

**State Laws Prohibiting Sexual Abuse of Individuals in Custody
Checklist
NIC/WCL Project on Addressing Prison Rape**

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STATE	Covers All Forms of Sexual Misconduct♣	AGENCY COVERAGE				PERSONNEL COVERAGE				Defenses	Penalties
		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Alabama Prohibited Acts. ALA. CODE § 14-11-31 (West 2008).	✓	✓	✓	✓		✓		✓	✓	Consent is not a defense.	Felony
Alaska Sexual assault in the first degree. ALASKA STAT. § 11.41.410 (West 2008). Sexual assault in the second degree. ALASKA STAT. § 11.41.420 (West 2008). Sexual assault in the third degree. ALASKA STAT. § 11.41.425 (West 2008). Sexual assault in the fourth degree. ALASKA STAT. § 11.41.427 (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Lack of knowledge of status as offender is a defense.	Graduated sanctions

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		Secure Confinement Facilities*	Community Corrections*	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Arizona Unlawful sexual conduct; correctional facilities; classification; definition. ARIZ. REV. STAT. ANN. § 13-1419. (West 2008).	✓	✓	✓ ¹	✓	✓	✓	✓	✓	✓	Marriage is a defense. Bona fide medical examination Lawful internal search	Felony
Arkansas Sexual assault in the first degree. ARK. CODE ANN. § 5-14-124 (West 2008). Sexual assault in the second degree. ARK. CODE ANN. § 5-14-125 (West 2008). Sexual assault in the third degree. ARK. CODE ANN. § 5-14-126 (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is a defense.	Felony
California Sodomy; punishment CAL. PENAL CODE § 286 (West 2008). Oral Copulation;	✓	✓	✓ ²	✓	✓	✓	✓	✓	✓	Consent is not a defense. ³ Bona fide medical examination Lawful search	Graduated sanctions

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California Cont'd punishment CAL. PENAL CODE § 288a (West 2008). Public entity, employees, officers, or agents; sexual activity with confined consenting adult; defense; application; violation; penalty. CAL. PENAL CODE § 289.6 (West 2008).											
Colorado Sexual Assault COLO. REV. STAT. § 18-3-402 (West 2008). Unlawful Sexual Contact. COLO. REV. STAT. § 18-3-404 (West 2008). Sexual Conduct in Penal Institutions. COLO. REV. STAT. § 18-7-701 (West 2008).	✓	✓	✓	✓ ⁴	✓	✓	✓	✓	✓	Bona fide medical purposes Lawful search	Graduated sanctions

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		Secure Confinement Facilities*	Community Corrections*	Juvenile	Private	Correctional Employees [▼]	Volunteers	Juvenile Workers	Contractors [▼]		
Connecticut Sexual assault in the second degree: Class C or B felony. CONN. GEN. STAT. § 53a-71 (West 2008). Sexual assault in the fourth degree: Class A misdemeanor or Class D felony. CONN. GEN. STAT. § 53a-73a (West 2008).	✓	✓	✓ ⁵	✓	✓	✓		✓	✓ ⁶	Marriage is a defense to sexual contact.	Graduated sanctions
Delaware Sexual relations in detention facility; Class G felony. DEL. CODE ANN. tit. 11, § 1259 (West 2008).	✓	✓		✓	✓	✓	✓	✓	✓	Consent is a defense.	Felony ⁷
District of Columbia First degree sexual abuse of a ward. D.C. CODE ANN. § 22-3013 (West 2008). Second degree sexual	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is a defense.	Felony

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District of Columbia Cont'd abuse of a ward. D.C. CODE ANN. § 22-3014 (West 2008).											
Florida Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties. FLA. STAT. ANN. § 944.35 (West 2008). Sexual battery. FLA. STAT. ANN. § 794.011 (West 2008).	Sexual contact is not covered	✓	✓	✓	✓	✓ ⁸		✓	✓	Consent is not a defense. Marriage is a defense. Bona fide medical purpose is a defense. Internal search conducted in the lawful performance of employee's duty is a defense. Lack of knowledge of status as offender is a defense.	Felony

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Georgia Sexual assault. GA. CODE ANN. § 16-6-5.1 (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is a defense to sexual contact.	Felony
Guam N/A: Guam does not have a law prohibiting the sexual abuse of individuals under custodial supervision											
Hawaii Sexual assault in the second degree. HAW. REV. STAT. ANN. § 707-731 (West 2008). Sexual assault in the third degree. HAW. REV. STAT. ANN. § 707-732 (West 2008).	✓	✓	✓ ⁹	✓	✓	✓		✓	✓	Marriage to a minor is a defense. Lack of knowledge of status as offender is a defense.	Felony

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		Secure Confinement Facilities*	Community Corrections*	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Idaho Sexual contact with a prisoner. IDAHO CODE ANN. § 18-6110 (West 2008). Criminal laws applicable to out-of-state prisoners and personnel of private correctional facilities. IDAHO CODE ANN. § 18-101B (West 2008).	✓	✓	✓	✓	✓	✓		✓	✓	Marriage is a defense.	Felony
Illinois Custodial Sexual Misconduct. 720 ILL. COMP. STAT. ANN. 5/11-9.2 (West 2008).	✓	✓	✓	✓	✓	✓		✓	✓	Consent is not a defense. Marriage is a defense. Lack of knowledge of status as offender is a defense.	Felony

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		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Indiana Sexual misconduct by service provider and detainee. IND. CODE ANN. § 35-44-1-5 (West 2008).	Sexual contact is not covered	✓	✓ ¹⁰	✓		✓	✓ ¹¹	✓	✓	Consent is not a defense. Marriage is a defense.	Felony
Iowa Sexual misconduct with offenders and juveniles. IOWA CODE § 709.16 (West 2008).	✓	✓	✓	✓		✓	✓	✓	✓		Misdemeanor
Kansas Unlawful sexual relations. KAN. STAT. ANN. § 21-3520 (West 2008).	✓	✓	✓	✓ ¹²	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is a defense. Knowledge of status as offender is a defense.	Felony

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		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Kentucky Sexual Abuse in the Second Degree. KY. REV. STAT. ANN. § 510.120 (West 2008).	Sexual intercourse is not covered	✓		✓		✓	✓	✓	✓	Marriage is a defense.	Misdemeanor
Louisiana Malfeasance in office; sexual conduct prohibited with persons Sentenced to the custody and supervision of the Department of Public Safety and Corrections LA. REV. STAT. ANN. § 14:134.1 (West 2008).	✓	✓	✓	✓		✓		✓			Felony
Maine Gross sexual assault. ME. REV. STAT. ANN. tit. 17-A, § 253 (West 2008).	✓	✓	✓	✓	✓ ¹³	✓	✓ ¹⁴	✓	✓ ¹⁵	Marriage is a defense. Mental retardation is a defense.	Felony

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		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▽		
Maine Cont'd Unlawful sexual contact. ME. REV. STAT. ANN. tit. 17-A, § 255-A (West 2008). Unlawful sexual touching. ME. REV. STAT. ANN. tit. 17-A, § 260 (West 2008). Failure to Report Sexual Abuse of Person in Custody ME. REV. STAT. ANN. tit. 17-A, § 760 (West 2008).											
Maryland Sexual conduct between correctional or juvenile justice employee and inmate or confined child. MD. CODE ANN., CRIM. LAW § 3-314 (West 2008).	✓	✓	✓	✓		✓	✓	✓	✓		Misdemeanor

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		Secure Confinement Facilities*	Community Corrections*	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Massachusetts Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment. MASS. ANN. LAWS ch. 268, § 21A (West 2008).	✓	✓		✓		✓		✓	✓	Consent is not a defense.	Felony
Michigan Criminal sexual conduct in the Second Degree. MICH. COMP. LAWS SERV. § 750.520c (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Lack of knowledge of status as offender is a defense.	Felony
Minnesota Criminal sexual conduct in the third degree. MINN. STAT. § 609.344 (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Bona fide medical purpose Mistaken belief of age is not a defense.	Felony

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		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▽		
Minnesota Cont'd Criminal sexual conduct in the fourth degree. MINN. STAT. § 609.345 (West 2008).											
Mississippi Sex between law enforcement official and offender. MISS. CODE ANN. § 97-3-104 (West 2008).	Sexual contact not covered	✓	✓		✓	✓				Consent is not a defense.	Felony
Missouri Sexual contact with an inmate, crime. MO. REV. STAT. § 566.145 (West 2008) Offender abuse, penalty—employees, not to use physical force, exceptions. MO. REV. STAT. § 217.405 (West 2008)	✓	✓	✓			✓			✓	Consent is not a defense.	Felony

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Missouri Cont'd Abuse of offender, duty to report, penalty—confidentiality of report, immunity from liability—harassment prohibited. MO. REV. STAT. § 217.410 (West 2008)											
Montana Sexual assault. MONT. CODE ANN. § 45-5-502 (West 2008). Sexual intercourse without consent. MONT. CODE ANN. §45-5-503(West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Lawful search is a defense. Marriage is a defense.	Felony
Nebraska Sexual abuse of an inmate or parolee. NEB. REV. STAT. ANN. § 28-322.01 (West 2008).	✓	✓	✓ ¹⁶	✓ ¹⁷	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is a defense.	Felony

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Nebraska Cont'd Sexual abuse of an inmate or parolee in the first degree; penalty. NEB. REV. STAT. 28-322.02 (West 2008). Sexual abuse of an inmate or parolee in the second degree; penalty. NEB. REV. STAT. ANN § 28-322.03 (West 2008). Sexual abuse of a protected individual; penalty NEB. REV. STAT. ANN § 28-322.04 (West 2008).											
Nevada Voluntary sexual conduct between prisoner and another person; penalty. NEV. REV. STAT. ANN § 212.187 (West 2006).	✓	✓			✓	✓	✓		✓	Consent is a defense. ¹⁸	Felony ¹⁹

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New Hampshire Aggravated Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A:2 (West 2008). Felonious Sexual Assault. N.H. REV. STAT. ANN. § 632-A:3 (West 2008).	✓	✓	✓	✓	✓	✓		✓	✓ ²⁰	Consent is not a defense. Marriage is a defense.	Felony
New Jersey Sexual assault. N.J. STAT. ANN. § 2C:14-2 (West 2008). Criminal Sexual Contact N.J. STAT. ANN. § 2C:14-3 (West 2008).	✓	✓	✓	✓	✓ ²¹	✓		✓		Mistaken belief of age is not a defense. Marriage is not a defense.	Felony
New Mexico Criminal sexual penetration. N.M. STAT. ANN. § 30-9-11 (West 2008).	Sexual contact is not covered	✓		✓		✓		✓	✓ ²²	A medically indicated procedure is a defense.	Felony

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New York Sexual misconduct. NY PENAL LAW § 130.20 (McKinney 2008). Forcible touching. NY PENAL LAW § 130.52 (McKinney 2008). Sexual abuse in the third degree. NY PENAL LAW § 130.55 (McKinney 2008). Sexual abuse in the second degree. NY PENAL LAW § 130.60 (McKinney 2008). Rape in the third degree. N.Y. PENAL LAW § 130.25 (McKinney 2008).	✓	✓	✓ ²³	✓	✓	✓	✓ ²⁴	✓	✓	Marriage is a defense. Consent is not a defense. Lack of knowledge of status as offender is a defense. Valid medical purpose is a defense.	Graduated sanctions

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New York Cont'd Criminal sexual act in the third degree. N.Y. PENAL LAW § 130.40 (McKinney 2008). Aggravated sexual abuse in the fourth degree. N.Y. PENAL LAW § 130.65-a (McKinney 2008).											
North Carolina Intercourse and sexual offenses with certain victims; consent no defense. N.C. GEN. STAT. § 14-27.7 (West 2008).	Sexual contact is not covered	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Accepted medical purposes is a defense.	Felony
North Dakota Sexual abuse of wards. N.D. CENT. CODE § 12.1-20-06 (West 2008). Sexual assault. N.D. CENT. CODE § 12.1-20-07 (West 2008).	✓	✓		✓	✓ ²⁵	✓		✓			Felony

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Ohio Sexual Battery, OHIO REV. CODE ANN. § 2907.03 (West 2008).	Sexual contact is not covered	✓	✓	✓	✓	✓		✓	✓ ²⁶	Marriage is a defense.	Felony
Oklahoma Rape Defined OKLA. STAT. tit. 21, § 1111 (West 2008). Rape in the first degree - second degree OKLA. STAT. tit.21, § 1114 (West 2008). Forcible sodomy OKLA. STAT. tit. 21, § 888 (West 2008). Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16 – Sexual battery. OKLA. STAT. tit. 21, § 1123 (West 2008).	✓	✓	✓	✓	✓	✓		✓	✓	Marriage is a defense.	Felony

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Oregon Custodial sexual misconduct in the first degree. OR. REV. STAT. § 163.452 (2005). Custodial sexual misconduct in the second degree. OR. REV. STAT. § 163.454 (2005).	✓	✓	✓			✓			✓	Consent is not a defense. Lack of supervisory authority is an affirmative defense.	Graduated sanctions
Pennsylvania Institutional sexual assault 18 PA. CONS. STAT. § 3124.2 (WEST 2008).	✓	✓	✓	✓	✓	✓		✓	✓		Felony
Puerto Rico N/A: Puerto Rico does not have a law prohibiting the sexual abuse of individuals under custodial supervision											

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Rhode Island Correctional employees — sexual relations with inmates Felony. R.I. GEN. LAWS § 11-25-24 (West 2008).	Sexual contact is not covered	✓	✓ ²⁷			✓			✓		Felony
South Carolina Sexual misconduct with an inmate, patient or offender. S.C. CODE ANN. § 44-23-1150 (West 2008).	✓	✓	✓			✓	✓		✓	Consent is not a defense. Lack of knowledge of status as offender is a defense.	Felony
South Dakota Sexual acts prohibited between prison employees and prisoners. S.D. CODIFIED LAWS § 24-1-26.1 (West 2008). Sexual acts between jail employees and detainees--Felony--Juvenile correctional	✓	✓	✓ ²⁸	✓		✓		✓	✓ ²⁹	Bona fide medical purpose	Felony

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South Dakota Cont'd facility defined. S.D. CODIFIED LAWS § 22-22-7.6 (West 2008).											
Tennessee Sexual contact or penetration with a prisoner or inmate by a law enforcement officer, correctional employee, vendor or volunteer; penalty. Tenn. Code Ann. § 39-16-408 (2006). Authority figure; sexual battery; penalty. TENN. CODE ANN. § 39-13-527 (2006).	✓	✓		✓	✓	✓	✓	✓	✓		Felony
Texas Violations of the Civil Rights of Person in Custody; Improper	✓	✓	✓	✓	✓	✓	✓	✓	✓	Marriage is a defense. Lack of knowledge of	Felony

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Texas Cont'd Sexual Activity with person in custody. TEX. PENAL CODE ANN. § 39.04 (West 2008).										status as offender is a defense.	
Utah Custodial sexual relations – custodial sexual misconduct – definitions – penalties – defenses. UTAH CODE ANN. § 76-5-412 (West 2008). Custodial relations or misconduct with youth receiving state services UTAH CODE ANN. § 76-5-413 (West 2008).	✓	✓	✓	✓	✓	✓		✓	✓	Consent is not a defense. Lack of knowledge of status as offender is a defense. Mistaken belief of age is not a defense.	Graduated sanctions
Vermont Sexual exploitation of an inmate. VT. STAT. ANN. tit. 13, § 3257 (West 2008).	✓	✓	✓		✓ ³⁰	✓	✓ ³¹		✓		Felony

**State Laws Prohibiting Sexual Abuse of Individuals in Custody
Checklist
NIC/WCL Project on Addressing Prison Rape**

(This checklist addresses laws that explicitly prohibit sexual behavior between staff and persons in custody. Please note that states also use other laws that address misconduct including but not limited to official misconduct, malfeasance in office, and obstruction of justice.)

STATE	Covers All Forms of Sexual Misconduct♣	AGENCY COVERAGE				PERSONNEL COVERAGE				Defenses	Penalties
		Secure Confinement Facilities*	Community Corrections*	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▽		
Virginia Carnal knowledge of certain minors VA. CODE ANN. § 18.2-64.1 (West 2008) Carnal knowledge of an inmate, parolee, probationer, or pretrial or post-trial offender; penalty. VA. CODE ANN. § 18.2-64.2 (West 2008). Sexual Battery VA. CODE ANN. § 18.2-67.4 (West 2008).	Sexual contact is not covered	✓	✓	✓	✓	✓	✓	✓	✓	Lack of knowledge of status as offender is a defense.	Graduated sanctions
Virgin Islands N/A: Virgin Islands does not have a law prohibiting the sexual abuse of individuals under custodial supervision											

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		Secure Confinement Facilities♦	Community Corrections*	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▼		
Washington Custodial sexual misconduct in the first degree WASH. REV. CODE ANN. § 9A.44.160 (West 2008). Custodial sexual misconduct in the second degree WASH. REV. CODE ANN. § 9A.44.170 (West 2008).	✓	✓	✓	✓		✓		✓	✓	Consent of the victim is not a defense.	Graduated sanctions
West Virginia Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalty W. VA. CODE ANN. § 61-8B-10 (West 2008).	Sexual contact is not covered	✓	✓	✓	✓	✓		✓	✓	³²	Felony
Wisconsin Sexual assault. WIS. STAT. ANN. § 940.225 (West 2008).	✓	✓	✓	✓	✓ ³³	✓	✓	✓	✓	Consent is not a defense. Marriage is not a defense.	Felony

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		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors▽		
Wisconsin Cont'd Abuse of residents of penal facilities. WIS. STAT. ANN. § 940.29 (West 2008).										Bona fide medical purpose	
Wyoming Sexual Assault in the first degree WYO. STAT. ANN. § 6-2-302 (West 2008). Sexual assault in the second degree WYO. STAT. ANN. § 6-2-303 (West 2008).	✓	✓	✓	✓	✓	✓	✓	✓	✓	Consent is not a defense. Marriage is not a defense.	Felony
United States Aggravated sexual abuse 18 U.S.C.S. § 2241 (West 2008). Sexual abuse 18 U.S.C.S. § 2242 (West 2008).	✓	✓		✓	✓	✓	✓	✓	✓	Mistake of age is a defense. Marriage is a defense.	Felony

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STATE	Covers All Forms of Sexual Misconduct♣	AGENCY COVERAGE				PERSONNEL COVERAGE				Defenses	Penalties
		Secure Confinement Facilities♦	Community Corrections♦	Juvenile	Private	Correctional Employees▽	Volunteers	Juvenile Workers	Contractors♥		
United States Cont'd Sexual abuse of a minor or ward 18 U.S.C.S. § 2243 (West 2008). Abusive sexual contact 18 U.S.C.S. § 2244 (West 2008).											

* The definition of “all forms of sexual misconduct” includes: penetration by a body part or object; oral sex; sodomy; and sexual touching or contact regardless of the sex of the parties involved. In most states, the definition of sexual contact includes the touching of the victim’s intimate parts directly or through his or her clothing.

♦ The definition of “secure confinement” includes prisons and jails.

♦ Community corrections varies from state to state and covers a wide variety of settings -- both custodial and non-custodial -- including but not limited to parole, probation, pre-trial services and/or electronic monitoring. Where appropriate, footnotes provide further information on forms of community corrections covered by state statutes prohibiting the sexual abuse of individuals in custody.

▽ The definition of “correctional employee” includes correctional officers, administrators and anyone employed by departments of corrections.

♥ The definition of “contractor” can include medical and mental health personnel, clergy, food service workers, teachers, and other staff who work in institutional settings but are employed by other entities.

¹ In Arizona, the statute prohibiting unlawful sexual contact with inmates by correctional staff explicitly excludes offenders who are “release[d] on parole, on community supervision, [or] on probation...” ARIZ. REV. STAT. ANN. § 13-2501(2)(c) (West 2008). Thus the Arizona criminal statute prohibiting sexual contact between staff and offenders does not prohibit sexual interactions between staff and offenders once the offender is in the community.

State Laws Prohibiting Sexual Abuse of Individuals in Custody

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²In California, the statute prohibiting sexual activity with inmates by correctional staff covers only employees “who during the course of employment directly provide treatment, care, control, or supervision of inmates, wards or parolees.” CAL. PENAL CODE § 289.6(3) (West 2008). Thus only community corrections employees who work with parolees are covered under the statute. So other forms of community such as probation do not appear to be covered under the California statute.

³ In California, the statute prohibiting sexual activity with inmates by correctional staff “does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes place pursuant to a court order or with written approval of an authorized representative of the public entity that operates or contracts for the detention facility where the conjugal visit takes place.” CAL. PENAL CODE § 289.6(f) (West 2008). Thus sex which occurs between a staff member and an inmate with whom s/he is permitted to have conjugal visits is not prohibited.

⁴ In Colorado, “any person who knowingly, with or without sexual contact, induces or coerces a child...to engage in any sexual contact, intrusion or penetration with another person, for the purpose of the actors’ own sexual gratification commits unlawful sexual contact.” COLO. REV. STAT. § 18-3-404 (g)(1.5) (West 2008). Thus the statute prohibits individuals, whether employees or not, from engaging in sexual contact with youth in custody.

⁵ In Connecticut, the statutes prohibiting sexual assault of inmates by correctional staff cover community corrections under the statutory language which provides that the inmate must be “in custody of law...and the actor has supervisory or disciplinary authority over such other person.” CONN. GEN. STAT. § 53a-71(a)(5) (West 2008) & CONN. GEN. STAT. § 53a-73a(a)(1)(F) (West 2008). *See also, State v. Straub*, 1999 Conn. Super. LEXIS 746 (holding that the statutory phrase “in custody of law” covers persons beyond those confined and includes persons committed by the court to supervision by the probation departments). Thus, in Connecticut, community corrections is included in the statute prohibiting sexual assault of inmates by correctional staff based on the court’s holding.

⁶In Connecticut, the statute prohibits sexual intercourse or sexual contact by “a person” so long as the victim “is in custody of law . . . and the actor has supervisory or disciplinary authority” over the inmate. CONN. GEN. STAT. § 53a-71(a)(5) (West 2008)..

⁷ In Delaware, the statute prohibiting sexual relations in a detention facility provides that inmates as well as staff offenders can be penalized for “consensual” sexual activity -- including with other inmates. DEL. CODE ANN. tit. 11, § 1259 (West 2008). The Delaware statute explicitly provides that consent is not a defense to prosecution under the statute. DEL. CODE ANN. tit. 11, § 1259 (West 2008). However, both inmates and staff can be charged criminally for sexual contact in custody. This practice makes it clear that, under Delaware law, inmates can consent to sex with staff members.

⁸ In Florida, correctional officers, law enforcement officers, and correctional probation officers are all covered under the statute prohibiting sexual misconduct of inmates by correctional staff. However, the definition of correctional officer “does not include any secretarial, clerical, or professionally trained personnel” FLA. STAT. ANN. § 943.10(2) (West 2008); the definition of law enforcement officer “does not include support personnel employed by the employing agency” FLA. STAT. ANN. § 943.10(1) (West 2008); and the definition of correctional probation officer does not include “management and administrative personnel above, but not including, the probation and parole regional administrator level.” FLA. STAT. ANN. § 943.10(3) (West 2008). Thus secretarial, clerical or professionally trained personnel such as nurses and physicians are exempt from the law prohibiting sexual misconduct by correctional staff.

⁹ In Hawaii, some community corrections employees and facilities are covered by the statute prohibiting sexual abuse of inmates. Jails are run by the state Department of Public Safety-Corrections Division. In Hawaii, jails serve as community corrections centers, so employees providing services under residential community supervision are prohibited from sexual contact with offenders. *See State Run Community Corrections Programs Chart* developed by the NIC/WCL Project on Addressing Prison Rape under NIC Cooperative Agreement 06S20GJJ1 (August 2006).

¹⁰In Indiana, “lawful detention” includes those placed “in a community corrections program’s residential facility” and “electronic monitoring” program. IND. CODE ANN. § 35-41-1-18 (a) (7) & IND. CODE ANN. § 35-41-1-18 (a)(8) (West 2008). So community corrections personnel who supervise offenders in a residential facility or through

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electronic monitored are prohibited from sexual contact with offenders under their care. However, probation officers or parole officers who supervise “a person on probation or parole or constraint incidental to release with or without bail” are explicitly excluded from the statute’s application. IND. CODE ANN. § 35-41-1-18 (a)(10)(b) (West 2008).

¹¹ In Indiana, the statute prohibits sexual misconduct of a detainee by “another person who provides goods or services to a person who is subject to lawful detention.” IND. CODE ANN. § 35-44-1-5 (a) (West 2008). Under this language volunteers would be prohibited from having sex with detainees.

¹² In Kansas, both public and private licensed juvenile facilities are explicitly covered under the statute prohibiting unlawful sexual relations of inmates by correctional staff. KAN. STAT. ANN. § 38-2302 (l) (West 2008).

¹³ In Maine, facilities “under contract with the department for the housing of persons sentenced to imprisonment...” are covered under the statute prohibiting sexual abuse of inmates by correctional staff. ME. REV. STAT. ANN. tit. 17-A, § 255(3) (West 2008). Under this language, private facilities are also covered by the statute.

¹⁴ In Maine, the statute prohibits those correctional staff with “supervisory or disciplinary authority” from sexually abusing offenders. ME. REV. STAT. ANN. tit. 17-A, § 253 (2)(E) (West 2008). Maine has interpreted its law to cover volunteers who have supervisory or disciplinary authority over inmates.

¹⁵ In Maine, the statute prohibits those correctional staff with “supervisory or disciplinary authority” from sexually abusing offenders. ME. REV. STAT. ANN. tit. 17-A, § 253 (2)(E) (West 2008). Maine has interpreted its law to cover contractors who have supervisory or disciplinary authority over inmates.

¹⁶ In Nebraska, the statute explicitly provides that “a person commits the offense of sexual abuse on an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact...” NEB. REV. STAT. ANN. § 28-322.01 (West 2008). Therefore, the only community corrections setting covered under the statute is parole.

¹⁷ In Nebraska, the statute prohibiting sexual abuse of an inmate or parolee defines an inmate or parolee as “any individual confined in a correctional facility operated by the Department of Correctional Services...” NEB. REV. STAT. ANN. § 28-322.01 (West 2008). Thus, juveniles are covered under these statutes because they are confined in the Nebraska Correctional Youth Facility which is run by the Nebraska Department of Corrections. See State Run Community Corrections Programs Chart developed by the NIC/WCL Project on Addressing Prison Rape under NIC Cooperative Agreement 06S20GJJ1 (August 2006).

¹⁸ In Nevada, while consent is not a defense to voluntary sexual conduct between a prisoner and another person, the fact that inmates are penalized for voluntary sex with staff means that Nevada recognizes inmate consent to sex with staff. NEB. REV. STAT. ANN. § 212.187 (West 2008).

¹⁹ In Nevada, the statute provides that inmates as well as staff offenders can be penalized for “voluntary” sexual conduct—including with other inmates. NEB. REV. STAT. ANN. § 212.187(1) (West 2008).

²⁰ In New Hampshire, contractors are covered by the statute prohibiting felonious sexual assault of an inmate by correctional staff if they are employed by the agency and have “direct supervisory authority over the victim.” N.H. REV. STAT. ANN. § 632-A:2 (West 2008).

²¹ In New Jersey, the statute prohibiting sexual assault of inmates by correctional staff includes other institutions where the “victim is on probation or parole, or is detained in a hospital, prison or other institution...” N.J. STAT. ANN. § 2C:14-2(c)(2) (West 2008). Therefore, private facilities may be covered under this definition.

²² In New Mexico, the statute prohibiting criminal sexual penetration of inmates by correctional staff includes contractors only when they are in a “position of authority over the inmate.” N.M. STAT. ANN. § 30-9-11(E)(2) (West 2008).

²³ In New York, employees of the division of parole are covered under the statute prohibiting sexual abuse of inmates by correctional staff when they perform “professional duties in a state correctional facility” and “provide institutional parole services.” NY PENAL LAW § 130.05 (3)(e)(ii) (McKinney, 2008). Thus, only parole officers who

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provide parole services in custodial settings are covered by the statute. The statute does not appear to cover parole, probation and other community corrections staff in the community.

²⁴In New York, volunteers are covered under the statute prohibiting sexual abuse of inmates by correctional staff when they provide “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...a written agreement with such department.” NY PENAL LAW § 130.05 (3)(e)(iv) (McKinney 2008).

²⁵In North Dakota, the statute prohibiting sexual abuse of wards also prohibits sexual abuse which occurs at “other institution[s].” N.D. CENT. CODE § 12.1-20-07(1)(d) (West 2008). Under this language, private facilities and their staff may be prohibited from the sexual abuse of wards.

²⁶The Ohio statute prohibits any person from sexual conduct with another who is not the person’s spouse, if 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.” OHIO REV. CODE ANN. § 2907.03(A)(6) (West 2008). Thus contractors are covered by that language

²⁷In Rhode Island, the statute prohibits “every employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution” from having sexual contact with inmates. R.I. GEN. LAWS §13-11-2 (West 2008). Community corrections staff are employees of the Rhode Island Department of Corrections and thus prohibited from sexual contact with inmates. See State Run Community Corrections Programs Chart developed by the NIC/WCL Project on Addressing Prison Rape under NIC Cooperative Agreement 06S20GJJ1 (August 2006).

²⁸In South Dakota, statutory language prohibiting sexual acts between inmates and “any person employed by the state, or employed within any state prison or other detention facility” extend coverage to “parole services, the Board of Pardon and Parole, and any such agencies . . . that may be placed under the control of the Department of Corrections.” S.D. CODIFIED LAWS § 1-15-1.4 (West 2008) & S.D. CODIFIED LAWS § 22-22-7.6 (West 2008). Under this language parole services and the Board of Pardon and Parole are the only community corrections agencies covered by the prohibition on sex between Department of Corrections employees and persons in custody.

²⁹In South Dakota, statutes prohibiting sexual acts between inmates and “any person employed by the state, or employed within any state prison or other detention facility” cover contract employees. S.D. CODIFIED LAWS § 22-22-7.6 (West 2008) & S.D. CODIFIED LAWS § 22-22-7.6 (West 2008).

³⁰In Vermont, the statute prohibiting sexual abuse of an inmate defines a correctional facility as “any structure of or supported by the department.” VT. STAT. ANN. tit. 28, § 3(10) (West 2008). Therefore, private facilities are covered under this statutory language.

³¹In Vermont, no “other person providing services to offenders...shall engage in a sexual act with a person who the other person knows is confined to a correctional facility.” VT. STAT. ANN. tit. 13, § 3257 (A) (West 2008). Vermont takes the position that volunteers provide services to offenders and, are thus covered by the statutory language.

³²In West Virginia, although the statute prohibiting sexual abuse of incarcerated persons is silent on the issue of consent, the State takes the position that consent is not a defense to sex with an inmate.

³³In Wisconsin, “[a]ny person in charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects, or ill-treats any person confined in or a resident of such institution or place...is guilty of a Class I felony.” Wis. Stat. Ann. § 940.29 (West 2008). Thus, private facilities are covered under this definition.