

Assembly Hearing Slip

(Please print plainly)

Date: 6/2/99

Bill No. AB 355

Or
Subject: _____

Cindy O'Donnell
(Name)

149 E. Wilson
(Street Address or Route Number)

MADISON, VT
(City & Zip Code)

DOC
(Representing)

Speaking in favor:

Speaking against:

Registering in favor:

Registering against:

Speaking for information only:
Neither for nor against:

Please return this slip to a messenger promptly.

Assembly Sergeant at Arms:
Room 411 West
State Capitol
Madison, VT 53702

**ASSEMBLY COMMITTEE ON
CORRECTIONS AND THE COURTS**

AGENDA

Wednesday, June 2, 1999

10:00 AM Room 424 NE

I. Call to Order

II. Roll Call

III. Public Hearing

A. Assembly Bill 355 (*Walker/Boyle/Fitzgerald*) sexual assault of a person confined in an adult or juvenile detention or correctional facility and providing a penalty.

IV. Announcements

A. Next meeting

V. Adjournment

**ASSEMBLY COMMITTEE ON
CORRECTIONS AND THE COURTS**

AGENDA

Tuesday, June 8, 1999

10 AM Room 424 NE

I. Call to Order

II. Roll Call

III. Executive Session

A. AB 355 (*Walker/Boyle/Fitzgerald*) sexual assault of a person confined in an adult or juvenile detention or correctional facility and providing a penalty.

IV. Announcements

A. Next meeting

V. Adjournment

Vote Record

Assembly Committee on Corrections and the Courts

Date: 6/18
 Moved by: unanimous consent Seconded by: _____
 AB: 355 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: 1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage
 - Introduction
 - Adoption
 - Rejection
 - Indefinite Postponement
 - Tabling
 - Concurrence
 - Nonconcurrence
 - Confirmation

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Rep. Scott Walker, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Totals: _____

Vote Record

Assembly Committee on Corrections and the Courts

Date: 6.18
 Moved by: Gundrum Seconded by: Suder
 AB: 355 Clearinghouse Rule: _____
 AB: _____ SB: _____ Appointment: _____
 AJR: _____ SJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: 1
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- | | |
|--|--|
| <input type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction | <input type="checkbox"/> Tabling |
| <input checked="" type="checkbox"/> Adoption | <input type="checkbox"/> Concurrence |
| <input type="checkbox"/> Rejection | <input type="checkbox"/> Nonconcurrence |
| | <input type="checkbox"/> Confirmation |

Committee Member	Aye	No	Absent	Not Voting
Rep. Scott Walker, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>6</u>	<u>3</u>	<u>3</u>	_____

Motion Carried

Motion Failed

Vote Record

Assembly Committee on Corrections and the Courts

Date: 6/18
 Moved by: Hahn Seconded by: Gundrum
 AB: 355 Clearinghouse Rule: _____
 AB: _____ Appointment: _____
 AJR: _____ Other: _____
 A: _____ SR: _____

A/S Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____
 A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Sub Amdt: _____
 A/S Amdt: _____ to A/S Amdt: _____ to A/S Sub Amdt: _____

- Be recommended for:
- Passage *as amended*
 - Introduction
 - Adoption
 - Rejection

- Indefinite Postponement
- Tabling
- Concurrence
- Nonconcurrence
- Confirmation

Committee Member	Aye	No	Absent	Not Voting
Rep. Scott Walker, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Robert Goetsch	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Scott Suder	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Carol Owens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tim Hoven	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Eugene Hahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Gundrum	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Larry Balow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. G. Spencer Coggs	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. Mark Pocan	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rep. Tony Staskunas	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Rep. David Travis	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Totals:	<u>9</u>	_____	<u>3</u>	_____

Motion Carried

Motion Failed

JUN 21 1999



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536

Telephone: (608) 266-1304

Fax: (608) 266-3830

Email: leg.council@legis.state.wi.us

DATE: June 10, 1999

TO: REPRESENTATIVE SCOTT WALKER AND OTHER INTERESTED LEGISLATORS

FROM: Shaun Haas, Senior Staff Attorney

SUBJECT: Explanation of 1999 Assembly Bill 355, Relating to Sexual Assault of a Person Confined in an Adult or Juvenile Detention or Correctional Facility and Providing a Penalty, as Affected by Assembly Amendment 1

This memorandum briefly describes 1999 Assembly Bill 355, relating to sexual assault of a person confined in an adult or juvenile detention or correctional facility and providing a penalty, as affected by Assembly Amendment 1. Assembly Bill 355, as affected by Assembly Amendment 1, was recommended for passage by the Assembly Committee on Corrections and the Courts.

Under *current law*, a person who has sexual contact or sexual intercourse, as defined in s. 939.22 (34) and (36), Stats., respectively (attached), with another person without the other person's consent commits the crime of sexual assault (s. 940.225, Stats., attached). In addition, current law prohibits a person from having sexual contact or sexual intercourse with another person under certain circumstances regardless of whether the other person has consented. The crime of sexual assault is committed when a person has sexual contact or sexual intercourse with the following persons, regardless of consent: (1) the person who is under the influence of drugs or alcohol or suffers from a mental illness, so as to preclude him or her from effectively consenting [s. 940.225 (2) (c) and (cm), Stats.]; (2) a person who is unconscious [s. 940.225 (2) (d), Stats.]; (3) a patient or resident of an adult family home, a community-based residential facility or health or mental health treatment facility that employs the other person [s. 940.295, Stats.]; or (4) a person under the age of 16 [s. 948.02 (1) and (2), Stats.].

1999 Assembly Bill 355 prohibits a "correctional officer" or an individual providing services directly to persons confined in a "correctional institution" from having sexual contact or sexual intercourse with an individual confined in a correctional institution. A person who violates this prohibition is guilty of a Class BC felony and may be fined not more than \$10,000 or imprisoned for not more than 20 years, or both. If the offense occurs on or after December

31, 1999, when the so-called "truth in sentencing" legislation takes effect, a person may be fined not more than \$10,000 or imprisoned for not more than 30 years, or both. "Correctional institution" is defined in the bill to mean a jail or correctional facility as defined in s. 961.01 (12m), Stats., attached; a secured correctional facility, is defined in s. 938.02 (15m), attached; or a secure detention facility, as defined in s. 938.02 (16), Stats., attached. "Correctional officer" is defined in the bill to mean ". . . any person employed by the state or any political subdivision whose duties include supervising, controlling or disciplining persons confined in a correctional institution."

Assembly Amendment 1 prohibits a prisoner from having sexual contact or sexual intercourse with another person while in a facility or institution in which the prisoner is confined. "Prisoner" is defined to mean a person confined in a jail or correctional facility, a secured correctional facility or a secure detention facility, as defined in the statutes cited in the previous paragraph and attached to this memorandum. A person who violates this prohibition is guilty of a Class D felony and may be fined not more than \$10,000 or imprisoned for not more than five years, or both. If the offense occurs on or after December 31, 1999, when the so-called "truth in sentencing" legislation takes effect, a person may be fined not more than \$10,000 or imprisoned for not more than 10 years, or both.

The amendment recognizes an exception to the general prohibition in the case of a prisoner who is a victim of a sexual assault. Under the exception, the prohibition does not apply to a prisoner if *all* of the following apply:

1. The other person engaging in the sexual contact or sexual intercourse is subject to prosecution for the commission of first-, second- or third-degree sexual assault [s. 940.225 (1), (2) or (3), Stats.]; and
2. The prisoner is not subject to prosecution under the sexual assault statute [s. 940.225, Stats.].

If you have questions regarding the bill or the amendment, please contact me.

SPH:jal:tlu;ksm

Attachment

ATTACHMENT

Sections 938.02 (15m) and (16), 939.22 (34) and (36), 940.225 and 961.01 (12m), Stats.

938.02 (15m) "Secured correctional facility" means a correctional institution operated or contracted for by the department of corrections or department of health and family services for holding in secure custody persons adjudged delinquent. "Secured correctional facility" includes the Mendota juvenile treatment center under s. 46.057, the facility at which the juvenile boot camp program under s. 938.532 is operated, a facility authorized under s. 938.533 (3) (b), 938.538 (4) (b) or 938.539 (5).

(16) "Secure detention facility" means a locked facility approved by the department under s. 301.36 for the secure, temporary holding in custody of juveniles.

939.22 (34) "Sexual contact" means the intentional touching of the clothed or unclothed intimate parts of another person with any part of the body clothed or unclothed or with any object or device, the intentional touching of any part of the body clothed or unclothed of another person with the intimate parts of the body clothed or unclothed, or the intentional penile ejaculation of ejaculate or intentional emission of urine or feces upon any part of the body clothed or unclothed of another person, if that intentional touching, ejaculation or emission is for the purpose of sexual humiliation, sexual degradation, sexual arousal or gratification.

(36) "Sexual intercourse" requires only vulvar penetration and does not require emission.

940.225 Sexual assault. (1) FIRST DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class B felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person and causes pregnancy or great bodily harm to that person.

(b) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of use of a dangerous weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a dangerous weapon.

(c) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(2) SECOND DEGREE SEXUAL ASSAULT. Whoever does any of the following is guilty of a Class BC felony:

(a) Has sexual contact or sexual intercourse with another person without consent of that person by use or threat of force or violence.

(b) Has sexual contact or sexual intercourse with another person without consent of that person and causes injury, illness, disease or impairment of a sexual or reproductive organ, or mental anguish requiring psychiatric care for the victim.

(c) Has sexual contact or sexual intercourse with a person who suffers from a mental illness or deficiency which renders that person temporarily or permanently incapable of appraising the person's conduct, and the defendant knows of such condition.

(cm) Has sexual contact or sexual intercourse with a person who is under the influence of an intoxicant to a degree which renders that person incapable of appraising the person's conduct, and the defendant knows of such condition.

(d) Has sexual contact or sexual intercourse with a person who the defendant knows is unconscious.

(f) Is aided or abetted by one or more other persons and has sexual contact or sexual intercourse with another person without the consent of that person.

(g) Is an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k) and has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

(3) **THIRD DEGREE SEXUAL ASSAULT.** Whoever has sexual intercourse with a person without the consent of that person is guilty of a Class D felony. Whoever has sexual contact in the manner described in sub. (5) (b) 2. with a person without the consent of that person is guilty of a Class D felony.

(3m) **FOURTH DEGREE SEXUAL ASSAULT.** Except as provided in sub. (3), whoever has sexual contact with a person without the consent of that person is guilty of a Class A misdemeanor.

(4) **CONSENT.** "Consent", as used in this section, means words or overt actions by a person who is competent to give informed consent indicating a freely given agreement to have sexual intercourse or sexual contact. Consent is not an issue in alleged violations of sub. (2) (c), (cm), (d) and (g). The following persons are presumed incapable of consent but the presumption may be rebutted by competent evidence, subject to the provisions of s. 972.11 (2):

(b) A person suffering from a mental illness or defect which impairs capacity to appraise personal conduct.

(c) A person who is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(5) **DEFINITIONS.** In this section:

(ag) "Inpatient facility" has the meaning designated in s. 51.01 (10).

(ai) "Intoxicant" means any controlled substance, controlled substance analog or other drug, any combination of a controlled substance, controlled substance analog or other drug or any combination of an alcohol beverage and a controlled substance, controlled substance analog or other drug. "Intoxicant" does not include any alcohol beverage.

(am) "Patient" means any person who does any of the following:

1. Receives care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program or from a person providing services under contract with a facility or program.

2. Arrives at a facility or program under s. 940.295 (2) (b), (c), (h) or (k) for the purpose of receiving care or treatment from a facility or program under s. 940.295 (2) (b), (c), (h) or (k), from an employe of a facility or program under s. 940.295 (2) (b), (c), (h) or (k), or from a person providing services under contract with a facility or program under s. 940.295 (2) (b), (c), (h) or (k).

(ar) "Resident" means any person who resides in a facility under s. 940.295 (2) (b), (c), (h) or (k).

(b) "Sexual contact" means any of the following:

1. Intentional touching by the complainant or defendant, either directly or through clothing by the use of any body part or object, of the complainant's or defendant's intimate parts if that intentional touching is either for the purpose of sexually degrading; or for the purpose of sexually humiliating the complainant or sexually arousing or gratifying the defendant or if the touching contains the elements of actual or attempted battery under s. 940.19 (1).

2. Intentional penile ejaculation of ejaculate or intentional emission of urine or feces by the defendant 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.

(c) "Sexual intercourse" includes the meaning assigned under s. 939.22 (36) 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.

(d) "State treatment facility" has the meaning designated in s. 51.01 (15).

(6) 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.

(7) DEATH OF VICTIM. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

961.01 (12m) "Jail or correctional facility" means any of the following:

(a) A Type 1 prison, as defined in s. 301.01 (5).

(b) A jail, as defined in s. 302.30.

(c) A house of correction.

(d) A Huber facility under s. 303.09.

(e) A lockup facility, as defined in s. 302.30.

(f) A work camp under s. 303.10.



Scott Walker

Wauwatosa's Representative in the Wisconsin State Assembly

TO: Interested Parties
FR: Representative Scott Walker
RE: Bill to make sexual contact with inmates by staff a felony
DT: March 18, 1999

Attached is a memo prepared by Shaun Haas of the Legislative Council on the current situation with sexual contact between staff and an inmate within the Wisconsin prison system. Senator Fitzgerald and I are introducing legislation that parallels (page 3 of the attachment to the Haas memo) the current BC felony for an employee of a facility (i.e. adult family home, CBRF, impatient health care or state treatment facility) who has sexual contact or sexual intercourse with a person who is a patient or resident of the facility or program.

The Department of Corrections does have an aggressive Fraternalization Policy and there are currently laws that prevent sex with a non-consenting adult, but neither of these allows for criminal prosecution against a correctional officer who has sex with a consenting adult inmate. The worst that can happen is that the officer will be fired and may be brought up on other charges - depending on the situation.

On Monday, Bradley W. Kok made an initial appearance in Dodge County Circuit Court on a charge of delivering articles to an inmate. According to the criminal complaint, Kok slipped cigarettes, paper and sexually explicit notes under the cell door of two female inmates while on duty last year. Later, Kok entered the cell and had sexual contact with one of the woman, according to the complaint. Under current law, Kok can **not** be charged for the sexual contact – although he is no longer an employee of the Department of Corrections.

In 1998, there were seven cases of consensual sex reported between guards and inmates, he said. Five involved female correctional officers and male inmates and two involved male officers and female inmates.

Two weeks ago, I began looking into this issue after an Amnesty International report noted that Wisconsin was one of the 13 states without a law against sexual contact with inmates. I plan to have a hearing on this bill at the beginning of April.

Any questions please contact me at 266-9180.

MAR 16 1999



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

One East Main Street, Suite 401; P.O. Box 2536; Madison, WI 53701-2536
Telephone: (608) 266-1304
Fax: (608) 266-3830
Email: leg.council@legis.state.wi.us

DATE: March 16, 1999
TO: REPRESENTATIVE SCOTT WALKER
FROM: Shaun Haas, Senior Staff Attorney
SUBJECT: Complaint by Jennifer M. Adams That Wisconsin Has "No Law Prohibiting Sexual Contact Between Inmates and Guards in Our Prisons"

This memorandum, prepared at your request, comments on issues raised by your constituent, Ms. Jennifer Adams, in an e-mail message to you, dated March 11, 1999. In the e-mail, Ms. Adams alleges that Wisconsin has "no law prohibiting sexual contact between inmates and guards in our prisons." Ms. Adams states further that "... there is little if any recourse for an inmate who has been sexually assaulted by a guard or other prison official."

It appears that Ms. Adams' concern is based on a report by Amnesty International that lists Wisconsin as one of 13 states that do not have laws "... that make it a crime for guards to have sexual contact with female prisoners." A review of the description of this report in an article that appeared in *U.S.A. Today*, dated March 4, 1999, attached, presents a confusing picture of Amnesty International's concern. Clearly, the conduct described in the article involved nonconsensual sex that is prohibited under Wisconsin's general sexual assault statute [s. 940.225, Stats., attached]. Additionally, you should be aware that a specific statute penalizes the abuse of residents of penal facilities. Specifically, under s. 940.29, Stats., attached, an employee of a penal or correctional facility who "abuses, neglects or ill-treats" any person confined in such a facility or who knowingly permits another person to do so is guilty of a Class E felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed two years, or both).

If Ms. Adams' concern extends to both nonconsensual and consensual sexual contact between an inmate and a prison guard, she should be aware that the Department of Corrections' (DOC) policy governing relations between inmates and guards prohibits both consensual and nonconsensual sexual contact. My understanding is that Bob Margolies, Legislative Liaison, DOC, is providing you a copy of the DOC's policy in this regard.

If you feel that the current criminal statutes should be revised to clearly address consensual sexual contact between prison guards and inmates, I recommend that you consider

- 2 -

creating a specific statute prohibiting sexual contact between an inmate and a guard, whether that contact is consensual or nonconsensual. This draft legislation could be patterned after s. 940.22, Stats., relating to sexual exploitation by a therapist (attached). Note, in particular, that sub. (2) of this statute prohibits intentional sexual contact between a therapist and his or her patient, regardless of consent. Another approach you might consider is to amend the general sexual assault statute to prohibit an employe of a prison facility from having sexual contact with an inmate of such facility, regardless of consent. This approach would be consistent with the criminalization of sexual contact between an employe and patient or resident in various treatment facilities identified in s. 940.295, Stats. This prohibition is currently set forth in s. 940.225 (1) (g), Stats., which is highlighted in the sexual assault statute, attached. Sexual contact between an employe of such a treatment facility and a patient or resident is a Class BC felony (punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 20 years, or both).

If I may be of further assistance regarding this matter, please let me know.

SPH:tlw;wu

Attachments

1999 Assembly Bill 355
Testimony of Cindy O'Donnell, Deputy Secretary
Department of Corrections
June 2, 1999

I am here today representing Secretary Litscher and the Department of Corrections to speak in support of AB 355 for the following reasons:

- 1) According to a 1996 report by the Women's Rights Project of Human Rights Watch, sexual abuse of women prisoners is a serious problem throughout the nation. Similar instances have been documented between female staff/male inmates and staff and inmates of the same gender. According to the National Institute of Corrections and other national correctional experts, there can be no consensual sex between an offender and a staff member. According to a survey conducted by Amnesty International-USA, Wisconsin is one of only 8 states that do not have a law that prohibits sexual relations between staff and offenders. The statute on Abuse of Residents does not apply. This law would fill that void.
- 2) Since there is no current law that accurately addresses situations where a DOC employee engages in sexual conduct with an offender, we terminate the employee under state work rules and the DOC Fraternalization policy. We have long supported zero tolerance within the system despite the absence of a criminal penalty.
- 3) Our mission statement provides for the humane and respectful treatment of offenders. This law would be consistent with that mission.
- 4) Currently, state law prohibits this conduct between therapists and we recently had a psychologist charged under that statute (s. 940.22-Class C felony). This staff member should not be treated differently from other staff inside the institution. All staff have the ability to impact an offender's release date through the issuance of conduct reports, recommendations to the parole commission, recommendations for lower security, etc. When staff are in positions of control, sexual conduct cannot be deemed consensual.

The vast majority of our staff does their job professionally and competently. Inappropriate relations with inmates jeopardize the safety of all employees and the security of our facilities. Any time a staff member is compromised, they become vulnerable to requests for weapons, drugs, etc. which endanger all staff and inmates. For these reasons, the Department of Corrections supports this bill.

As for the potential penalty for a violation, the Department would only note that the Criminal Penalties Study Committee is currently reviewing the Criminal Code and the classification of penalties. Given the expertise of that group, we suggest that this Committee might want to consider asking them for a recommendation on appropriate penalties. Thank you.

Rights for All: Amnesty International's campaign on the United States of America

"Not Part of my Sentence:" Violations of the Human Rights of Women in Custody

FACTSHEET #6:

The State of Laws and Lawlessness: A survey of statutes on custodial sexual contact

Incarcerated women in U.S. prisons often suffer punishment far in excess of their state imposed sentence. At the hands of correctional officers they face widespread sexual abuse ranging from unauthorized body frisks to rape. Thirteen states offer no legal protections for women against sexual molestation and abuse:

The following states have no law: Alabama; Kentucky; Massachusetts; Minnesota; Oregon; Utah; Vermont; Wisconsin

The following states have enacted laws since March 4, 1999: Montana; Nebraska; Virginia; Washington; West Virginia;

(NOTE: Amnesty International - USA believes that the West Virginia legislation is inadequate to protect women incarcerated in that state, and an action will be initiated shortly)

In the vast majority of U.S. states and the Federal government, laws apply that recognize the potential for abusive relationships between female inmates and correctional authorities and have criminalized custodial sexual contact. Despite laws on the books, enforcement is often sporadic or non-existent. Nationwide, rape and sexual abuse of incarcerated women is so widespread that inmates often consider it a customary aspect of the prison experience. The recent explosion in the number of women incarcerated exacerbates the problem, increasing instances of physical and emotional violation.

<u>Alaska</u>	<u>Idaho</u>	<u>Montana</u>	<u>Rhode Island</u>
<u>Arizona</u>	<u>Illinois</u>	<u>Nebraska</u>	<u>South Carolina</u>
<u>Arkansas</u>	<u>Indiana</u>	<u>Nevada</u>	<u>South Dakota</u>
<u>California</u>	<u>Iowa</u>	<u>New Hampshire</u>	<u>Tennessee</u>
<u>Colorado</u>	<u>Kansas</u>	<u>New Jersey</u>	<u>Texas</u>
<u>Connecticut</u>	<u>Louisiana</u>	<u>New Mexico</u>	<u>Virginia</u>
<u>Delaware</u>	<u>Maine</u>	<u>New York</u>	<u>Washington</u>
<u>District of Columbia</u>	<u>Maryland</u>	<u>North Carolina</u>	<u>West Virginia</u>
<u>Florida</u>	<u>Michigan</u>	<u>Ohio</u>	<u>Wyoming</u>
<u>Georgia</u>	<u>Mississippi</u>	<u>Oklahoma</u>	<u>United States</u>
<u>Hawaii</u>	<u>Missouri</u>	<u>Pennsylvania</u>	

Alaska's law is incorporated into the Criminal Code for sexual assault.

"Penetration" is *Sexual Assault in the First Degree*, and "contact" is in the *second degree*, both of which are felonies.

The status of the people involved is given as the "offender engages in sexual [penetration] [contact] with another person who is in the offender's care by authority of law."

Alaska Stat. #11.41.410 and #11.41.420.

Arizona's law is a separate section in the Criminal Code for sexual offenses.

The status of the people involved is an employee of the State Department of Corrections ("DoC"), a private prison facility, or a contractual vendor to the DoC or private prison and a person under the supervision of the department.

The prisoner is also guilty of the same offense,

Violation is a class 5 felony.

A.R.S. #13-1419

Arkansas' law is within the state's Criminal Code for sexual offenses, the 'statutory rape' laws.

The status of the persons involved is employed directly or through contract with the DoC, the Dept of Community punishment, or with city or county jails, and a prisoner in the custody of these places and departments.

Consent is not a defense.

Violation is a Class A misdemeanor

Ark. Stat. Ann. #5-14-109.

California has a separate section in their Penal Code for this law,

The 1st conviction a misdemeanor and the 2nd violation a felony.

The status of the people involved are employees and officers of public entities, employees, officers or agents of contractual entities providing detention facilities or staff, and a person confined.

Consent is not a defense.

Cal Pen Code # 289.6.

Colorado includes the provision inside its Criminal Code under sexual offenses.

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in custody of law or detained in a hospital or other institution

The offender must USE his authority to coerce the victim to submit in order to be guilty of the offense.

A violation is a Class 4 Felony for penetration or intrusion and a class 1 misdemeanor for

contact.

C.R.S. #18-3-403 and #18-3-404

Connecticut's law is within its Penal Code listing of sex offenses.

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in custody of law or detained in a hospital or other institution

Intercourse is a Class C felony, while sexual contact is a Class A misdemeanor

Conn. Gen. Stat. #53a-71 and #53a-73a

Delaware's law is a separate section, *Sexual relations in detention facility*, in its Criminal Code under the subpart dealing with offenses relating to custody.

The status of the persons involved are a person working at a detention facility and a person in custody at a detention facility.

The prisoner is also guilty.

The incident must occur on the premises of a detention facility

Consent is not a defense.

Violation is a class G felony

11 Del. C. # 1259

The **District of Columbia** has a separate section under the Sexual offenses chapter of the Criminal Code

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in official custody, or is a ward or resident, permanent or temporary, of a hospital, treatment facility, or other institution

Violation can be punished by a fine and/ or imprisonment up to ten years

D.C. Code #22-4113

Florida's law is a separate section under the State Correctional System chapter.

The status of the persons involved are an employee of the State DoC and an inmate or other person supervised by the department in the community

Violation is a third degree felony.

Florida requires other employees to report their knowledge or reasonable suspicions, and provides that failure to report, or reporting inaccurately, is a first degree misdemeanor.

Any attempts to coerce the person required to report is a third degree felony.

Fla. Stat. #944.35

Georgia includes a separate section in its Criminal Code's sexual offenses chapter.

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in custody of law or detained in a hospital or other institution

The status of probation or parole officer, or other custodian or supervisor and a victim who is under the supervision of the officer, custodian or supervisor is also included.

Consent is not a defense

Violation requires imprisonment for at least one but not more than three years.

O.C.G.A. #16-6-5.1

Hawaii has its law within the Sexual Offenses section of the Criminal Code.

For a *Second Degree* offense, the status of the persons is a person employed in a state facility or a law enforcement officer and a person in custody. The act requires penetration, which is a Class B Felony.

For a *Third Degree* offense, the status of the persons is a person employed in state correctional facility and an imprisoned person. The act requires contact, which is a class C felony.

HRS #707-731 and #707-732

Idaho has a separate section in its Rape chapter of the Penal Code.

The status of the people is an officer, employee of agent of a jail or correctional facility and an inmate of the facility.

The sexual act itself is defined and has to match the given criteria.

It is an unclassified crime with a maximum life term but no minimum.

Idaho Code # 18-6110

Illinois has a separate section in its Sexual Offenses part of the Criminal Code.

The status of the persons are an employee of the penal system and a person in custody of the penal system, which includes probationers, parolees, or releasees.

Consent is not a defense.

Violation is a class 3 felony.

720 ILCS 5/11-9.2

Indiana has a separate section in its Official Misconduct section of the Criminal Law.

The status of the persons is a public employee or contractual employee who provides goods or services to a person in lawful detention and a person under lawful detention.

Consent is not a defense,

Violation is a class D felony.

Burns Ind. Code Ann. #35-44-1-5

Iowa has a separate section in its Criminal law under the sexual abuse chapter.

The status of the persons is an officer, employee, contractor, volunteer or agent of the DoC, a district or county and a person under custody of the DoC, district or agent.

Violation is an aggravated misdemeanor.

Iowa Code #709.16

Kansas has a separate section in its Criminal code under sexual offenses.

The status of the persons is an employee of the DoC or a contractual service provider employee and an inmate, or a parole officer and a parolee or releasee under the direct supervision and control of the offender.

The sexual act must conform to intercourse or sodomy as defined.

Consent is an element to the infraction

Violation is a level 10 felony

K.S.A. #21-3520

Louisiana's law is a separate section under Official Misconduct in the Criminal Code.

The status of the persons involved is a law enforcement officer, officer of the DoC, or employee of a prison, jail or correctional institution and a person confined in a prison, jail or correctional institution.

Violation results in a fine up \$10,000 and/or imprisonment up to 10 years.

La. R.S. 14:134.1

Maine includes the law as part of its Sexual assaults chapter in the Criminal Code.

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in official custody or detained in a hospital, prison or other institution, or is a probationer or parolee.

Violation is a Class B crime.

17-A M.R.S. #253

Maryland has a separate section in its sexual offenses part of the Criminal Code.

The status of the persons involved are a correctional officer or a head or deputy head of a correctional facility, including a sheriff, warden, superintendent, or any person having an equivalent title who is appointed or employed to supervise a correctional facility and an inmate incarcerated at a state or local correctional facility or an adult rehabilitation center.

Violation is a misdemeanor.

Md. Ann. Code art. 27, # 464G

Michigan includes its law within the Penal Code chapter of criminal sexual conduct.

The status of the persons is the offender is an employee, contractual employee or volunteer with the DoC or with a county and the victim is a prisoner, probationer, or under the jurisdiction of the DoC.

The offender must know of the victim's status.

Violation is fourth degree misdemeanor.

MSA # 28.788(5) MCL # 750.520e

Mississippi has a separate section in its sexual offenses part of the Criminal Code.

The status of the persons are jailer, guard, employee of the DoC, sheriff, constable, marshal or other officer and a person incarcerated in any jail or any state, county or private correctional facility.

The sex act is defined.

Consent is irrelevant to the crime.

Violation is a felony.

MS Code #97-3-104

Missouri has an inadequate provision in its Correctional and Penal Institutions code

The only status required is the victim must under the jurisdiction of the DoC.

The law requires that the offender knowingly injures the physical well-being of the victim by sexual contact

Violation is a class C felony.

217.405 R.S.Mo.

Montana's Governor signed 1999 SB 32 on March 16, 1999, amending the criminal code for sexual offenses.

The status of the persons involved are a person incarcerated in a detention, correctional or treatment facility and an employee, contractor or volunteer of the facility that has supervisory or disciplinary authority over the victim.

Consent is not a defense.

Sexual intercourse is punished by a term of up to 5 years and a fine, and sexual contact is punished by a maximum 6 months and a \$500 fine.

1999 Montana Chap. Law 84

Nebraska's Governor approved 1999 LB 511 on March 30, 1999, amending the criminal code.

The status of the persons is an inmate or parolee and a person employed by the Department of Correctional Services or Office of Parole Administration, a contractor with the department, or a person delegated or authorized by the department to oversee inmates. Local jails are not included.

Consent is not a defense.

Violation is a felony.

1999 Nebraska Laws 511

Nevada has a separate section in a Prohibited Conduct section of the Correctional Institutions code

The only status required is a person who is in lawful custody or confinement, but not residential confinement

Both the prisoner and the other person are guilty of a class D felony.

Nev.Rev.Stat.Ann.#212.187

New Hampshire includes the provision within its sexual assault section of the Criminal Code.

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is incarcerated in a correctional institution, or a probation or parole officer and the victim who is under the supervision of the officer.

The law requires the offender must use the authority to coerce the victim to submit

Penetration is an aggravated felonious sexual assault.

Contact is a class B felony.

Consent is not a defense to penetration

62 NH Stat Ann #632-A2 and #632-A3

New Jersey includes the law within the sexual offenses in the Criminal Code.

The status of the people are an offender who has supervisory or disciplinary authority over the victim by legal, professional or occupational status, and the victim is on probation, parole, or detained in a hospital, prison or other institution

Penetration is a second degree crime.

Contact is a fourth degree crime.

N.J. Stat # 2C:14-2 and #2C:14-3

New Mexico includes the law within its criminal sexual acts part of the Criminal Code.

The status of the persons are an offender with authority over the victim and the victim is confined in a correctional facility or jail

Penetration is fourth degree felony.

Contact is not criminalized.

NMSA 30-9-11

New York does not have a specific crime, but includes a provision within its statutory rape provisions of the article on sex offenses section of the Penal Code.

The status of the persons is an offender who is an employee with specific duties of the DoC or local jail and a victim who is committed to the DoC, hospital or jail.

The victim is considered incapable of consent.

There are no specific crimes related to the act, only statutory rape provisions

NY CLS Penal #130.05

North Carolina includes a provision within its sexual offenses article of the Criminal Law.

The status of the people is an offender who an agent or employee of an institution having custody of the victim, and the victim is in custody

Consent is not a defense.

Violation is a class E felony.

N.C. Gen.Stat. #14-27.7

Ohio includes a provision within its sexual offenses part of the Criminal Code

The status of the people are an offender who has supervisory or disciplinary authority over the victim and the victim is in custody of law or a patient in a hospital or other institution

Violation is a third degree felony

OH.R.S. #2907.03

Oklahoma has a provision within the rape law in the Criminal Code

The status of the people are an offender who is an employee of the state or a contractor that has authority over the victim and the victim is in legal custody of a state agency

Violations are a Section S-1 penalty

Ok Stat Ann. # 21-1111

Pennsylvania passed their law on December 21, 1998 (*becomes effective February 21, 1999*) by adding a section to the Sexual Assault chapter of the Criminal Code.

The status of the persons is an employee or contractual employee of the State or county DoC and an inmate

Violation is a first degree misdemeanor.

1998 Pa. ALS 157 (to be codified as 18 #3124.2)

Rhode Island has a separate section in the Jails and Prisons chapter of the Criminal Code.

The status of the persons is an employee of the DoC or a service contractor, or a person having direct custodial supervision and control and an inmate

The sexual act is defined

Violation is a felony

R.I. Gen. Laws #11-25-24

South Carolina hides a provision within its Health Code under the article Treatment, Rights, Privileges and Expenses of Patients Generally

The status of the persons is an employee of a state or local correctional facility and an inmate of that facility

The act is sexual intercourse

Violation is a felony

S.C. Code Ann. #44-23-1150

South Dakota has a separate section under the chapter Management of State Penitentiary in the Penal Institutions code.

The status of the people are an offender who is employed by the state or at a detention facility and has custodial, supervisory or disciplinary authority over the victim and the victim is in detention

Sexual penetration is the prohibited act

Violation is a class 6 felony

S.D. Codified Laws #24-1-26.1

Tennessee has a separate section under the Regulation and Care of Inmates part of the Correctional Code.

The status of the people are a law enforcement or correctional officer and a prisoner or an inmate

Violation is a class A misdemeanor

Tenn.Code Ann. #41-21-241

Texas has a separate section in the Penal Code under the Abuse of Office chapter.

The status of the persons is a peace officer, an official or employee of a penal institution and a person under arrest, detention, or confinement.

Violation is a felony.

Tex Penal Code #39.04

Virginia's Governor signed 1999 HB 346 on March 22, 1999, updating Virginia's criminal code.

The status of the persons is an inmate, parolee, probationer, or pretrial or posttrial offender and

an employee, contractual employee or volunteer with a state or local correctional facility, regional jail, the department of corrections, a local community corrections program or a pretrial program and is in a position of authority over the other person and knows the other person is under jurisdiction.

Sexual intercourse is a felony. Sexual battery is a misdemeanor.

1999 VA Chapter Law 294

Washington's Governor signed SB 5234 on April 20, 1999, amending the law on institutions.

The status of the persons are an employee or contract person with the ability to influence the victim's conditions of confinement, or law enforcement and a person detained, under arrest, or a resident under of a facility or under supervision.

Consent is not a defense.

Sexual intercourse is a felony and contact is a misdemeanor.

1999 Washington Chapter Law 45

West Virginia's Governor signed SB 466 on March 26, 1999 amending the Organizations and Institutions section of the code.

The status of the persons are a person employed by the Department of Corrections or working at a correctional facility by contract and an individual incarcerated in West Virginia.

The person incarcerated is guilty of the same offense, unless the incarcerated person can prove the act was not voluntary.

Violation is a misdemeanor.

Wyoming has a provision within the Sexual Assault laws of its Criminal Code

The status of the persons is the offender is in a position of authority over the victim

The act is defined as sexual intrusion

The offender must USE their authority to cause the victim to submit

The law does not mention inmates or those under detention specifically

Violation is a felony

WY Stat #6-2-303

The **United States** Federal Government has a separate section under its Sexual Abuse chapter in the Criminal Code

The status of the people are an offender who has custodial, supervisory or disciplinary authority over the victim and the victim is in official detention

Violation is punishable by a fine and/or imprisonment up to one year

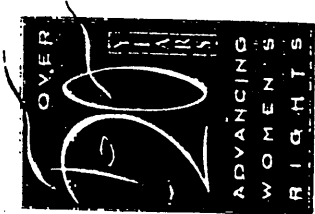
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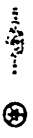


*Fifty State Survey
of State Criminal Laws
Prohibiting Sexual Abuse of Prisoners*

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November 1996



ACKNOWLEDGEMENTS

Nancy Duff Campbell, co-president, Kathleen Donnelly, staff attorney, Kristin Holman, Kristin Flynn, Marelisa Fabrega, Laura Cutilletta, law clerks, Alvin Stith, Shauna Helton, administrative assistants and Sharon Jenkins, communications director, all of the National Women's Law Center provided invaluable support and assistance in the development, research and editing of the *Fifty-Survey of State Criminal Laws Prohibiting the Sexual Abuse of Prisoners*. Thanks also to Heather Pauline Lamberg for her research, Robin Levi and Dorothy Thomas of Human Rights Watch and to Andie Moss, Connie Clem and Pat Scholes of the National Institute of Corrections who gave important feedback and criticism on the survey. We also wish to express gratitude and appreciation to the foundations* which provided generous funding to support this project:

The Educational Foundation of America
Eugene and Agnes Meyer Foundation
Ford Foundation
Georgetown Women's Law and Public Policy Fellowship Program
Morris and Gwendolyn Cafritz Foundation
The Public Welfare Foundation

*(The information contained in this survey does not necessarily represent the views or position of the above mentioned organizations or foundations.)

The National Women's Law Center is a non-profit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Service Code. Our tax I.D. number is 52-1213010. Contributions to the Center enabling it to continue its work on behalf of women and girls across the country are tax deductible.

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State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Alabama	No Legislation ¹					

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Alaska	<p>Alaska Stat. § 11.41.410 (1989 & Supp. 1996)</p> <p>Alaska Stat. § 11.41.420 (1989 & Supp. 1996)</p>	<p>§ 11.41.410. Sexual assault in the first degree</p> <p>§ 11.41.420. Sexual assault in the second degree</p>	<p>§ 11.41.410(a): A person commits the crime of sexual assault in the first degree if, (3) the defendant engages in sexual penetration with another person (B) who is entrusted to the defendant's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the Department of Administration under AS 47.33 or by the Department of Health and Social Services.</p> <p>§ 11.41.420(a): An offender commits the crime of sexual assault in the second degree if (2) the offender engages in sexual conduct with a person (B) who is entrusted to 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 Department of Administration under AS 47.33 or by the Department of Health and Social Service.</p>		<p>§ 11.41.410(b): Sexual assault in the first degree is an unclassified felony.</p> <p>§ 12.55.125(j): The penalty for an unclassified felony shall be (1): imprisonment for a term of 8 years for first time, unarmed offense.</p> <p>§ 11.41.420(b): Sexual assault in the second degree is a class B felony.</p> <p>§ 12.55.125(d): The penalty for a class B felony shall be imprisonment for a term not to exceed 10 years.</p>	<p>§ 11.41.432. Defenses: (a) It is a defense to a crime charged under AS 11.41.410(a)(3) or AS 11.41.420(a)(2) that the offender is: (1) mentally incapable; or (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Arizona	1996 Ariz. Legis. Serv. 13-1419 (West) [Enacted 7/20/96]	§13-1419. Unlawful sexual conduct; correctional employees; prisoners; classification; definition	<p>§13-1419.A: A person who has custodial responsibility for a prisoner or an offender who is on release status and who is under the supervision of the Department of Corrections commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a prisoner who is in the custody of the department or an offender who is under the supervision of the department.</p> <p>B: A prisoner who is in the custody of the state department of corrections or an offender who is on release status and who is under the supervision of the state department of corrections commits unlawful sexual contact by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who has custodial responsibility for the prisoner or offender.</p>	<p>§13-1419.E: For the purposes of this section "custodial responsibility" means having responsibility for the care, management or control of a prisoner who is committed to the state department of corrections or an offender who is under the supervision of the state department of corrections.</p> <p>NOTE: The statute makes it illegal for the prisoner to engage in any sexual contact with a custodian.</p>	<p>§ 13-1419.D: Unlawful sexual conduct is a class 1 misdemeanor.</p> <p>§ 13-707(A)(1): The penalty for a class 1 misdemeanor shall be imprisonment for a term not to exceed 6 months; and/or</p> <p>§ 13-802(A): a fine not to exceed \$2,500.</p>	<p>§13-1419.C.1: Marriage is a defense for the custodian if the marriage occurred before the prisoner was incarcerated by the Department of Corrections.</p> <p>§13-1419.C.2: Marriage is a defense for an offender who is on release status if the marriage occurred before the prisoner was incarcerated by the Department of Corrections.</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Arkansas	Ark. Code Ann. § 5-14-109 (Michie 1987 & Supp. 1995)	§ 5-14-109. Sexual abuse in the second degree	§ 5-14-109: Sexual abuse in the second degree: (a) A person commits sexual abuse in the second degree if: (3) He or she, being employed directly or through contract with the Department of Corrections or the Department of Community Punishment, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment, the consent of the person in custody notwithstanding.		5-14-109(b): Sexual abuse in the second degree is a Class A misdemeanor. 5-4-401(b)(1): The penalty for a Class A misdemeanor shall be imprisonment for a term not to exceed 1 year; and/or 5-4-201(b)(1): a fine not to exceed \$1,000.	§ 5-14-109: Consent is not a defense.

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
California	Cal. Penal Code § 289.6 (West 1996 Supplement)	§ 289.6. Public entity employees, or officers, or agents; sexual activity with confined consenting adult; defense; application; violation; penalty	§ 289.6(a): An employee or officer of a public entity, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.		<p>§ 289.6 (g): Any violation of this section shall constitute a misdemeanor.</p> <p>§ 19: The penalty for a misdemeanor where not otherwise prescribed shall be imprisonment in the county jail for a term not to exceed 6 months, and/or a fine not to exceed \$1,000.</p> <p>§ 289.6(h): Any person previously convicted of a violation of this section shall, upon a subsequent violation be guilty of a felony.</p> <p>§ 18: The penalty for a felony where not otherwise prescribed shall be imprisonment for a term of 16 months, 2 years, or 3 years.</p>	<p>§ 289.6 (e) Consent by a confined person to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.</p> <p>§ 289.6(f): This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes places pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place.</p>

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Colorado	<p>Colo. Rev. Stat. § 18-3-403 (1986 & Supp. 1995)</p>	<p>§ 18-3-403. Sexual assault in the second degree</p>	<p>§ 18-3-403: Sexual assault in the second degree. (1) Any actor who knowingly inflicts sexual penetration or sexual intrusion on a victim commits sexual assault in the second degree if: (g) 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 the sexual intrusion is incident to a lawful search, to coerce the victim to submit.</p>		<p>§ 18-3-403(2): Sexual assault in the second degree is a class 4 felony.</p> <p>§ 18-1-105(V)(A): The penalty for a class 4 felony shall be imprisonment for a term ranging from 2-6 years with a 3 year mandatory probation and/or</p> <p>§ 18-1-105(III)(A): a fine ranging from \$2,000 to \$500,000.</p>	

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/NOTES	PENALTIES	DEFENSES
Connecticut	Conn. Gen. Stat. Ann. § 53a-71 (West 1958 & Supp. 1994) Conn. Gen. Stat. Ann. § 53a-73a (West 1958 & Supp. 1994)	§ 53a-71. Sexual assault in the second degree; Class C felony; Nine months not suspendable § 53a-73a. Sexual assault in the fourth degree; Class A misdemeanor	§ 53a-71: Sexual assault in the second degree: (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person. § 53a-73a: Sexual assault in the fourth degree: (a) A person is guilty of sexual assault in fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person.		§ 53a-71(b): Sexual assault in the second degree is a class C felony for which 9 months of the sentence imposed may not be suspended or reduced by the court. § 53a-35a(6): The penalty for a class C felony shall be imprisonment for a term not less than 1 year nor more than 10 years. § 53a-73a(b): Sexual assault in the fourth degree is a class A misdemeanor. § 53a-36: The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.	
Delaware	De. Code Ann. tit. 11, § 1259 (1974 & Supp. 1995)	§ 1259. Sexual relations in detention facility; Class G felony	§ 1259: Sexual Relations in detention facility; Class G felony: A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility.	NOTE: The statute also makes it illegal for a prisoner to engage in sexual relations with an employee at the detention facility.	§ 1259: Violation of this section is a class G felony. 4205(b)(7): The penalty for a class G felony shall be imprisonment at Level V for a term not to exceed 2 years, and 4205(k): may include fines and penalties as the court deems appropriate.	§ 1259: It shall be no defense that such conduct was consensual.

State Criminal Laws Prohibiting Sexual Abuse of Prisoners

STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
District of Columbia	<p>D.C. Code Ann. § 22-4101 (1981 & Supp. 1996)</p> <p>D.C. Code Ann. § 22-4113 (1981 & Supp. 1996)</p> <p>D.C. Code Ann. § 22-4114 (1981 & 1996)</p> <p>D.C. Code Ann. § 22-4117 (1981 & 1996)</p>	<p>§ 22-4101. Definitions</p> <p>§ 22-4113. First degree sexual abuse of a ward</p> <p>§ 22-4114. Second degree sexual abuse of a ward</p> <p>§ 22-4117. Defenses to sexual abuse of a ward, patient, or client</p>	<p>§ 22-4113: First degree sexual abuse of a ward: Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person: (1) is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) is under the supervisory or disciplinary authority of the actor 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>§ 22-4114: Second degree sexual abuse of a ward: Whoever engages in sexual contact with another person or causes another person to engage in or submit to sexual contact when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor shall be imprisoned for not more than 5 years and, in addition, may be fined in an amount not to exceed \$50,000.</p>	<p>§ 22-4101: Definitions: For the purposes of this chapter: (6) "Official custody" means: (A) Detention following 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 extradition, or deportation, or exclusion.</p>	<p>§ 22-4113: The penalty for first degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 10 years, and may include a fine not to exceed \$100,000.</p> <p>§ 22-4114: The penalty for second degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 5 years and may include a fine not to exceed \$50,000.</p>	<p>§ 22-4117(a): Consent is not a defense, to either first or second degree sexual abuse of a ward; (b) Marriage between the defendant and the victim at the time of the offense is a defense to both first and second degree sexual abuse of a ward, which the defendant must prove by a preponderance of the evidence.</p>

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Florida	1996 Fla. H.B. 1411 Amended Fla. Stat. § 944.35 (Approved 5/30/96)	Authorized use of Force; Malicious battery & Sexual misconduct prohibited; reporting required	Covers offense of sexual misconduct by Department of Corrections employees with inmates or offenders being supervised by the Department of Corrections. Also covers the offense of failure to make reports of such activity or preventing another from doing so.	Sexual Misconduct: oral, anal, vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Does not include internal search or bona fide medical exam.	Sexual misconduct is a felony in the third degree. The penalty for a felony in the third degree shall be: imprisonment for a term not to exceed 5 years; dismissal from employment; and prohibition from employment in any capacity in connection with the correctional system. Failure to report is a misdemeanor of the first degree. The penalty for a misdemeanor of the first degree shall be imprisonment for a term not to exceed 1 year. Inaccurate or false reports is a misdemeanor of the first degree. Preventing others from reporting is a felony in the third degree.	Consent is not a defense. Ignorance that inmate is an inmate or under the supervision by the Department of Corrections is a defense.

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Georgia	Ga. Code Ann. § 16-6-5.1 (1996)	§ 16-6-5.1. Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institu- tion; sexual assault by practitioner of psychotherapy against patient	§ 16-6-5.1(b): A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person.(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: (A) in the custody of law; or (B) Detained in or is a patient in a hospital or other institution.	§ 16-6-5.1(a): As used in this Code section, the term: (2) "intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person; (4) "Sexual Contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.	§ 16-6-5.1(b): The penalty for sexual assault shall be imprisonment for a term not less than 1 nor more than 3 years.	§ 16-6-5.1(c)(3): Consent of the victim is not a defense. The definition of "sexual contact" in § 16-6-5.1(a)(4) excludes contact between married persons.

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Hawaii	Haw. Rev. Stat. Ann. § 707-731 (Michie 1994) Haw. Rev. Stat. Ann. § 707-732 (Michie 1994)	§ 707-731. Sexual assault in the second degree § 707-732. Sexual assault in the third degree	<p>§ 707-731: Sexual assault in the second degree: (1) A person commits the offense of sexual assault in the second degree if: (c) the person, while employed in a state correctional facility, knowingly subjects to sexual penetration an imprisoned person.</p> <p>§ 707-732: Sexual assault in the third degree: (1) A person commits the offense of sexual assault in the third degree if: (d) the person, while employed in a state correctional facility, knowingly subjects to sexual contact an imprisoned person or causes such person to have sexual contact with the actor.</p>		<p>§ 707-731(2): Sexual assault in the second degree is a class B felony.</p> <p>§ 707-732(2): Sexual assault in the third degree is a class C felony.</p> <p>§ 706-660: The penalty for a class B felony shall be imprisonment for a term of 10 years. The penalty for a class C felony shall be imprisonment for a term of 5 years.</p>	
Idaho	Idaho Code § 18-6110 (1987 & Supp. 1996)	§ 18-6110. Sexual contact with an inmate	§ 18-6110: Sexual contact with an inmate. It is a felony for any officer, employee or agent of a jail or correctional facility to have sexual contact with an inmate of such facility.	§ 18-6110: For the purposes of this section sexual contact means sexual intercourse, genital-genital, anal-genital, oral-genital or oral-anal, between persons of the same or opposite sex.	§ 18-6110: The penalty for sexual contact with an inmate shall be imprisonment in the state prison for a term not to exceed life.	

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Illinois	No Legislation ¹					
Indiana	Ind. Code Ann. § 35-44-1-5 (West 1986 & Supp. 1996)	§ 35-44-1-5. Sexual misconduct by service provider with detainee	§ 35-44-1-5: Sec. 5(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct.	§ 35-44-1-5: Sec. 5(a) As used in this section, "service provider" means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.	§ 35-44-1-5(b): Sexual misconduct is a class D felony. § 35-50-2-7(a): The penalty for imprisonment for 1½ years and may also include a fine not to exceed \$10,000.	§ 35-44-1-5(c): It is not a defense that an act described in subsection (b) was consensual.
Iowa	Iowa Code Ann. § 709.16 (West 1993)	§ 709.16. Sexual misconduct with offenders	§ 709.16: Sexual misconduct with offenders: An officer, employee, contractor, vendor, volunteer or agent of a judicial district department of corrections services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of corrections services commits an aggravated misdemeanor.		§ 709.16: Sexual misconduct with offenders is an aggravated misdemeanor. § 903.1(2): The penalty for an aggravated misdemeanor shall be imprisonment for a term not to exceed 2 years and a fine ranging between \$500 and \$5,000.	

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Kansas	Kan. Stat. Ann. § 21-3520 (1995)	§ 21-3520. Unlawful sexual relations	<p>§ 21-3520: Unlawful sexual relations: (a) Unlawful sexual relations is engaging in consensual sexual intercourse or sodomy with a person who is not married to the offender if: (1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate; or (2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender.</p>		<p>§ 21-3520(c): Unlawful sexual relations is a severity 10 person felony.</p> <p>§ 21-4704(a): The penalty for a severity 10 person felony shall be imprisonment for a term between 6 and 12 months depending on offender's criminal history.</p>	<p>Marriage is a defense.</p> <p>Consent is not a defense.</p>
Kentucky	No Legislation ¹					

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STATE	STATUTE	TITLE	COVERAGE	DEFINITIONS/ NOTES	PENALTIES	DEFENSES
Louisiana	La. Rev. Stat. Ann. § 134.1 (West 1986)	§ 134.1. Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions	§ 134.1: Malfeasance in office; sexual conduct prohibited with persons confined in correctional institutions. A. It shall be unlawful and constitute malfeasance in office for any person who is a law enforcement officer, officer of the Department of Corrections, or employee of a prison, jail, or correctional institution, to engage in sexual intercourse or any other sexual conduct with a person confined in a prison, jail or correctional institution.		§ 134.1.B: Penalty for a violation of a provision of this section shall be imprisonment for a term not to exceed 10 years and/or a fine not to exceed \$10,000.	
Maine	Me. Rev. Stat. Ann. tit. 17-A, § 253 (West 1983 & Supp. 1995)	§ 253. Gross sexual assault	§ 253(2): A person is guilty of gross sexual assault if that person engages in a sexual act with another person and: (E) The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person.		§ 253(5): Violation of subsection 2, paragraph E is a Class B crime. § 1252(2)(B): The penalty for a Class B crime shall be imprisonment for a term not to exceed 10 years.	Marriage is a defense.

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Maryland	BILL FAILED 1996 Maryland Senate Bill 116 Last Action: 4/2/96 From House Committee on Judiciary: Reported unfavorably.		Provided that a fourth degree sexual offense includes sexual activity between an individual who works in a correctional facility or supervises offenders in the community and someone incarcerated or supervised in the community; relates to custodial employees and individuals in custody.			
Massachusetts	No Legislation ¹					
Michigan	Mich. Comp. Laws Ann. § 750.520e (West 1991 & Supp. 1996)	§ 750.520e. Fourth degree criminal sexual conduct	§ 750.520e.(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 if any of the following circumstances exist: (c) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county who knows that the other person is under the county's jurisdiction.		§ 750.520e(2): Criminal sexual conduct in the fourth degree is a misdemeanor the penalty for which shall be imprisonment for a term not to exceed 2 years and/or a fine not to exceed \$500.	
Minnesota	No Legislation ¹					

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Mississippi	BILL FAILED 1996 MS House Bill 773 Last Action: 2/6/96 Defeated by committee.		Relates to corrections; employees engaging in sex with offenders are guilty of sexual battery.			

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Missouri	Mo. Ann. Stat. § 217.405 (Vernon 1983 & Supp. 1996) Mo. Ann. Stat. § 217.410 (Vernon 1983 & Supp. 1996)	§ 217.405. Offender abuse, penalty -- employees not to use physical force, exceptions § 217.410. Abuse of offender, duty to report, penalty-- confidentiality of report, immunity from liability-- harassment prohibited	§ 217.405: Offender abuse, penalty - employees not to use physical force, exceptions: (1) Except as provided in subsection 3 of this section, a person commits the crime of "offender abuse" if he knowingly injures the physical well- being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person. (3) No employee of the department shall use physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender. § 217.410.1: When any employee of the department has reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused, he shall immediately report it in writing to the director.	NOTE: There is a requirement to report reasonable belief of abuse.	§ 217.405.2: Offender abuse is a class C felony. § 217.410.3: Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor. § 558.011.1(3): The penalty for a class C felony shall be imprisonment for a term not to exceed 7 years. § 558.011.1(5): The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.	
Montana	No Legislation ¹					
Nebraska	No Legislation ¹					

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Nevada	Nev. Rev. Stat. § 212.187 (1996)	§ 212.187. Voluntary sexual conduct between prisoner and person engaged in his custody or confinement unlawful	§ 212.187(1): It is unlawful for: (a) A prisoner who is in lawful custody or confinement to engage voluntarily in sexual conduct with a person who has custody of him or an employee of the institution in which he is confined; or (b) a person who has custody of a prisoner or who is an employee of an institution in which a prisoner is confined, to engage voluntarily in sexual conduct with a prisoner.	§ 212.187(2): As used in this section, sexual conduct means acts of masturbation, homosexuality, sexual intercourse or physical contact with another's unclotthed genitals or pubic area. NOTE: The statute makes it unlawful for a prisoner to engage in sexual activity with correctional staff.	Violation of § 212.187(2) is a misdemeanor. § 193.170: Whenever the performance of any act is prohibited by any statute, and no penalty for the violation of such statute is imposed, the committing of such act shall be a misdemeanor. § 193.150: 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.	Consent is not a defense.
New Hampshire	No Legislation ¹					

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New Jersey	N.J. Stat. Ann. § 2C: 14-2 (West 1995)	§ 2C: 14-2. Sexual assault	§ 2C:14-2.c: An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances: (3) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status.		§ 2C:14-2: Sexual assault is a crime of the second degree. § 2C:43-6a(2): The penalty for a crime of the second degree shall be imprisonment for a term of between 5 and 10 years.	
New Mexico	N.M. Stat. Ann. § 30 9-11 (Michie 1978 & Supp. 1996)	§ 30-9-11. Criminal sexual penetration	§ 30-9-11: Criminal sexual penetration. D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate.		§ 30-9-11.D. Criminal sexual penetration in the second degree is a second degree felony. § 31-18-15.A.(3): The penalty for a second degree felony shall be imprisonment for a term of 9 years and E.(3): may include a fine of up to \$10,000.	