduct, sadomasochistic abuse, physical torture or brutality and that, taken as a whole, is harmful to children. (b) "Harmful to children" means that quality of any description, narrative account or representation, in whatever form, of nudity,</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>sexually explicit conduct, sexual excitement, sadomasochistic abuse, physical torture or brutality, when it:</p> <ol style="list-style-type: none"> <li>1. Predominantly appeals to the prurient, shameful or morbid interest of children;</li> <li>2. Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable for children; and</li> <li>3. Lacks serious literary, artistic, political, scientific or educational value for children, when taken as a whole.</li> </ol> <p>(d) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.</p> <p>(e) "Person" means any individual, partnership, firm, association, corporation or other legal entity.</p> <p>(f) "Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.</p> <p>(2) Criminal penalties. (a) Whoever, with knowledge of the character and content of the material, sells, rents, exhibits, plays, distributes, or loans to a child any harmful material, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:</p> <ol style="list-style-type: none"> <li>1. The person knows or reasonably should know that the child has not attained the age of 18 years.</li> <li>2. The person has face-to-face contact with the child before or during the sale, rental, exhibit, playing, distribution, or loan.</li> </ol> <p>(am) Any person who has attained the age of 17 and who, with knowledge of the character and content of the description or narrative account, verbally communicates, by any means, a harmful description or narrative account to a child, with or without monetary consideration, is guilty of a Class I felony if any of the following applies:</p> <ol style="list-style-type: none"> <li>1. The person knows or reasonably should know that the child has not attained the age of 18 years.</li> <li>2. The person has face-to-face contact with the child before or during the communication.</li> </ol> <p>(b) Whoever, with knowledge of the character and content of the material, possesses harmful material with the intent to sell, rent, exhibit, play, distribute, or loan the material to a child is guilty of a Class A misdemeanor if any of the following applies:</p> <ol style="list-style-type: none"> <li>1. The person knows or reasonably should know that the child has not attained the age of 18 years.</li> <li>2. The person has face-to-face contact with the child.</li> </ol> <p>(c) It is an affirmative defense to a prosecution for a violation of pars. (a)2., (am)2., and (b)2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.</p> <p>(3) Extradition. If any person is convicted under sub. (2) and cannot be found in this state, the governor or any person performing the functions of governor by authority of the law shall, unless the convicted person has appealed from the judgment of contempt or conviction and the appeal has not been finally determined, demand his or her extradition from the executive authority of the state in which the person is found.</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>(4) Libraries and educational institutions. (a) The legislature finds that the libraries and educational institutions under par. (b) carry out the essential purpose of making available to all citizens a current, balanced collection of books, reference materials, periodicals, sound recordings and audiovisual materials that reflect the cultural diversity and pluralistic nature of American society. The legislature further finds that it is in the interest of the state to protect the financial resources of libraries and educational institutions from being expended in litigation and to permit these resources to be used to the greatest extent possible for fulfilling the essential purpose of libraries and educational institutions.</p> <p>(b) No person who is an employee, a member of the board of directors or a trustee of any of the following is liable to prosecution for violation of this section for acts or omissions while in his or her capacity as an employee, a member of the board of directors or a trustee:</p> <ol style="list-style-type: none"> <li>1. A public elementary or secondary school.</li> <li>2. A private school, as defined in s. 115.001(3r).<sup>77</sup></li> <li>3. Any school offering vocational, technical or adult education that: <ol style="list-style-type: none"> <li>a. Is a technical college, is a school approved by the educational approval board under s. 38.50, or is a school described in s. 38.50(1)(e)6., 7. or 8.; and</li> <li>b. Is exempt from taxation under section 501(c)(3) of the internal revenue code, as defined in s. 71.01(6).</li> </ol> </li> <li>4. Any institution of higher education that is accredited, as described in s. 39.30(1)(d), and is exempt from taxation under section 501(c)(3) of the internal revenue code, as defined in s. 71.01(6).</li> <li>5. A library that receives funding from any unit of government.</li> </ol> <p>(5) Severability. The provisions of this section, including the provisions of sub. (4), are severable, as provided in s. 990.001(11).</p> <p>WIS. STAT. ANN. § 948.12 (West 2011). <u>Possession of child pornography</u></p> <p>(1m) Whoever possesses any undeveloped film, photographic negative, photograph, motion picture, videotape, or other recording of a child engaged in sexually explicit conduct under all of the following circumstances may be penalized under sub. (3):</p> <ol style="list-style-type: none"> <li>(a) The person knows that he or she possesses the material.</li> <li>(b) The person knows the character and content of the sexually explicit conduct in the material.</li> <li>(c) The person knows or reasonably should know that the child engaged in sexually explicit conduct has not attained the age of 18 years.</li> </ol> <p>(2m) Whoever exhibits or plays a recording of a child engaged in sexually explicit conduct, if all of the following apply, may be penalized under sub. (3):</p> <ol style="list-style-type: none"> <li>(a) The person knows that he or she has exhibited or played the recording.</li> </ol>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>(b) Before the person exhibited or played the recording, he or she knew the character and content of the sexually explicit conduct. (c) Before the person exhibited or played the recording, he or she knew or reasonably should have known that the child engaged in sexually explicit conduct had not attained the age of 18 years. (3)(a) Except as provided in par. (b), a person who violates sub. (1m) or (2m) is guilty of a Class D felony. (b) A person who violates sub. (1m) or (2m) is guilty of a Class I felony if the person is under 18 years of age when the offense occurs.</p> <p>WIS. STAT. ANN. § 948.13 (West 2011). <u>Child sex offender working with children</u></p> <p>(1) In this section, “serious child sex offense” means any of the following: (a) A crime under s. 940.22(2) or 940.225(2)(c) or (cm), if the victim is under 18 years of age at the time of the offense, a crime under s. 940.302(2) if s. 940.302(2)(a)1. b. applies, or a crime under s. 948.02(1) or (2), 948.025(1), 948.05(1) or (1m), 948.051, 948.06, 948.07(1), (2), (3), or (4), 948.075, or 948.085. (b) A crime under federal law or the law of any other state or, prior to May 7, 1996, under the law of this state that is comparable to a crime specified in par. (a). (2)(a) Except as provided in pars. (b) and (c), whoever has been convicted of a serious child sex offense and subsequently engages in an occupation or participates in a volunteer position that requires him or her to work or interact primarily and directly with children under 16 years of age is guilty of a Class F felony. (b) If all of the following apply, the prohibition under par. (a) does not apply to a person who has been convicted of a serious child sex offense until 90 days after the date on which the person receives actual written notice from a law enforcement agency, as defined in s. 165.77(1)(b), of the prohibition under par. (a): 1. The only serious child sex offense for which the person has been convicted is a crime under s. 948.02(2). 2. The person was convicted of the serious child sex offense before May 7, 2002. 3. The person is eligible to petition for an exemption from the prohibition under sub. (2m) because he or she meets the criteria specified in sub. (2m)(a)1. and 1m. (c) The prohibition under par. (a) does not apply to a person who is exempt under a court order issued under sub. (2m). (2m)(a) A person who has been convicted of a crime under s. 948.02(2), 948.025(1), or 948.085 may petition the court in which he or she was convicted to order that the person be exempt from sub. (2)(a) and permitted to engage in an occupation or participate in a volunteer position that requires the person to work or interact primarily and directly with children under 16 years of age. The court may grant a petition filed under this paragraph if the court finds that all of the following apply: 1. At the time of the commission of the crime under s. 948.02(2), 948.025(1), or 948.085 the person had not attained the age of 19 years</p>
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American University, Washington College of Law

Current as of June 2011

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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>and was not more than 4 years older or not more than 4 years younger than the child with whom the person had sexual contact or sexual intercourse.</p> <p>1m. The child with whom the person had sexual contact or sexual intercourse had attained the age of 13 but had not attained the age of 16.</p> <p>2. It is not necessary, in the interest of public protection, to require the person to comply with sub. (2)(a).</p> <p>(b) A person filing a petition under par. (a) shall send a copy of the petition to the district attorney who prosecuted the person. The district attorney shall make a reasonable attempt to contact the victim of the crime that is the subject of the person's petition to inform the victim of his or her right to make or provide a statement under par. (d).</p> <p>(c) A court may hold a hearing on a petition filed under par. (a) and the district attorney who prosecuted the person may appear at the hearing. Any hearing that a court decides to hold under this paragraph shall be held no later than 30 days after the petition is filed if the petition specifies that the person filing the petition is covered under sub. (2)(b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2)(a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. (2)(b).</p> <p>(d) Before deciding a petition filed under par. (a), the court shall allow the victim of the crime that is the subject of the petition to make a statement in court at any hearing held on the petition or to submit a written statement to the court. A statement under this paragraph must be relevant to the issues specified in par. (a) 1., 1m. and 2.</p> <p>(e)1. Before deciding a petition filed under par. (a), the court may request the person filing the petition to be examined by a physician, psychologist or other expert approved by the court. If the person refuses to undergo an examination requested by the court under this subdivision, the court shall deny the person's petition without prejudice.</p> <p>2. If a person is examined by a physician, psychologist or other expert under subd. 1., the physician, psychologist or other expert shall file a report of his or her examination with the court, and the court shall provide copies of the report to the person and, if he or she requests a copy, to the district attorney. The contents of the report shall be confidential until the physician, psychologist or other expert has testified at a hearing held under par. (c). The report shall contain an opinion regarding whether it would be in the interest of public protection to require the person to comply with sub. (2)(a) and the basis for that opinion.</p> <p>3. A person who is examined by a physician, psychologist or other expert under subd. 1. is responsible for paying the cost of the services provided by the physician, psychologist or other expert, except that if the person is indigent the cost of the services provided by the physician, psychologist or other expert shall be paid by the county. If the person claims or appears to be indigent, the court shall refer the person to the authority for indigency determinations under s. 977.07 (1), except that the person shall be considered indigent without another determination under s. 977.07 (1) if the person is represented by the state public defender or by a private attorney appointed under s. 977.08.</p> <p>(em) A court shall decide a petition no later than 45 days after the petition is filed if the petition specifies that the person filing the</p>
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<p>Statute Cont' (<i>Wisconsin</i>)</p>	<p>petition is covered under sub. (2)(b), that he or she has received actual written notice from a law enforcement agency of the prohibition under sub. (2)(a), and that he or she is seeking an exemption under this subsection before the expiration of the 90-day period under sub. (2)(b).</p> <p>(f) The person who filed the petition under par. (a) has the burden of proving by clear and convincing evidence that he or she satisfies the criteria specified in par. (a)1., 1m. and 2. In deciding whether the person has satisfied the criterion specified in par. (a)2., the court may consider any of the following:</p> <ol style="list-style-type: none"> <li>1. The ages, at the time of the violation, of the person who filed the petition and the victim of the crime that is the subject of the petition.</li> <li>2. The relationship between the person who filed the petition and the victim of the crime that is the subject of the petition.</li> <li>3. Whether the crime that is the subject of the petition resulted in bodily harm to the victim.</li> <li>4. Whether the victim of the crime that is the subject of the petition suffered from a mental illness or mental deficiency that rendered him or her temporarily or permanently incapable of understanding or evaluating the consequences of his or her actions.</li> <li>5. The probability that the person who filed the petition will commit other serious child sex offenses in the future.</li> <li>6. The report of the examination conducted under par. (e).</li> <li>7. Any other factor that the court determines may be relevant to the particular case.</li> </ol> <p>(3) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact primarily and directly with children under 16 years of age:</p> <ol style="list-style-type: none"> <li>(a) Teaching children.</li> <li>(b) Child care.</li> <li>(c) Youth counseling.</li> <li>(d) Youth organization.</li> <li>(e) Coaching children.</li> <li>(f) Parks or playground recreation .</li> <li>(g) School bus driving.</li> </ol> <p>WIS. STAT. ANN. § 948.14 (West 2011). <u>Registered sex offender and photographing minors</u></p> <p>(1) Definitions. In this section:</p> <ol style="list-style-type: none"> <li>(a) “Captures a representation” has the meaning given in s. 942.09(1)(a).</li> <li>(b) “Minor” means an individual who is under 17 years of age.</li> </ol>
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	<p>(c) “Representation” has the meaning giving in s. 942.09(1)(c).</p> <p>(d) “Sex offender” means a person who is required to register under s. 301.45.</p> <p>(2) Prohibition. (a) A sex offender may not intentionally capture a representation of any minor without the written consent of the minor's parent, legal custodian, or guardian. The written consent required under this paragraph shall state that the person seeking the consent is required to register as a sex offender with the department of corrections.</p> <p>(b) Paragraph (a) does not apply to a sex offender who is capturing a representation of a minor if the sex offender is the minor's parent, legal custodian, or guardian.</p> <p>(3) Penalty. Whoever violates sub. (2) is guilty of a Class I felony.</p>
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Definitions ( <i>Wisconsin</i> )	<p>WIS. STAT. ANN. § 948.01 (West 2011).</p> <p><u>Definitions</u></p> <p>In this chapter, the following words and phrases have the designated meanings unless the context of a specific section manifestly requires a different construction:</p> <p>(1) “Child” means a person who has not attained the age of 18 years, except that for purposes of prosecuting a person who is alleged to have violated a state or federal criminal law, “child” does not include a person who has attained the age of 17 years.</p> <p>(1d) “Exhibit,” with respect to a recording of an image that is not viewable in its recorded form, means to convert the recording of the image into a form in which the image may be viewed.</p> <p>(1g) “Joint legal custody” has the meaning given in s. 767.001(1).</p> <p>(1r) “Legal custody” has the meaning given in s. 767.001(2).</p> <p>(2) “Mental harm” means substantial harm to a child's psychological or intellectual functioning which may be evidenced by a substantial degree of certain characteristics of the child including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior. “Mental harm” may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development.</p> <p>(3) “Person responsible for the child's welfare” includes the child's parent; stepparent; guardian; foster parent; treatment foster parent; an employee of a public or private residential home, institution or agency; other person legally responsible for the child's welfare in a residential setting; or a person employed by one legally responsible for the child's welfare to exercise temporary control or care for the</p>

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Definitions Cont' ( <i>Wisconsin</i> )	<p>child.</p> <p>(3m) "Physical placement" has the meaning given in s. 767.001(5).</p> <p>(3r) "Recording" includes the creation of a reproduction of an image or a sound or the storage of data representing an image or a sound.</p> <p>(4) "Sadomasochistic abuse" means the infliction of force, pain or violence upon a person for the purpose of sexual arousal or gratification.</p> <p>(5) "Sexual contact" means any of the following:</p> <p>(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:</p> <ol style="list-style-type: none"> <li>1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.</li> <li>2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.</li> </ol> <p>(b) Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant or, upon the defendant's instruction, by another person upon any part of the body clothed or unclothed of the complainant if that ejaculation or emission is either for the purpose of sexually degrading or sexually humiliating the complainant or for the purpose of sexually arousing or gratifying the defendant.</p> <p>(c) For the purpose of sexually degrading or humiliating the complainant or sexually arousing or gratifying the defendant, intentionally causing the complainant to ejaculate or emit urine or feces on any part of the defendant's body, whether clothed or unclothed.(6)</p> <p>"Sexual intercourse" means vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.</p> <p>(7) "Sexually explicit conduct" means actual or simulated:</p> <ol style="list-style-type: none"> <li>(a) Sexual intercourse, meaning vulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by a person or upon the person's instruction. The emission of semen is not required;</li> <li>(b) Bestiality;</li> <li>(c) Masturbation;</li> <li>(d) Sexual sadism or sexual masochistic abuse including, but not limited to, flagellation, torture or bondage; or</li> <li>(e) Lewd exhibition of intimate parts.</li> </ol>
Defenses	WIS. STAT. ANN. § 948.05 (West 2011).

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<p>(<i>Wisconsin</i>)</p> <p>Defenses Cont' (<i>Wisconsin</i>)</p>	<p><u>Sexual exploitation of a child</u></p> <p>(3) It is an affirmative defense to prosecution for violation of sub. (1)(a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.</p> <p>WIS. STAT. ANN. § 948.11 (West 2011).</p> <p><u>Exposing a child to harmful material or harmful descriptions or narrations</u></p> <p>(c) It is an affirmative defense to a prosecution for a violation of pars. (a)2., (am)2., and (b)2. if the defendant had reasonable cause to believe that the child had attained the age of 18 years, and the child exhibited to the defendant a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.</p>
<p>Penalty (<i>Wisconsin</i>)</p>	<p>WIS. STAT. ANN. § 939.50 (West 2011).</p> <p><u>Classification of felonies</u></p> <p>(1) Felonies in the statutes are classified as follows: (3) Penalties for felonies are as follows: (a) For a Class A felony, life imprisonment. (b) For a Class B felony, imprisonment not to exceed 60 years. (c) For a Class C felony, a fine not to exceed \$ 100,000 or imprisonment not to exceed 40 years, or both. (d) For a Class D felony, a fine not to exceed \$ 100,000 or imprisonment not to exceed 25 years, or both. (e) For a Class E felony, a fine not to exceed \$ 50,000 or imprisonment not to exceed 15 years, or both. (f) For a Class F felony, a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both. (g) For a Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years, or both. (h) For a Class H felony, a fine not to exceed \$10,000 or imprisonment not to exceed 6 years, or both. (i) For a Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.</p> <p>WIS. STAT. ANN. § 939.51 (West 2011).</p> <p><u>Classification of misdemeanors</u></p>

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	<p>(3) Penalties for misdemeanors are as follows:</p> <p>(a) For a Class A misdemeanor, a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.</p> <p>(b) For a Class B misdemeanor, a fine not to exceed \$1,000 or imprisonment not to exceed 90 days, or both.</p> <p>(c) For a Class C misdemeanor, a fine not to exceed \$500 or imprisonment not to exceed 30 days, or both.</p>
<b>Wyoming</b>	
Statute (Wyoming)	<p>WYO. STAT. ANN. § 6-2-302 (West 2011).  <u>Sexual assault in the first degree</u></p> <p>(a) Any actor who inflicts sexual intrusion on a victim commits a sexual assault in the first degree if:</p> <p>(i) The actor causes submission of the victim through the actual application, reasonably calculated to cause submission of the victim, of physical force or forcible confinement;</p> <p>(ii) The actor causes submission of the victim by threat of death, serious bodily injury, extreme physical pain or kidnapping to be inflicted on anyone and the victim reasonably believes that the actor has the present ability to execute these threats;</p> <p>(iii) The victim is physically helpless, and the actor knows or reasonably should know that the victim is physically helpless and that the victim has not consented; or</p> <p>(iv) The actor knows or reasonably should know that the victim through a mental illness, mental deficiency or developmental disability is incapable of appraising the nature of the victim's conduct.</p> <p>WYO. STAT. ANN. § § 6-2-303 (West 2011).  <u>Sexual assault in the second degree</u></p> <p>(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:</p> <p>(i) The actor causes submission of the victim by threatening to retaliate in the future against the victim or the victim's spouse, parents, brothers, sisters or children, and the victim reasonably believes the actor will execute this threat. "To retaliate" includes threats of kidnapping, death, serious bodily injury or extreme physical pain;</p>

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<p>Statute Cont' (Wyoming)</p>	<p>(ii) The actor causes submission of the victim by any means that would prevent resistance by a victim of ordinary resolution;          (iii) The actor administers, or knows that someone else administered to the victim, without the prior knowledge or consent of the victim, any substance which substantially impairs the victim's power to appraise or control his conduct;          (iv) The actor knows or should reasonably know that the victim submits erroneously believing the actor to be the victim's spouse;          (v) Repealed by Laws 2007, ch. 159, § 3.          (vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit;          (vii) The actor is an employee, independent contractor or volunteer of a state, county, city or town, or privately operated adult or juvenile correctional system, including but not limited to jails, penal institutions, detention centers, juvenile residential or rehabilitative facilities, adult community correctional facilities, secure treatment facilities or work release facilities, and the victim is known or should be known by the actor to be a resident of such facility or under supervision of the correctional system; or          (viii) The actor inflicts sexual intrusion in treatment or examination of a victim for purposes or in a manner substantially inconsistent with reasonable medical practices.          (b) A person is guilty of sexual assault in the second degree if he subjects another person to sexual contact and causes serious bodily injury to the victim under any of the circumstances listed in W.S. 6-2-302(a)(i) through (iv) or paragraphs (a)(i) through (vii) of this section.          (c) Repealed by Laws 1997, ch. 135, § 2.</p> <p>WYO. STAT. ANN. § 6-2-304 (West 2011).  <u>Sexual assault in the third degree</u></p> <p>(a) An actor commits sexual assault in the third degree if, under circumstances not constituting sexual assault in the first or second degree:          (i), (ii) Repealed by Laws 2007, ch. 159, § 3.          (iii) The actor subjects a victim to sexual contact under any of the circumstances of W.S. 6-2-302(a)(i) through (iv) or 6-2-303(a)(i) through (vii) without inflicting sexual intrusion on the victim and without causing serious bodily injury to the victim.</p> <p>WYO. STAT. ANN. § 6-2-313 (West 2011).  <u>Sexual battery</u></p> <p>(a) Except under circumstances constituting a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 through 6-2-317 or 6-2-502, an actor who unlawfully subjects another person to any sexual contact is guilty of sexual battery.</p>
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<p>Statute Cont' (Wyoming)</p>	<p>WYO. STAT. ANN. § 6-2-314 (West 2011). <u>Sexual abuse of a minor in the first degree; penalties</u></p> <p>(a) An actor commits the crime of sexual abuse of a minor in the first degree if:</p> <p>(i) Being sixteen (16) years of age or older, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age;</p> <p>(ii) Being eighteen (18) years of age or older, the actor inflicts sexual intrusion on a victim who is less than eighteen (18) years of age, and the actor is the victim's legal guardian or an individual specified in W. S. 6-4-402;</p> <p>(iii) Being eighteen (18) years of age or older, the actor inflicts sexual intrusion on a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim.</p> <p>WYO. STAT. ANN. § 6-2-315 (West 2011). <u>Sexual abuse of a minor in the second degree; penalties</u></p> <p>(a) Except under circumstance constituting sexual abuse of a minor in the first degree as defined by W.S. 6-2-314, an actor commits the crime of sexual abuse of a minor in the second degree if:</p> <p>(i) Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;</p> <p>(ii) Being sixteen (16) years of age or older, the actor engages in sexual contact of a victim who is less than thirteen (13) years of age;</p> <p>(iii) Being eighteen (18) years of age or older, the actor engages in sexual contact with a victim who is less than eighteen (18) years of age and the actor is the victim's legal guardian or an individual specified in W.S. 6-4-402; or</p> <p>(iv) Being eighteen (18) years of age or older, the actor engages in sexual contact with a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim.</p> <p>WYO. STAT. ANN. § 6-2-316 (West 2011). <u>Sexual abuse of a minor in the third degree</u></p> <p>(a) Except under circumstance constituting sexual abuse of a minor in the first or second degree as defined by W.S. 6-2-314 and 6-2-315, an actor commits the crime of sexual abuse of a minor in the third degree if:</p> <p>(i) Being seventeen (17) years of age or older, the actor engages in sexual contact with a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;</p>
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# Fifty State Survey of State Criminal Laws Addressing the Sexual Exploitation of Minors

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<p>Statute Cont' (Wyoming)</p>	<p>(ii) Being twenty (20) years of age or older, the actor engages in sexual intrusion with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim;</p> <p>(iii) Being less than sixteen (16) years of age, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or</p> <p>(iv) Being seventeen (17) years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than seventeen (17) years of age and the victim is at least four (4) years younger than the actor.</p> <p>(c) A person charged with violating the provisions of paragraph (a)(iii) of this section shall be subject to the original jurisdiction of the juvenile court, except the matter may be transferred to the district court having jurisdiction of the offense as provided in W.S. 14-6-237.</p> <p>WYO. STAT. ANN. § 6-2-317 (West 2011). <u>Sexual abuse of a minor in the fourth degree</u></p> <p>(a) Except under circumstance constituting sexual abuse of a minor in the first, second or third degree as defined by W.S. 6-2-314 through 6-2-316, an actor commits the crime of sexual abuse of a minor in the fourth degree if:</p> <p>(i) Being less than sixteen (16) years of age, the actor engages in sexual contact with a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or</p> <p>(ii) Being twenty (20) years of age or older, the actor engages in sexual contact with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim.</p> <p>(c) A person charged with violating the provisions of paragraph (a)(i) of this section shall be subject to the original jurisdiction of the juvenile court, except the matter may be transferred to the district court having jurisdiction of the offense as provided in W.S. 14-6-237.</p> <p>WYO. STAT. ANN. § 6-2-318 (West 2011). <u>Soliciting to engage in illicit sexual relations; penalty</u></p> <p>Except under circumstance constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.</p>
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<p>Statute Cont' (Wyoming)</p>	<p>WYO. STAT. ANN. § 6-4-302 (West 2011). <u>Promoting obscenity; penalties</u></p> <p>(a) A person commits the crime of promoting obscenity if he:            (i) Produces or reproduces obscene material with the intent of disseminating it;            (ii) Possesses obscene material with the intent of disseminating it; or            (iii) Knowingly disseminates obscene material.            (b) Promoting obscenity is a misdemeanor            (c) This section shall not apply to any person who may produce, reproduce, possess or disseminate obscene material:            (i) In the course of law enforcement and judicial activities;            (ii) In the course of bona fide school, college, university, museum or public library activities or in the course of employment of such an organization.</p> <p>WYO. STAT. ANN. § 6-4-303 (West 2011). <u>Sexual exploitation of children; penalties; definitions</u></p> <p>(b) A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:            (i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;            (ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;            (iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography;            (iv) Possesses child pornography, except that this paragraph shall not apply to:            (A) Peace officers, court personnel or district attorneys engaged in the lawful performance of their official duties;            (B) Physicians, psychologists, therapists or social workers, provided such persons are duly licensed in Wyoming and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or            (C) Counsel for a person charged under this section.            (c) The sexual exploitation of a child pursuant to paragraphs (b)(i) through (iii) of this section is a felony.            (d) The sexual exploitation of a child by possession of sexually exploitive material pursuant to paragraph (b)(iv) of this section is a felony.</p>
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Statute Cont' (Wyoming)	<p>WYO. STAT. ANN. § 6-4-304 (West 2011). <u>Voyeurism; penalties</u></p> <p>(a) A person is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both, if he, without the consent of the person being viewed, commits the crime of voyeurism by looking in a clandestine, surreptitious, prying or secretive nature into an enclosed area where the person being viewed has a reasonable expectation of privacy, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) Restrooms;</li> <li>(ii) Baths;</li> <li>(iii) Showers; or</li> <li>(iv) Dressing or fitting rooms.</li> </ul> <p>(b) A person is guilty of a felony punishable by imprisonment for not more than two (2) years, a fine of not more than five thousand dollars (\$5,000.00), or both, if he:</p> <ul style="list-style-type: none"> <li>(i) Commits the offense specified in subsection (a) of this section by knowingly or intentionally capturing an image by means of a camera, a video camera or any other image recording device; or</li> <li>(ii) Uses a camera, video camera or any other image recording device for the purpose of observing, viewing, photographing, filming or videotaping another person under the clothing being worn by the other person where that other person has not consented to the observing, viewing, photographing, filming or videotaping.</li> </ul>
Age of Consent♦ (Wyoming)	18
Definitions (Wyoming)	<p>WYO. STAT. ANN. § 6-2-301 (West 2011). <u>Definitions</u></p> <p>(a) As used in this article:</p> <ul style="list-style-type: none"> <li>(i) "Actor" means the person accused of criminal assault;</li> <li>(ii) "Intimate parts" means the external genitalia, perineum, anus or pubes of any person or the breast of a female person;</li> <li>(iii) "Physically helpless" means unconscious, asleep or otherwise physically unable to communicate unwillingness to act;</li> <li>(iv) "Position of authority" means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person;</li> </ul>

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<p>Definitions Cont' (Wyoming)</p>	<p>(v) "Sexual assault" means any act made criminal pursuant to W.S. 6-2-302 through 6-2-319;</p> <p>(vi) "Sexual contact" means touching, with the intention of sexual arousal, gratification or abuse, of the victim's intimate parts by the actor, or of the actor's intimate parts by the victim, or of the clothing covering the immediate area of the victim's or actor's intimate parts;</p> <p>(vii) "Sexual intrusion" means:</p> <p>(A) Any intrusion, however slight, by any object or any part of a person's body, except the mouth, tongue or penis, into the genital or anal opening of another person's body if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification or abuse; or</p> <p>(B) Sexual intercourse, cunnilingus, fellatio, analingus or anal intercourse with or without emission.</p> <p>(viii) "Victim" means the person alleged to have been subjected to sexual assault;</p> <p>(ix) "This article" means W.S. 6-2-301 through 6-2-320.</p> <p>WYO. STAT. ANN. § 6-4-301 (West 2011).</p> <p><u>Definitions</u></p> <p>(a) As used in this article:</p> <p>(i) "Disseminate" means to sell, distribute, deliver, provide, exhibit or otherwise make available to another;</p> <p>(ii) "Material" includes any form of human expression or communication intended for, or capable of, visual, auditory or sensory perception;</p> <p>(iii) "Obscene" is material which the average person would find:</p> <p>(A) Applying contemporary community standards, taken as a whole, appeals to the prurient interest;</p> <p>(B) Applying contemporary community standards, depicts or describes sexual conduct in a patently offensive way; and</p> <p>(C) Taken as a whole, lacks serious literary, artistic, political or scientific value.</p> <p>(iv) "Produce or reproduce" means to bring into being regardless of the process or means employed. Undeveloped photographs, films, molds, casts, printing plates and like articles may be obscene notwithstanding that further processing or other acts are necessary to make the obscenity patent or to disseminate or exhibit the obscene material;</p> <p>(v) "Sexual conduct" means:</p> <p>(A) Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated;</p> <p>(B) Sado-masochistic abuse; or</p> <p>(C) Patently offensive representations or descriptions of masturbation, excretory functions or lewd exhibitions of the genitals.</p>
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Definitions Cont' (Wyoming)	<p>WYO. STAT. ANN. § 6-4-303 (West 2011). <u>Sexual exploitation of children; penalties; definitions</u></p> <p>(a) As used in this section:</p> <p>(i) “Child” means a person under the age of eighteen (18) years;</p> <p>(ii) “Child pornography” means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:</p> <p>(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;</p> <p>(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or</p> <p>(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.</p> <p>(D) Repealed by Laws 2005, ch. 70, § 2.</p> <p>(iii) “Explicit sexual conduct” means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person;</p> <p>(iv) “Visual depiction” means developed and undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.</p>
Defenses (Wyoming)	<p>WYO. STAT. ANN. § 6-2-308 (West 2011). <u>Criminality of conduct; victim's age</u></p> <p>(a) Except as provided by subsection (b) of this section, if criminality of conduct in this article depends on a victim being under sixteen (16) years of age, it is an affirmative defense that the actor reasonably believed that the victim was sixteen (16) years of age or older.</p> <p>(b) If criminality of conduct in this article depends upon a victim being under twelve (12) years or under fourteen (14) years, it is no defense that the actor did not know the victim's age, or that he reasonably believed that the victim was twelve (12) years or fourteen (14) years of age or older, as applicable.</p>
Penalty (Wyoming)	<p>WYO. STAT. ANN. § 6-2-306 (West 2011). <u>Penalties for sexual assault</u></p> <p>(a) An actor convicted of sexual assault under W.S. 6-2-302 through 6-2-304 who does not qualify under the criteria of subsection (b) or (d) of this section shall be punished as follows:</p> <p>(i) Sexual assault in the first degree under W.S. 6-2-302 is a felony punishable by imprisonment for not less than five (5) years nor more</p>

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<p>Penalty Cont' (Wyoming)</p>	<p>than fifty (50) years;</p> <p>(ii) Sexual assault in the second degree under W.S. 6-2-303 is a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years;</p> <p>(iii) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than fifteen (15) years;</p> <p>(iv) Repealed by Laws 1997, ch. 135, § 2.</p> <p>(b) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, who has previously been convicted of any crime containing the same or similar elements as the crimes defined in W.S. 6-2-302 through 6-2-304 and who does not qualify under the criteria of subsection (d) of this section shall be punished as follows:</p> <p>(i), (ii) Repealed by Laws 2007, ch. 159, § 3.</p> <p>(iii) Sexual assault in the first or second degree under W.S. 6-2-302 or 6-2-303 is a felony punishable by imprisonment for not less than twenty-five (25) years or for life; or</p> <p>(iv) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than twenty (20) years.</p> <p>(c) Repealed by Laws 2007, ch. 159, § 3.</p> <p>(i), (ii) Repealed by Laws 2007, ch. 159, § 3.</p> <p>(iii) Repealed by Laws 1997, ch. 135, § 2.</p> <p>(d) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor under W.S. 6-2-316 through 6-2-317, shall be punished by life imprisonment without parole if the actor has two (2) or more previous convictions for any of the following designated offenses, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere:</p> <p>(i) A crime defined in W.S. 6-2-302 through 6-2-304 or a criminal statute from another jurisdiction containing the same or similar elements as a crime defined by W.S. 6-2-302 through 6-2-304.</p> <p>(ii) Repealed by Laws 1997, ch. 135, § 2.</p> <p>(iii) Repealed by Laws 2007, ch. 159, § 3.</p> <p>(e) An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere.</p> <p>WYO. STAT. ANN. § 6-2-313 (West 2011).</p> <p><u>Sexual battery</u></p>
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<p>Penalty Cont' (Wyoming)</p>	<p>(b) Sexual battery is a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both.</p> <p>WYO. STAT. ANN. § 6-2-314 (West 2011).<sup>78</sup>  <u>Sexual abuse of a minor in the first degree; penalties</u></p> <p>(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than fifty (50) years, unless the person convicted qualifies under W.S. 6-2-306(e).</p> <p>WYO. STAT. ANN. § 6-2-315 (West 2011).  <u>Sexual abuse of a minor in the second degree; penalties</u></p> <p>(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than twenty (20) years, unless the person convicted qualifies under W.S. 6-2-306(e).</p> <p>WYO. STAT. ANN. § 6-2-316 (West 2011).  <u>Sexual abuse of a minor in the third degree</u></p> <p>(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than fifteen (15) years.</p> <p>WYO. STAT. ANN. § 6-2-317 (West 2011).  <u>Sexual abuse of a minor in the fourth degree</u></p> <p>(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than five (5) years.</p> <p>WYO. STAT. ANN. § 6-2-318 (West 2011).  <u>Soliciting to engage in illicit sexual relations; penalty</u></p> <p>[Anyone who violates this section] is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.</p>
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<p>Penalty Cont' (Wyoming)</p>	<p>WYO. STAT. ANN. § 6-4-302 (West 2011).<sup>79</sup> <u>Promoting obscenity; penalties</u></p> <p>(b) Promoting obscenity is a misdemeanor punishable upon conviction as follows:            (i) If to an adult, by a fine not to exceed one thousand dollars (\$1,000.00) or by imprisonment for not to exceed one (1) year, or both;            (ii) If to a minor, for each violation, by a fine not to exceed six thousand dollars (\$6,000.00) or by imprisonment for not to exceed one (1) year, or both.</p> <p>WYO. STAT. ANN. § 6-4-303 (West 2011). <u>Sexual exploitation of children; penalties; definitions</u></p> <p>(c) The sexual exploitation of a child pursuant to paragraphs (b)(i) through (iii) of this section is a felony punishable by imprisonment for not less than five (5) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.            (d) The sexual exploitation of a child by possession of sexually exploitive material pursuant to paragraph (b)(iv) of this section is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.            (e) A second or subsequent conviction pursuant to paragraphs (b)(i) through (iv) of this section, or of a substantially similar law of any other jurisdiction, is a felony punishable by imprisonment for not less than seven (7) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.            (f) Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:            (i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;            (ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;            (iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.</p> <p>WYO. STAT. ANN. § 6-4-304 (West 2011).<sup>80</sup> <u>Voyeurism; penalties</u></p> <p>(a) A person is guilty of a misdemeanor punishable by imprisonment for not more than six (6) months, a fine of not more than seven hundred fifty dollars (\$750.00), or both, if he [violates this section].            (b) A person is guilty of a felony punishable by imprisonment for not more than two (2) years, a fine of not more than five thousand dollars (\$5,000.00), or both, if he [violates this section].</p>
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United States/ Federal	
Statute (U.S./ Federal)	18 U.S.C.A. § 2241 (West 2011). <u>Aggravated sexual abuse</u>
Statute Cont' (U.S./ Federal)	<p>(a) By force or threat.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act--</p> <p>(1) by using force against that other person; or</p> <p>(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping; or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.</p> <p>(b) By other means.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--</p> <p>(1) renders another person unconscious and thereby engages in a sexual act with that other person; or</p> <p>(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--</p> <p>(A) substantially impairs the ability of that other person to appraise or control conduct; and</p> <p>(B) engages in a sexual act with that other person;</p> <p>or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.</p> <p>(c) With children.--Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. (d) State of mind proof requirement.--In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act</p>

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<p>Statute Cont' (U.S./ Federal)</p>	<p>had not attained the age of 12 years.</p> <p>18 U.S.C.A. § 2242 (West 2011). <u>Sexual abuse</u></p> <p>Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--</p> <p>(1) causes another person to engage in a sexual act by threatening or placing that other person in fear (other than by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping); or</p> <p>(2) engages in a sexual act with another person if that other person is--</p> <p>(A) incapable of appraising the nature of the conduct; or</p> <p>(B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act;</p> <p>or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.</p> <p>18 U.S.C.A. § 2243 (West 2011). <u>Sexual abuse of a minor or ward</u></p> <p>(a) Of a minor.-- Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who--</p> <p>(1) has attained the age of 12 years but has not attained the age of 16 years; and</p> <p>(2) is at least four years younger than the person so engaging;</p> <p>or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.</p> <p>(b) Of a ward.--Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who is--</p> <p>(1) in official detention; and</p> <p>(2) under the custodial, supervisory, or disciplinary authority of the person so engaging;</p> <p>or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.</p> <p>(d) State of mind proof requirement.--In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew--</p>
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<p>Statute Cont' (U.S./ Federal)</p>	<p>(1) the age of the other person engaging in the sexual act; or (2) that the requisite age difference existed between the persons so engaging.</p> <p>18 U.S.C.A. § 2251 (West 2011). <u>Sexual exploitation of children</u></p> <p>(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.</p> <p>(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.</p> <p>(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).</p> <p>(2) The circumstance referred to in paragraph (1) is that-- (A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or (B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any</p>
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<p>Statute Cont' (U.S./ Federal)</p>	<p>means or facility of interstate or foreign commerce or mail.</p> <p>(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering--</p> <p>(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or</p> <p>(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct:</p> <p>shall be punished as provided under subsection (e).</p> <p>(2) The circumstance referred to in paragraph (1) is that--</p> <p>(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or</p> <p>(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.</p> <p>18 U.S.C.A. § 2252 (West 2011). <u>Certain activities relating to material involving the sexual exploitation of minors</u></p> <p>(a) Any person who--</p> <p>(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if--</p> <p>(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and</p> <p>(B) such visual depiction is of such conduct;</p> <p>(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if--</p> <p>(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and</p> <p>(B) such visual depiction is of such conduct;</p> <p>(3) either--</p> <p>(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise</p>
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Age of Consent (U.S./ Federal)	<p><u>18 U.S.C. §§ 2422(b), 2423(a)</u></p> <p>18</p>
Definitions (U.S./ Federal)	<p>18 U.S.C.A. § 2246 (West 2011). <u>Definitions for chapter</u></p> <p>As used in this chapter--</p> <p>(1) the term “prison” means a correctional, detention, or penal facility;</p> <p>(2) the term “sexual act” means--</p> <p>(A) contact between the penis and the vulva or the penis and the anus, and for purposes of this subparagraph contact involving the penis occurs upon penetration, however, slight;</p> <p>(B) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus;</p> <p>(C) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person; or</p> <p>(D) the intentional touching, not through the clothing, of the genitalia of another person who has not attained the age of 16 years with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person;</p> <p>(3) the term “sexual contact” means the intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast,</p>

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Defenses (U.S./ Federal)	<p>18 U.S.C.A. § 2243 (West 2011). <u>Sexual abuse of a minor or ward</u></p> <p>(c) Defenses.--(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.</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> <p>18 U.S.C.A. § 2252 (West 2011). <u>Certain activities relating to material involving the sexual exploitation of minors</u></p> <p>(c) Affirmative defense.--It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant--</p> <p>(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and</p>

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<p>Penalty (U.S./ Federal)</p>	<p>18 U.S.C.A. § 2241 (West 2011).<sup>81</sup> <u>Aggravated sexual abuse</u></p> <p>(B) [Whoever violates this section] 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 [violates this section] or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.</p> <p>18 U.S.C.A. § 2242 (West 2011). <u>Sexual abuse</u></p> <p>Whoever [violates this section] or attempts to do so, shall be fined under this title and imprisoned for any term of years or for life.</p>

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<p>Penalty Cont' (U.S./ Federal)</p>	<p>18 U.S.C.A. § 2251 (West 2011). <u>Sexual exploitation of children</u></p> <p>(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.</p> <p>18 U.S.C.A. § 2252 (West 2011). <u>Certain activities relating to material involving the sexual exploitation of minors</u></p> <p>(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.</p> <p>(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of Title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.</p>
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Current as of June 2011

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<p>Penalty Cont' (U.S./ Federal)</p>	<p>18 U.S.C.A. § 2252A (West 2011).  <u>Certain activities relating to material constituting or containing child pornography</u>  (b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.  (2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.  (3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.  (g)(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.</p> <p>18 U.S.C.A. § 2252B (West 2011).  <u>Misleading domain names on the Internet</u></p> <p>(a) Whoever [violates this section] shall be fined under this title or imprisoned not more than 2 years, or both.  (b) Whoever [violates this section] shall be fined under this title or imprisoned not more than 10 years, or both.</p> <p>18 U.S.C.A. § 3581 (West 2011).  <u>Sentence of imprisonment</u></p> <p>(a) In general.--A defendant who has been found guilty of an offense may be sentenced to a term of imprisonment.  (b) Authorized terms.--The authorized terms of imprisonment are--</p>
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	(1) for a Class A felony, the duration of the defendant's life or any period of time; (2) for a Class B felony, not more than twenty-five years; (3) for a Class C felony, not more than twelve years; (4) for a Class D felony, not more than six years; (5) for a Class E felony, not more than three years; (6) for a Class A misdemeanor, not more than one year; (7) for a Class B misdemeanor, not more than six months; (8) for a Class C misdemeanor, not more than thirty days; and (9) for an infraction, not more than five days.
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<sup>1</sup> The validity of this statute has been called into question. Case law pending.

<sup>2</sup> Proposed legislation would amend the statute to require the offender to be 18 years old or older and would specify that the offender could be male or female.

<sup>3</sup> Proposed legislation would amend the statute to require the offender to be 18 years old or older and would specify that the offender could be male or female.

<sup>4</sup> Proposed legislation would add section (a)(4) to include consent obtained by use of fraud or artifice, or circumstances not covered by the rest of the statute.

<sup>5</sup> Proposed legislation would amend § 13A-6-67, § 13A-6-68 and § 13A-6-69 to require the offender to be 18 years old or older and would specify that the offender could be male or female.

<sup>6</sup> Proposed legislation would raise the age of consent in §13A-6-79(c)(1) to 18 years.

<sup>7</sup> Proposed legislation would define a child as a person under 18 years old.

<sup>8</sup> Proposed legislation would add section (4)(d) to require that an offender who was convicted of a sex offense under section 13A-6-61, 13A-6-63, or 13A-6-65.1, and was 21 years or older at the time of an offense, and the victim of the offense was sex years or younger, “shall be sentenced to life imprisonment without the possibility of parole.”

<sup>9</sup> Section (A)(4) is a recent amendment.

<sup>10</sup> Section (a)(3) is a recent amendment.

<sup>11</sup> Section (c)(1) is a recent amendment.

<sup>12</sup> A proposed amendment would add unlawful exploitation and online enticement of a minor to section (i)(2) and online enticement to section (i)(2)(F)(3).

<sup>13</sup> A proposed amendment would eliminate sections B and C, and list only minimum and maximum sentences, and lower sentences.

<sup>14</sup> A proposed amendment would add that a sentence for crime involving sexual exploitation of a minor may be served concurrently with other sentences.

<sup>15</sup> A proposed amendment would add section (6) regarding a person 21 years old or over engaging in sexual activity with a person under 15 years old. That would not apply if the parties are married.

<sup>16</sup> <http://www.jkrlaw.com/california-felony-sentencing-schedule>

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- <sup>17</sup> A proposed amendment would require an offender to be sentenced pursuant to CAL. PENAL CODE § 1170(h).
- <sup>18</sup> Proposed legislation would change sentence ranges for offenses committed after July 2011.
- <sup>19</sup> Proposed legislation would delete sections (4) and (6).
- <sup>20</sup> Proposed legislation would modify the sentence to life without the possibility of parole for all offenders.
- <sup>21</sup> Proposed legislation would amend the sentence for class A felonies to life imprisonment without the possibility of release.
- <sup>22</sup> §§ 779 and 779A have been redesignated.
- <sup>23</sup> This statute has been flagged as unconstitutional
- <sup>24</sup> Idaho's state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles
- <sup>25</sup> Many of Indiana's Child Exploitation laws are only effective through June 30, 2011.
- <sup>26</sup> This law has been flagged as unconstitutional
- <sup>27</sup> *R.S. 14:42(D)(2) was declared unconstitutional by the United States Supreme Court in Kennedy v. Louisiana, 128 S.Ct. 2641, 2008 WL 2511282 (June 25, 2008).*
- <sup>28</sup> Proposed legislation would make changes to this law.
- <sup>29</sup> A proposed amendment would increase the sentence to 2 ½ years to 10 years.
- <sup>30</sup> Mississippi's state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles
- <sup>31</sup> A proposed amendment would add a definition of aggravated sexual battery.
- <sup>32</sup> Missouri's state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles
- <sup>33</sup> This is flagged as being unconstitutional. It is not clear if the recent change to the law was to remedy that.
- <sup>34</sup> Held unconstitutional by *Gryczan v. State*, 942 P.2d 112, 113+, 283 Mont. 433, 433+ (Mont. Jul 02, 1997) (NO. 96-202)
- <sup>35</sup> Held unconstitutional by *Gryczan v. State*, 942 P.2d 112, 113+, 283 Mont. 433, 433+ (Mont. Jul 02, 1997) (NO. 96-202)
- <sup>36</sup> Nevada's state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles
- <sup>37</sup> Found to be unconstitutional. *American Civil Liberties Union of Nevada v. Cortez Masto*, 719 F.Supp.2d 1258, 1258 (D.Nev. Oct 07, 2008)
- <sup>38</sup> Found to be unconstitutional. *American Civil Liberties Union of Nevada v. Cortez Masto*, 719 F.Supp.2d 1258, 1258 (D.Nev. Oct 07, 2008)
- <sup>39</sup> Proposed legislation would specify federal adjusted gross income.
- <sup>40</sup> Oregon's state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles
- <sup>41</sup> A proposed amendment to § 163.670, §163.684, §163.686, and § 163.687 would remove "any photograph, motion picture, videotape or other [visual recording]" and just refer to any "visual recording."
- <sup>42</sup> A proposed amendment would change some wording in section (a)(A) to specify that a person "knowingly possesses, accesses or views. . . ."
- <sup>43</sup> A proposed amendment to section (1)(a) would include someone who knowingly possesses, accesses or views a visual depiction."
- <sup>44</sup> A proposed amendment to this statute essentially changes the entire statute.
- <sup>45</sup> A proposed amendment to this statute would also remove "any photograph, motion picture, videotape or other [visual recording]" and just refer to any "visual recording." It would also remove from section (4) "photographs, films, videotapes, pictures or computer or computer generated images" and refer only to "visual recordings or pictures. It also would add section (5) defining "visual recording."
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<sup>46</sup> A proposed amendment to this statute would also remove “any photograph, motion picture, videotape or other [visual recording]” and just refer to any “visual recording.” It adds section (5) to define “visual recording”

<sup>47</sup> A proposed amendment would increase the sentences in section (d)(1) to between 25 and 75 years, and section (d)(2) to between 50 years and life without the possibility of parole. It would also add section (d.1) to impose consecutive sentences for multiple victims.

<sup>48</sup> A proposed amendment would add a long section regarding schools and school employees and change the definitions section.

<sup>49</sup> A proposed amendment would increase sentences in section (e)(1) to between 25 and 75 years, and in section (e)(2) to a minimum of 50 years and maximum of life without the possibility of parole.. It also proposed section (f) be added to impose consecutive terms for multiple victims.

<sup>50</sup> A proposed amendment would change sentences in section (d)(1) to between 25 and 75 years, and section (d)(2) to between 50 years and life without the possibility of parole. It would also add section (d.1) to impose consecutive sentences for multiple victims.

<sup>51</sup> Laws are only current through 2008.

<sup>52</sup> Rhode Island’s state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles

<sup>53</sup> A proposed amendment would add section (g), defining “sexually explicit conduct.”

<sup>54</sup> South Carolina’s state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles

<sup>55</sup> A proposed amendment would make some minor changes to wording. It would remove the phrase “according to the discretion of the court.” It would also add section (1)(c) regarding school employees and students, and section (3) to say that (1)(c) would not apply to a spouse.

<sup>56</sup> A proposed amendment would make several minor changes to wording.

<sup>57</sup> A proposed amendment would make some minor changes to the language of section (2).

<sup>58</sup> A proposed amendment would make some minor changes to the language of the statute.

<sup>59</sup> Proposed legislation would amend section (b)(2)(A) to punish an offender as a Range II offender, or Range III if appropriate.

<sup>60</sup> Proposed legislation would amend section (b)(2)(A) to punish an offender as a Range II offender, or Range III if appropriate.

<sup>61</sup> Sections (c)(7) and (c)(8) are recent amendments.

<sup>62</sup> A proposed amendment would make the offense a state jail felony if the defendant had been convicted two or more times under the statute.

<sup>63</sup> A proposed amendment elaborates a little on the definition of an educator.

<sup>64</sup> A proposed amendment would involve pat-down searches in publically accessible buildings or transportation. It also would allow for concurrent jurisdiction with state and local prosecuting offices.

<sup>65</sup> A proposed amendment to the statute would remove the requirement that the victim be of the opposite sex of the offender in order for the offender to invoke the defense.

<sup>66</sup> The proposed amendment would allow for a defense if the actor was not more than three years older than the student and the relationship began before the actor was employed at the school.

<sup>67</sup> Proposed legislation would change the age requirement to four years older than the minor.

<sup>68</sup> Vermont’s state criminal law prohibiting sexual abuse of persons under custodial supervision does **NOT** cover juveniles

<sup>69</sup> This law was held unconstitutional.

<sup>70</sup> Proposed legislation would change the fines for misdemeanors.

<sup>71</sup> Proposed legislation would include state registered domestic partners.

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<sup>72</sup> Proposed legislation would alter definitions of schools (likely to include home-based instruction).

<sup>73</sup> Proposed legislation would remove the crime of patronizing a juvenile prostitute, and include commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, and promoting travel for commercial sexual abuse of a minor.

<sup>74</sup> Proposed legislation would add and define “sexual contact” and define “lack of consent.”

<sup>75</sup> Proposed legislation would delete the requirement that the victim not be married to the actor.

<sup>76</sup> Proposed amendments would include in section (1) persons the actor believes to be under 18 and in section (2) persons the actor believes to be under 13 (regardless of actual age).

<sup>77</sup> Proposed legislation would add tribal schools.

<sup>78</sup> Proposed legislation would require an offender at least 25 years old to be sentenced to 25-50 years imprisonment.

<sup>79</sup> Proposed legislation would increase the fine to \$1,500.

<sup>80</sup> Proposed legislation would increase the fines to \$1,000.

<sup>81</sup> Proposed legislation would add additional punishment of special confinement for life for the prevention of sexual predation to §§ 2241, 2242 and 2251.

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