

Sexual Offenses Against Children Compilation

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State laws recognize the value in drafting statutes that include heightened criminal liability for those who commit sexual offenses against children. In fact, the Supreme Court identified “[t]he prevention of sexual exploitation and abuse of children” as a “government objective of surpassing importance.”¹ Child sexual abuse is defined by the American Psychological Association as “any interaction between a child and an adult (or another child) in which the child is used for the sexual stimulation of the perpetrator or an observer.”² State laws address the particular vulnerabilities that make children susceptible to sexual exploitation. One widely held rationale for providing heightened protections is that children lack the ability to consent to sexual acts.³ Children do not have the capacity to understand sex, reproduction, the role of sex in relationships and its consequences, to make an informed decision.⁴ They are also at a greater risk for abuse because of their general dependency on adults to meet their needs.⁵ These reasons, along with the severe psychological trauma that results,⁶ make child sexual abuse an offense requiring special attention.

While statutes vary according to the policy objectives of each state,⁷ one common feature is that the severity of the crime generally differs in relation to the age of the child.⁸ Statutory rape laws, for example, create strict liability for offenders who have sexual intercourse with a child who has not reached the age of consent.⁹ The age of consent for states varies from ten to eighteen years of age.¹⁰ Therefore, consent is not a defense to statutory rape.¹¹ For offenders to be liable, it is also not required that they had knowledge of the child’s age when they committed the crime.¹²

While general sexual offense statutes may be applicable to children, this compilation only consists of statutes that have specific language regarding sexual offenses against children. Acts included in the American Psychological Association’s definition of child sexual abuse are sexual contact, penetration,

¹ 1-5 Morosco, *The Prosecution and Defense of Sex Crimes* § 5.01 (Matthew Bender, Rev. Ed.).

² *Child sexual abuse: What parents should know*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/pi/families/resources/child-sexual-abuse.aspx> (last visited July 30, 2013).

³ Charles A. Phipps, *Article: Children, Adults, Sex and the Criminal Law: In Search of Reason*, 22 SETON HALL LEGIS. J. 18 (1997).

⁴ *Id.* at 64-65.

⁵ *Id.* at 22, 65.

⁶ Eric S. Janus & Emily A. Polachek, *A Crooked Picture: Re-Framing the Problem of Child Sexual Abuse*, 36 WM. MITCHELL L. REV. 142, 143 (2009).

⁷ *Id.* at 22.

⁸ *Id.* at 30.

⁹ Marie K. Pesando, 65 AM. JUR. 2D *Rape* § 11.

¹⁰ Marie K. Pesando, 65 AM. JUR. 2D *Rape* § 13.

¹¹ *Id.*

¹² Marie K. Pesando, 65 AM. JUR. 2D *Rape* § 14.

grooming, forcing the child perform a sexual act for the creation of pornographic material, prostitution, exposing private body parts to a child, voyeurism, and verbally enticing a child for sex.¹³ Statutes regarding incest, prostitution and human trafficking are not included in this compilation.¹⁴ All statutes contained in this compilation have been signed by the pertinent governor and enacted into law. This report was compiled using Westlaw and Lexis Search Services and other online sources for statutes not found in these services. This compilation is up-to-date as of the month it was created. However, please note we recommend checking both case law and current legislation for any possible modifications to the statutes listed below.

¹³ *Child sexual abuse: What parents should know*, AMERICAN PSYCHOLOGICAL ASSOCIATION, <http://www.apa.org/pi/families/resources/child-sexual-abuse.aspx> (last visited July 30, 2013).

¹⁴ Please refer to the incest and human trafficking compilations available on the National District Attorneys Association website for a list of these statutes. These compilations are available at http://www.ndaa.org/ncpca_state_statutes.html.

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ALABAMA

ALA. CODE § 13A-6-61 (2013). Rape; first degree.

(a) A person commits the crime of rape in the first degree if:

(1) He or she engages in sexual intercourse with a member of the opposite sex by forcible compulsion; or

(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He or she, being 16 years or older, engages in sexual intercourse with a member of the opposite sex who is less than 12 years old.

(b) Rape in the first degree is a Class A felony.

CREDIT(S)

(Acts 1977, No. 77-607; Acts 2000, No. 00-726.)

ALA. CODE § 13A-6-62 (2013). Rape; second degree.

(a) A person commits the crime of rape in the second degree if:

(1) Being 16 years old or older, he or she engages in sexual intercourse with a member of the opposite sex less than 16 and more than 12 years old; provided, however, the actor is at least two years older than the member of the opposite sex.

(2) He or she engages in sexual intercourse with a member of the opposite sex who is incapable of consent by reason of being mentally defective.

(b) Rape in the second degree is a Class B felony.

CREDIT(S)

(Acts 1977, No. 77-607; Acts 1979, No. 79-471; Acts 1987, No. 87-607; Acts 2000, No. 00-726.)

ALA. CODE § 13A-6-63 (2013). Sodomy; first degree.

(a) A person commits the crime of sodomy in the first degree if:

(1) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being physically helpless or mentally incapacitated; or

(3) He, being 16 years old or older, engages in deviate sexual intercourse with a person who is less than 12 years old.

(b) Sodomy in the first degree is a Class A felony.

CREDIT(S)

(Acts 1977, No. 77-607.)

ALA. CODE § 13A-6-64 (2013). Sodomy; second degree.

(a) A person commits the crime of sodomy in the second degree if:

(1) He, being 16 years old or older, engages in deviate sexual intercourse with another person less than 16 and more than 12 years old.

(2) He engages in deviate sexual intercourse with a person who is incapable of consent by reason of being mentally defective.

(b) Sodomy in the second degree is a Class B felony.

CREDIT(S)

(Acts 1977, No. 77-607; Acts 1979, No. 79-471; Acts 1987, No. 87-607.)

ALA. CODE § 13A-6-65.1 (2013). Sexual torture.

(a) A person commits the crime of sexual torture:

(1) By penetrating the vagina or anus or mouth of another person with an inanimate object by forcible compulsion with the intent to sexually torture or to sexually abuse.

(2) By penetrating the vagina or anus or mouth of a person who is incapable of consent by reason of physical helplessness or mental incapacity with an inanimate object, with the intent to sexually torture or to sexually abuse.

(3) By penetrating the vagina or anus or mouth of a person who is less than 12 years old with an inanimate object, by a person who is 16 years old or older with the intent to sexually torture or to sexually abuse.

(b) The crime of sexual torture is a Class A felony.

CREDIT(S)

(Acts 1993, No. 93-606.)

ALA. CODE § 13A-6-67 (2013). Sexual abuse; second degree.

(a) A person commits the crime of sexual abuse in the second degree if:

(1) He subjects another person to sexual contact who is incapable of consent by reason of some factor other than being less than 16 years old; or

(2) He, being 19 years old or older, subjects another person to sexual contact who is less than 16 years old, but more than 12 years old.

(b) Sexual abuse in second degree is a Class A misdemeanor, except that if a person commits a second or subsequent offense of sexual abuse in the second degree within one year of another sexual offense, the offense is a Class C felony.

CREDIT(S)

(Acts 1977, No. 77-607; Acts 2000, No. 00-728.)

ALA. CODE § 13A-6-69 (2013). Child molestation; luring child someplace in order to perform or to propose sexual acts.

(a) It shall be unlawful for any person with lascivious intent to entice, allure, persuade or invite, or attempt to entice, allure, persuade or invite, any child under 16 years of age to enter any vehicle, room, house, office or other place for the purpose of proposing to such child the performance of an act of sexual intercourse or an act which constitutes the offense of sodomy or for the purpose of proposing the fondling or feeling of the sexual or genital parts of such child or the breast of such child, or for the purpose of committing an aggravated assault on such child, or for the purpose of proposing that such child fondle or feel the sexual or genital parts of such person.

(b) A violation of this section is a Class C felony.

CREDIT(S)

(Acts 2005, 1st Sp. Sess., No. 05-301.)

ALA. CODE § 13A-6-69.1 (2013). Sexual abuse of child under 12.

(a) A person commits the crime of sexual abuse of a child less than 12 years old if he or she, being 16 years old or older, subjects another person who is less than 12 years old to

sexual contact.

(b) Sexual abuse of a child less than 12 years old is a Class B felony.

CREDIT(S)

(Acts 2006, No. 06-575.)

ALA. CODE § 13A-6-70 (2013). Consent of victim.

(a) Whether or not specifically stated, it is an element of every offense defined in this article, with the exception of subdivision (a)(3) of Section 13A-6-65, that the sexual act was committed without consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion; or

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances, in addition to forcible compulsion or incapacity to consent, in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent if he is:

(1) Less than 16 years old; or

(2) Mentally defective; or

(3) Mentally incapacitated; or

(4) Physically helpless.

CREDIT(S)

(Acts 1977, No. 77-607.)

ALA. CODE § 13A-6-81(2013). Sex act or deviant sexual intercourse with a student.

(a) A person commits the crime of a school employee engaging in a sex act or deviant sexual intercourse with a student under the age of 19 years if he or she is a school employee and engages in a sex act or deviant sexual intercourse with a student, regardless

of whether the student is male or female. Consent is not a defense to a charge under this section.

(b) As used in this section, sex act means sexual intercourse with any penetration, however slight; emission is not required.

(c) As used in this section, deviant sexual intercourse means any act of sexual gratification between persons not married to each other involving the sex organs of one person and the mouth or anus of another.

(d) The crime of a school employee engaging in a sex act or deviant sexual intercourse with a student is a Class B felony.

CREDIT(S)

(Acts 2010, No. 10-497, § 1, July 1, 2010.)

ALA. CODE § 13A-6-82 (2013). Sexual contact with a student.

(a) A person commits the crime of a school employee having sexual contact with a student under the age of 19 years if he or she is a school employee and engaging in sexual contact with a student, regardless of whether the student is male or female. Consent is not a defense to a charge under this section.

(b) As used in this section, sexual contact means any touching of the sexual or other intimate parts of a student, done for the purpose of gratifying the sexual desire of either party. The term includes soliciting or harassing a student to perform a sex act..

(c) The crime of a school employee having sexual contact with a student is a Class A misdemeanor.

CREDIT(S)

(Acts 2010, No. 10-497, § 2, July 1, 2010.)

ALA. CODE § 14-11-30 (2013). Custodial sexual misconduct.

(a) When used in this section, the following words shall have the following meanings:

(1) Custody. Any of the following:

a. Pretrial incarceration or detention.

b. Incarceration or detention under a sentence or commitment to a state or local penal institution, any detention facility for children or youthful offenders.

c. Parole or mandatory supervised release.

d. Electronic home detention.

e. Parole or probation.

(2) Employee. An employee or contractual employee of any governmental agency of the state, county, or municipality that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or detention facility.

(3) Sexual conduct. Any of the following acts:

a. Sexual intercourse. This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required.

b. Sexual contact. Any known touching for the purpose of sexual arousal, gratification, or abuse of the following:

1. The sexual or other intimate parts of the victim by the actor.

2. The sexual or other intimate parts of the actor by the victim.

3. The clothing covering the immediate area of the sexual or other intimate parts of the victim or actor.

b. Sexual intrusion. Any intrusion, however slight, by any object or any part of the body of a person into the genital, anal, or oral opening of the body of another person if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

CREDIT(S)

(Acts 2004, No. 04-298.)

ALASKA

ALASKA STAT. § 11.41.434 (2013). Sexual abuse of a minor in the first degree

(a) An offender commits the crime of sexual abuse of a minor in the first degree if

(1) being 16 years of age or older, the offender engages in sexual penetration with a person who is under 13 years of age or aids, induces, causes, or encourages a person who is under 13 years of age to engage in sexual penetration with another person;

(2) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian; or

(3) being 18 years of age or older, the offender engages in sexual penetration with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the first degree is an unclassified felony and is punishable as provided in AS 12.55.010.

CREDIT(S)

(§ 2 ch 78 SLA 1983; am § 3 ch 66 SLA 1988; am § 1 ch 151 SLA 1990)

ALASKA STAT. § 11.41.436 (2013). Sexual abuse of a minor in the second degree

(a) An offender commits the crime of sexual abuse of a minor in the second degree if,

(1) being 17 years of age or older, the offender engages in sexual penetration with a person who is 13, 14, or 15 years of age and at least four years younger than the offender, or aids, induces, causes, or encourages a person who is 13, 14, or 15 years of age and at least four years younger than the offender to engage in sexual penetration with another person;

(2) being 16 years of age or older, the offender engages in sexual contact with a person who is under 13 years of age or aids, induces, causes, or encourages a person under 13 years of age to engage in sexual contact with another person;

(3) being 18 years of age or older, the offender engages in sexual contact with a person who is under 18 years of age, and the offender is the victim's natural parent, stepparent, adopted parent, or legal guardian;

(4) being 16 years of age or older, the offender aids, induces, causes, or encourages a person who is under 16 years of age to engage in conduct described in AS 11.41.455(a)(2) -- (6);

(5) being 18 years of age or older, the offender engages in sexual contact with a person who is under 16 years of age, and

(A) the victim at the time of the offense is residing in the same household as the

offender and the offender has authority over the victim; or

(B) the offender occupies a position of authority in relation to the victim;

(6) being 18 years of age or older, the offender engages in sexual penetration with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim; or

(7) being under 16 years of age, the offender engages in sexual penetration with a person who is under 13 years of age and at least three years younger than the offender.

(b) Sexual abuse of a minor in the second degree is a class B felony.

CREDIT(S)

(§ 2 ch 78 SLA 1983; am § 3 ch 66 SLA 1988; am § 1 ch 151 SLA 1990)

ALASKA STAT. § 11.41.438 (2013). Sexual abuse of a minor in the third degree

(a) An offender commits the crime of sexual abuse of a minor in the third degree if being 17 years of age or older, the offender engages in sexual contact with a person who is 13, 14, or 15 years of age and at least four years younger than the offender.

(b) Sexual abuse of a minor in the third degree is a class C felony.

CREDIT(S)

(§ 2 ch 78 SLA 1983; am § 3 ch 151 SLA 1990; am § 14 ch 124 SLA 2004; am § 2 ch 14 SLA 2006)

ALASKA STAT. § 11.41.440 (2013). Sexual abuse of a minor in the fourth degree

(a) An offender commits the crime of sexual abuse of a minor in the fourth degree if

(1) being under 16 years of age, the offender engages in sexual contact with a person who is under 13 years of age and at least three years younger than the offender; or

(2) being 18 years of age or older, the offender engages in sexual contact with a person who is 16 or 17 years of age and at least three years younger than the offender, and the offender occupies a position of authority in relation to the victim.

(b) Sexual abuse of a minor in the fourth degree is a class A misdemeanor.

CREDIT(S)

(§ 3 ch 166 SLA 1978; am § 9 ch 102 SLA 1980; am § 3 ch 78 SLA 1983; am § 4 ch 151 SLA 1990; am § 15 ch 124 SLA 2004)

ALASKA STAT. § 11.41.458 (2013). Indecent exposure in the first degree

(a) An offender commits the crime of indecent exposure in the first degree if the offender violates AS 11.41.460(a), the offense occurs within the observation of a person under 16 years of age, and

(1) while committing the act constituting the offense, the offender knowingly masturbates; or

(2) the offender has been previously convicted under

(A) this section;

(B) AS 11.41.460(a); or

(C) a law or ordinance of this or another jurisdiction with elements similar to a crime listed under (A) or (B) of this paragraph.

(b) Indecent exposure in the first degree is a class C felony.

CREDIT(S)

(§ 3 ch 81 SLA 1998; am § 1 ch 62 SLA 2005)

ALASKA STAT. § 11.41.460 (2013). Indecent exposure in the second degree

(a) An offender commits the crime of indecent exposure in the second degree if the offender knowingly exposes the offender's genitals in the presence of another person with reckless disregard for the offensive, insulting, or frightening effect the act may have.

(b) Indecent exposure in the second degree before a person under 16 years of age is a class A misdemeanor. Indecent exposure in the second degree before a person 16 years of age or older is a class B misdemeanor.

CREDIT(S)

(§ 4 ch 78 SLA 1983; am § 4 ch 81 SLA 1998)

ALASKA STAT. § 11.51.100 (2013). Endangering the welfare of a child in the first degree

(a) A person commits the crime of endangering the welfare of a child in the first degree if, being a parent, guardian, or other person legally charged with the care of a child under 16 years of age, the person

(1) intentionally deserts the child in a place under circumstances creating a substantial risk of physical injury to the child;

(2) leaves the child with another person who is not a parent, guardian, or lawful custodian of the child knowing that the person is

(A) registered or required to register as a sex offender or child kidnapper under AS 12.63 or a law or ordinance in another jurisdiction with similar requirements;

(B) charged by complaint, information, or indictment with a violation of AS 11.41.410 - 11.41.455 or a law or ordinance in another jurisdiction with similar elements; or

(C) charged by complaint, information, or indictment with an attempt, solicitation, or conspiracy to commit a crime described in (B) of this paragraph;

(3) leaves the child with another person knowing that the person has previously physically mistreated or had sexual contact with any child, and the other person causes physical injury to or engages in sexual contact with the child; or.

(4) recklessly fails to provide an adequate quantity of food or liquids to a child, causing protracted impairment of the child's health.

(b) A person commits the crime of endangering the welfare of a minor in the first degree if the person transports a child in a motor vehicle, aircraft, or watercraft while in violation of AS 28.35.030.

(c) In this section, "physically mistreated" means

(1) having committed an act punishable under AS 11.41.100 -- 11.41.250; or

(2) having applied force to a child that, under the circumstances in which it was applied, or considering the age or physical condition of the child, constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation because of the substantial and unjustifiable risk of

(A) death;

(B) serious or protracted disfigurement;

(C) protracted impairment of health;

(D) loss or impairment of the function of a body member or organ;

(E) substantial skin bruising, burning, or other skin injury;

(F) internal bleeding or subdural hematoma;

(G) bone fracture; or

(H) prolonged or extreme pain, swelling, or injury to soft tissue.

(d) Endangering the welfare of a child in the first degree under (a)(3) of this section is a

(1) class B felony if the child dies;

(2) class C felony if the child suffers sexual contact, sexual penetration, or serious physical injury; or

(3) class A misdemeanor if the child suffers physical injury.

(e) Endangering the welfare of a child under (b) of this subsection is a class A misdemeanor.

(f) Endangering the welfare of a child in the first degree under (a)(1) or (2) of this section is a class C felony.

CREDIT(S)

SLA 1978, ch. 166, § 5; SLA 1998, ch. 99, § 5; SLA 2004, ch. 127, §§ 1--3. Amended by SLA 2011, ch. 20, § 10, eff. July 1, 2011; SLA 2012, ch. 70, §§ 3, 4, eff. July 1, 2012; SLA 2013, ch. 9, § 5, eff. May 10, 2013.

ALASKA STAT. § 11.56.765 (2013). Failure to report a violent crime committed against a child

(a) A person, other than the victim, commits the crime of failure to report a violent crime committed against a child if the person

(1) witnesses what the person knows or reasonably should know is

(A) the murder or attempted murder of a child by another;

(B) the kidnapping or attempted kidnapping of a child by another;

(C) the sexual penetration or attempted sexual penetration by another

(i) of a child without consent of the child;

- (ii) of a child that is mentally incapable;
 - (iii) of a child that is incapacitated; or
 - (iv) of a child that is unaware that a sexual act is being committed; or
 - (D) the assault of a child by another causing serious physical injury to the child;
 - (2) knows or reasonably should know that the child is under 16 years of age; and
 - (3) does not in a timely manner report that crime to a peace officer or law enforcement agency.
- (b) In a prosecution under this section, it is an affirmative defense that the defendant
- (1) did not report in a timely manner because the defendant reasonably believed that doing so would have exposed the defendant or others to a substantial risk of physical injury; or
 - (2) acted to stop the commission of the crime and stopped
 - (A) the commission of the crime; or
 - (B) the completion of the crime being attempted.
- (c) In this section,
- (1) "incapacitated" has the meaning given in AS 11.41.470;
 - (2) "mentally incapable" has the meaning given in AS 11.41.470;
 - (3) "sexual act" has the meaning given in AS 11.41.470;
 - (4) "without consent" has the meaning given in AS 11.41.470.
- (d) Failure to report a violent crime committed against a child is a class A misdemeanor.

CREDIT(S)

(§ 1 ch 62 SLA 1999)

ARIZONA

ARIZ. REV. STAT. § 13-705 (2013). Dangerous crimes against children; sentences; definitions

A. A person who is at least eighteen years of age and who is convicted of a dangerous crime against children in the first degree involving sexual assault of a minor who is twelve years of age or younger or sexual conduct with a minor who is twelve years of age or younger shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the person has served thirty-five years or the sentence is commuted. This subsection does not apply to masturbatory contact.

B. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is under twelve years of age, second degree murder of a minor who is under twelve years of age, sexual assault of a minor who is under twelve years of age, sexual conduct with a minor who is under twelve years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is under twelve years of age may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the person has served thirty-five years or the sentence is commuted. If a life sentence is not imposed pursuant to this subsection, the person shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
13 years	20 years	27 years

C. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving attempted first degree murder of a minor who is twelve, thirteen or fourteen years of age, second degree murder of a minor who is twelve, thirteen or fourteen years of age, sexual assault of a minor who is twelve, thirteen or fourteen years of age, taking a child for the purpose of prostitution, child prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen years of age, continuous sexual abuse of a child, sex trafficking of a minor who is under fifteen years of age or manufacturing methamphetamine under circumstances that cause physical injury to a minor who is twelve, thirteen or fourteen years of age or involving or using minors in drug offenses shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
13 years	20 years	27 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
23 years	30 years	37 years

D. Except as otherwise provided in this section, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the first degree involving aggravated assault, molestation of a child, commercial sexual exploitation of a minor, sexual exploitation of a minor, aggravated luring a minor for sexual exploitation, child abuse or kidnapping shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
10 years	17 years	24 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows:

Minimum	Presumptive	Maximum
21 years	28 years	35 years

E. Except as otherwise provided in this section, if a person who is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving luring a minor for sexual exploitation or unlawful age misrepresentation and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted:

Minimum	Presumptive	Maximum
5 years	10 years	15 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted:

Minimum	Presumptive	Maximum
8 years	15 years	22 years

F. Except as otherwise provided in this section, if a person is at least eighteen years of age or has been tried as an adult and is convicted of a dangerous crime against children involving sexual abuse or bestiality under [section 13-1411](#), subsection A, paragraph 2 and is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically

authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted convicted:

Minimum	Presumptive	Maximum
2.5 years	5 years	7.5 years

A person who has been previously convicted of one predicate felony shall be sentenced to a term of imprisonment as follows and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted:

Minimum	Presumptive	Maximum
8 years	15 years	22 years

G. The presumptive sentences prescribed in subsections B, C and D of this section or subsections E and F of this section if the person has previously been convicted of a predicate felony may be increased or decreased pursuant to [section 13-701](#), subsections C, D and E.

H. Except as provided in subsection F of this section, a person who is sentenced for a dangerous crime against children in the first degree pursuant to this section is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served or commuted.

I. A person who is convicted of any dangerous crime against children in the first degree pursuant to subsection C or D of this section and who has been previously convicted of two or more predicate felonies shall be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the person has served not fewer than thirty-five years or the sentence is commuted.

J. Notwithstanding chapter 10 of this title, a person who is at least eighteen years of age or who has been tried as an adult and who is convicted of a dangerous crime against children in the second degree pursuant to subsection B, C or D of this section is guilty of a class 3 felony and if the person is sentenced to a term of imprisonment, the term of imprisonment is as follows and the person is not eligible for release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the person has served the sentence imposed by the court, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted:

Minimum	Presumptive	Maximum
5 years	10 years	15 years

K. A person who is convicted of any dangerous crime against children in the second degree and who has been previously convicted of one or more predicate felonies is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by [section 31-233](#), subsection A or B until the sentence imposed by the court has been served, the person is eligible for release pursuant to [section 41-1604.07](#) or the sentence is commuted.

L. [Section 13-704](#), subsection J and [section 13-707](#), subsection B apply to the determination of prior convictions.

M. The sentence imposed on a person by the court for a dangerous crime against children under subsection D of this section involving child molestation or sexual abuse pursuant to subsection F of this section may be served concurrently with other sentences if the offense involved only one victim. The sentence imposed on a person for any other dangerous crime against children in the first or second degree shall be consecutive to any other sentence imposed on the person at any time, including child molestation and sexual abuse of the same victim.

N. In this section, for purposes of punishment an unborn child shall be treated like a minor who is under twelve years of age.

O. A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense, except attempted first degree murder is a dangerous crime against children in the first degree.

P. For the purposes of this section:

1. "Dangerous crime against children" means any of the following that is committed against a minor who is under fifteen years of age:

(a) Second degree murder.

(b) Aggravated assault resulting in serious physical injury or involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument.

(c) Sexual assault.

(d) Molestation of a child.

(e) Sexual conduct with a minor.

(f) Commercial sexual exploitation of a minor.

(g) Sexual exploitation of a minor.

- (h) Child abuse as prescribed in [section 13-3623](#), subsection A, paragraph 1.
- (i) Kidnapping.
- (j) Sexual abuse.
- (k) Taking a child for the purpose of prostitution as prescribed in [section 13-3206](#).
- (l) Child prostitution as prescribed in [section 13-3212](#).
- (m) Involving or using minors in drug offenses.
- (n) Continuous sexual abuse of a child.
- (o) Attempted first degree murder.
- (p) Sex trafficking.
- (q) Manufacturing methamphetamine under circumstances that cause physical injury to a minor.
- (r) Bestiality as prescribed in [section 13-1411](#), subsection A, paragraph 2.
- (s) Luring a minor for sexual exploitation.
- (t) Aggravated luring a minor for sexual exploitation.
- (u) Unlawful age misrepresentation.

2. "Predicate felony" means any felony involving child abuse pursuant to [section 13-3623](#), subsection A, paragraph 1, a sexual offense, conduct involving the intentional or knowing infliction of serious physical injury or the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument, or a dangerous crime against children in the first or second degree.

CREDIT(S)

(Laws 1998, Ch. 281, § 1; Laws 1999, Ch. 261, § 6; Laws 2000, Ch. 50, § 1; Laws 2001, Ch. 334, § 7; Laws 2005, Ch. 2, § 1; Laws 2005, Ch. 188, § 2; Laws 2005, Ch. 282, § 1; Laws 2005, Ch. 327, § 2; Laws 2006, Ch. 295, § 2; Laws 2007, Ch. 248, § 2; Laws 2008, Ch. 195, § 1; Laws 2008, Ch. 219, § 1; Laws 2008, Ch. 301, § 29.)

ARIZ. REV. STAT. § 13-1402 (2013). Indecent exposure; exception; classification

- A. A person commits indecent exposure if he or she exposes his or her genitals or anus or she exposes the areola or nipple of her breast or breasts and another person is present, and the defendant is reckless about whether the other person, as a reasonable person, would be offended or alarmed by the act
- B. Indecent exposure does not include an act of breast-feeding by a mother
- C. Indecent exposure to a person who is fifteen or more years of age is a class 1 misdemeanor, except that it is a class 6 felony if the defendant has two or more prior convictions for a violation of this section or has one or more prior convictions for a violation of section 13-1406. Indecent exposure to a person who is under fifteen years of age is a class 6 felony
- D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or section 13-1403 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age is guilty of a class 3 felony and shall be sentenced to a term of imprisonment as follows:
- | Mitigated | Minimum | Presumptive | Maximum | Aggravated |
|-----------|---------|-------------|----------|------------|
| 6 years | 8 years | 10 years | 12 years | 15 years |
- E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

CREDIT(S)

(Laws 2006, Ch. 135, § 1; Laws 2010, 2nd Reg. Sess., Ch. 255, § 4; Laws 2011, 1st Reg. Sess., Ch. 90, § 10; Laws 2012, 2nd Reg. Sess., Ch. 189, § 1.)

ARIZ. REV. STAT. § 13-1403 (2013). Public sexual indecency; public sexual indecency to a minor; classifications

A. A person commits public sexual indecency by intentionally or knowingly engaging in any of the following acts, if another person is present, and the defendant is reckless about whether such other person, as a reasonable person, would be offended or alarmed by the act:

1. An act of sexual contact
2. An act of oral sexual contact
3. An act of sexual intercourse
4. An act of bestiality

B. A person commits public sexual indecency to a minor if the person intentionally or knowingly engages in any of the acts listed in subsection A of this section and such person is reckless about whether a minor who is under fifteen years of age is present

C. Public sexual indecency is a class 1 misdemeanor. Public sexual indecency to a minor is a class 5 felony

D. A person who is convicted of a felony violation of this section and who has two or more historical prior felony convictions for a violation of this section or section 13-1402 involving indecent exposure or public sexual indecency to a minor who is under fifteen years of age shall be sentenced to a term of imprisonment as follows:

Mitigated	Minimum	Presumptive	Maximum	Aggravated
6 years	8 years	10 years	12 years	15 years

E. The presumptive term imposed pursuant to subsection D of this section may be mitigated or aggravated pursuant to section 13-701, subsections D and E.

CREDIT(S)

(Laws 2006, Ch. 295, § 3; Laws 2010, 2nd Reg. Sess., Ch. 255, § 5; Laws 2011, 1st Reg. Sess., Ch. 90, § 11.)

ARIZ. REV. STAT. § 13-1404 (2013). Sexual abuse; classifications

A. A person commits sexual abuse by intentionally or knowingly engaging in sexual contact with any person fifteen or more years of age without consent of that person or with any person who is under fifteen years of age if the sexual contact involves only the female breast.

B. Sexual abuse is a class 5 felony unless the victim is under fifteen years of age in which case sexual abuse is a class 3 felony punishable pursuant to section 13-604.01.

CREDIT(S)

(Laws 2008, Ch. 301, § 57.)

ARIZ. REV. STAT. § 13-1405 (2013). Sexual conduct with a minor; classification; definition

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to section 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was the minor's parent, stepparent, adoptive parent, legal guardian or foster parent or the minor's teacher or clergyman or priest and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by

section 31-233, subsection A or B until the sentence imposed has been served or commuted.

C. For the purposes of this section, "teacher" means a certificated teacher as defined in section 15-501 or any other person who provides instruction to pupils in any school district, charter school or accommodation school, the Arizona state schools for the deaf and the blind or a private school in this state.

CREDIT(S)

(Laws 2008, Ch. 210, § 1; Laws 2008, Ch. 301, § 58; Laws 2011, 1st Reg. Sess., Ch. 58, § 1.)

ARIZ. REV. STAT. § 13-1406 (2013). Sexual assault; classification; increased punishment

A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without consent of such person.

B. Sexual assault is a class 2 felony, and the person convicted shall be sentenced pursuant to this section and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until the sentence imposed by the court has been served or commuted. If the victim is under fifteen years of age, sexual assault is punishable pursuant to section 13-705. The presumptive term may be aggravated or mitigated within the range under this section pursuant to section 13-701, subsections C, D and E. If the sexual assault involved the intentional or knowing administration of flunitrazepam, gamma hydroxy butyrate or ketamine hydrochloride without the victim's knowledge, the presumptive, minimum and maximum sentence for the offense shall be increased by three years. The additional sentence imposed pursuant to this subsection is in addition to any enhanced sentence that may be applicable. The term for a first offense is as follows:

Minimum	Presumptive	Maximum
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5.25 years	7 years	14 years

The term for a defendant who has one historical prior felony conviction is as follows:

Minimum	Presumptive	Maximum
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7 years	10.5 years	21 years

The term for a defendant who has two or more historical prior felony convictions is as follows:

Minimum	Presumptive	Maximum
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14 years	15.75 years	28 years

C. The sentence imposed on a person for a sexual assault shall be consecutive to any other sexual assault sentence imposed on the person at any time.

D. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, if the sexual assault involved the intentional or knowing infliction of serious physical injury, the person may be sentenced to life imprisonment and is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by section 31-233, subsection A or B until at least twenty-five years have been served or the sentence is commuted. If the person was at least eighteen years of age and the victim was twelve years of age or younger, the person shall be sentenced pursuant to section 13-705.

ARIZ. REV. STAT. § 13-1409 (2013). Unlawful sexual conduct; adult probation department employees; juvenile court employees; classification; definitions

A. An adult probation department employee or juvenile court employee commits unlawful sexual conduct if the employee knowingly coerces the victim to engage in sexual contact, oral sexual contact or sexual intercourse by either:

1. Threatening to negatively influence the victim's supervision or release status.
2. Offering to positively influence the victim's supervision or release status.

B. Unlawful sexual conduct with a victim who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with a victim who is at least fifteen years of age and under eighteen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

C. For the purposes of this section:

1. "Adult probation department employee or juvenile court employee" means an employee of an adult probation department or the juvenile court who either:

(a) Through the course of employment, directly provides treatment, care, control or supervision to a victim.

(b) Provides presentence or predisposition reports directly to a court regarding the victim.

2. "Victim" means a person who is either of the following:

(a) Subject to conditions of release or supervision by a court.

(b) A minor who has been referred to the juvenile court.

CREDIT(S)

(Laws 2011, 1st Reg. Sess., Ch. 226, § 1.)

ARIZ. REV. STAT. § 13-1410 (2013). Molestation of child; classification

A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child under fifteen years of age.

B. Molestation of a child is a class 2 felony that is punishable pursuant to section 13-705.

CREDIT(S)

(Laws 2008, Ch. 301, § 60.)

ARIZ. REV. STAT. § 13-1417 (2013). Continuous sexual abuse of a child; classification

A. A person who over a period of three months or more in duration engages in three or more acts in violation of section 13-1405, 13-1406 or 13-1410 with a child who is under fourteen years of age is guilty of continuous sexual abuse of a child.

B. Continuous sexual abuse of a child is a class 2 felony and is punishable pursuant to section 13-705.

C. To convict a person of continuous sexual abuse of a child, the trier of fact shall unanimously agree that the requisite number of acts occurred. The trier of fact does not need to agree on which acts constitute the requisite number.

D. Any other felony sexual offense involving the victim shall not be charged in the same proceeding with a charge under this section unless the other charged felony sexual offense occurred outside the time period charged under this section or the other felony sexual offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved. If more than one victim is involved, a separate count may be charged for each victim.

CREDIT(S)

(Laws 2008, Ch. 301, § 63.)

ARIZ. REV. STAT. § 13-1419 (2013). Unlawful sexual conduct; correctional facilities; classification; definition

A. A person commits unlawful sexual conduct by intentionally or knowingly engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail or with an offender who is under the supervision of either department or a city or county. For the purposes of this subsection, "person" means a person who:

1. Is employed by the state department of corrections or the department of juvenile corrections.

2. Is employed by a private prison facility, a juvenile detention facility, or a city or county jail.

3. Contracts to provide services with the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

4. Is an official visitor, volunteer or agency representative of the state department of corrections, the department of juvenile corrections, a private prison facility, a juvenile detention facility or a city or county jail.

B. This section does not apply to a person who is employed by the state department of corrections, a private prison facility or a city or county jail or who contracts to provide services with the state department of corrections, a private prison facility or a city or county jail or an offender who is on release status if the person was lawfully married to the prisoner or offender on release status before the prisoner or offender was sentenced to the state department of corrections or was incarcerated in a city or county jail.

C. Unlawful sexual conduct with an offender who is under fifteen years of age is a class 2 felony. Unlawful sexual conduct with an offender who is between fifteen and seventeen years of age is a class 3 felony. All other unlawful sexual conduct is a class 5 felony.

D. For the purposes of this section, "any act of a sexual nature":

1. Includes the following:

(a) Any completed, attempted, threatened or requested touching of the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(b) Any act of exposing the genitalia, anus, groin, breast, inner thigh, pubic area or buttocks with the intent to arouse or gratify sexual desire.

(c) Any act of photographing, videotaping, filming, digitally recording or otherwise viewing, with or without a device, a prisoner or offender with the intent to arouse or gratify sexual desire, either:

(i) While the prisoner or offender is in a state of undress or partial dress.

(ii) While the prisoner or offender is urinating or defecating.

2. Does not include an act done pursuant to a bona fide medical exam or lawful internal search.

CREDIT(S)

(Laws 1998, Ch. 232, § 2; Laws 1999, Ch. 261, § 18; Laws 2001, Ch. 225, § 4; Laws 2002, Ch. 304, § 7; Laws 2007, Ch. 248, § 4; Laws 2008, Ch. 209, § 1; Laws 2011, 1st Reg. Sess., Ch. 226, § 2.)

ARIZ. REV. STAT. § 13-1423. Violent sexual assault; natural life sentence

A. A person is guilty of violent sexual assault if in the course of committing an offense under section 13-1404, 13-1405, 13-1406 or 13-1410 the offense involved the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or involved the intentional or knowing infliction of serious physical injury and the person has a historical prior felony conviction for a sexual offense under this chapter or any offense committed outside this state that if committed in this state would constitute a sexual offense under this chapter.

B. Notwithstanding section 13-703, section 13-704, section 13-705, section 13-706, subsection A and section 13-708, subsection D, a person who is guilty of a violent sexual assault shall be sentenced to life imprisonment and the court shall order that the person not be released on any basis for the remainder of the person's natural life.

CREDIT(S)

(Laws 1999, Ch. 92, § 2; Laws 2005, Ch. 185, § 6; Laws 2008, Ch. 301, § 64.)

ARIZ. REV. STAT. § 13-3619 (2013). Permitting life, health or morals of minor to be imperiled by neglect, abuse or immoral associations; classification

A person having custody of a minor under sixteen years of age who knowingly causes or permits the life of such minor to be endangered, its health to be injured or its moral welfare to be imperiled, by neglect, abuse or immoral associations, is guilty of a class 1 misdemeanor.

CREDIT(S)

(Last year in which legislation affected this section: 1978)

ARIZ. REV. STAT. § 13-3623 (2013). Child or vulnerable adult abuse; emotional abuse; classification; exceptions; definitions

A. Under circumstances likely to produce death or serious physical injury, any person who causes a child or vulnerable adult to suffer physical injury or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the

child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows: 1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is under fifteen years of age it is punishable pursuant to section 13-705.

2. If done recklessly, the offense is a class 3 felony.

3. If done with criminal negligence, the offense is a class 4 felony.

B. Under circumstances other than those likely to produce death or serious physical injury to a child or vulnerable adult, any person who causes a child or vulnerable adult to suffer physical injury or abuse or, having the care or custody of a child or vulnerable adult, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 4 felony.

2. If done recklessly, the offense is a class 5 felony.

3. If done with criminal negligence, the offense is a class 6 felony.

C. For the purposes of subsections A and B of this section, the terms endangered and abuse include but are not limited to circumstances in which a child or vulnerable adult is permitted to enter or remain in any structure or vehicle in which volatile, toxic or flammable chemicals are found or equipment is possessed by any person for the purpose of manufacturing a dangerous drug in violation of section 13-3407, subsection A, paragraph 3 or 4. Notwithstanding any other provision of this section, a violation committed under the circumstances described in this subsection does not require that a person have care or custody of the child or vulnerable adult.

...

E. This section does not apply to:

1. A health care provider as defined in section 36-3201 who permits a patient to die or the patient's condition to deteriorate by not providing health care if that patient refuses that care directly or indirectly through a health care directive as defined in section 36-3201, through a surrogate pursuant to section 36-3231 or through a court appointed guardian as provided for in title 14, chapter 5, article 3.

...

F. For the purposes of this section:

1. "Abuse", when used in reference to a child, means abuse as defined in section 8-201, except for those acts in the definition that are declared unlawful by another statute of this title ...

2. "Child" means an individual who is under eighteen years of age.

3. "Emotional abuse" means a pattern of ridiculing or demeaning a vulnerable adult, making derogatory remarks to a vulnerable adult, verbally harassing a vulnerable adult or threatening to inflict physical or emotional harm on a vulnerable adult.

4. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ or any physical condition that imperils health or welfare.

5. "Serious physical injury" means physical injury that creates a reasonable risk of death or that causes serious or permanent disfigurement, serious impairment of health or loss or protracted impairment of the function of any bodily organ or limb.

...

CREDIT(S)

(Laws 1998, Ch. 276, § 38; Laws 2000, Ch. 50, § 4; Laws 2006, Ch. 252, § 1; Laws 2008, Ch. 301, § 85.)

ARKANSAS

ARK. CODE ANN. § 5-14-103 (2013). Rape.

(a) A person commits rape if he or she engages in sexual intercourse or deviate sexual activity with another person:

(1) By forcible compulsion;

(2) Who is incapable of consent because he or she is:

(A) Physically helpless;

(B) Mentally defective; or

(C) Mentally incapacitated;

(3)

(A) Who is less than fourteen (14) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(3)(A) of this section that the actor was not more than three (3) years older than the victim; or

(4)

(A) Who is a minor and the actor is the victim's:

(i) Guardian;

(ii) Uncle, aunt, grandparent, step-grandparent, or grandparent by adoption;

(iii) Brother or sister of the whole or half blood or by adoption; or

(iv) Nephew, niece, or first cousin.

(B) It is an affirmative defense to a prosecution under subdivision (a)(4)(A) of this section that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under subdivisions (a)(3) or (4) of this section that the victim consented to the conduct.

(c) (1) Rape is a Class Y felony.

(2) Any person who pleads guilty or nolo contendere to or is found guilty of rape involving a victim who is less than fourteen (14) years of age shall be sentenced to a minimum term of imprisonment of twenty-five (25) years.

(d) (1) A court may issue a permanent no contact order when:

(A) A defendant pleads guilty or nolo contendere; or

(B) All of the defendant's appeals have been exhausted and the defendant remains convicted.

(2) If a judicial officer has reason to believe that mental disease or defect of the defendant will or has become an issue in the case, the judicial officer shall enter such orders as are consistent with § 5-2-305.

(e) A person convicted of rape is subject to Section 9-10-121.

CREDIT(S)

Acts of 1975, Act 280, § 1803; Acts of 1981, Act 620, § 12; Acts of 1985, Act 281, § 2; Acts of 1985, Act 919, § 2; Acts of 1993, Act 935, § 1; Acts of 1997, Act 831, § 1, eff. March 26, 1997; Acts of 2001, Act 299, § 1, eff. Aug. 13, 2001; Acts of 2001, Act 1738, § 1, eff. Aug. 13, 2001; Acts of 2003, Act 1469, § 3, eff. July 16, 2003; Acts of 2006 (1st Ex. Sess.), Act 5, § 2, eff. July 21, 2006; Acts of 2009, Act 748, § 8, eff. July 31, 2009; Acts of 2013, Act 210, § 2, eff. March 1, 2013.

ARK. CODE ANN. § 5-14-110 (2013). Sexual indecency with a child.

(a) A person commits sexual indecency with a child if:

(1) Being eighteen (18) years of age or older, the person solicits another person who is less than fifteen (15) years of age or who is represented to be less than fifteen (15) years of age to engage in:

(A) Sexual intercourse;

(B) Deviate sexual activity; or

(C) Sexual contact;

(2) (A) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of any other person, the person purposely exposes his or her sex organs to another person who is less than fifteen (15) years of age.

(B) It is an affirmative defense to a prosecution under subdivision (a)(2)(A) of this section if the person is within three (3) years of age of the victim; or

(3) With the purpose to arouse or gratify a sexual desire of himself or herself or a sexual desire of any other person, the person purposely exposes his or her sex organs to a minor, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust and authority over the minor;

(4) With the purpose to arouse or gratify his or her sexual desire or a sexual desire of another person, a person who is eighteen (18) years of age or older causes or coerces a minor to expose his or her sex organs to another person, and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(B) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(C) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor; or

(5) Being eighteen (18) years of age or older, the person causes or coerces another person who is less than fourteen (14) years of age to expose his or her sex organs or the breast of a female with the purpose to arouse or gratify a sexual desire of himself, herself, or another person.

(b) Sexual indecency with a child is a Class D felony.

CREDIT(S)

(Acts 1975, No. 280, § 1810; A.S.A. 1947, § 41-1810; Acts 1995, No. 550, § 1; 2001, No. 1821, § 1; 2005, No. 1993, § 1; 2007, No. 531, § 1; 2009, No. 748, § 9; 2009, No. 758, § 1.)

ARK. CODE ANN. § 5-14-124 (2013). Sexual assault in the first degree.

(a) A person commits sexual assault in the first degree if :

(1) The person engages in sexual intercourse or deviate sexual activity with a minor who is not the actor's spouse and the actor is:

(A) Employed with the Department of Correction, the Department of Community Correction, the Department of Human Services, or any city or county jail or a juvenile detention facility, and the victim is in the custody of the Department of Correction, the Department of Community Correction, the Department of Human Services, any city or county jail or juvenile detention facility, or their contractors or agents;

(B) A mandated reporter under Section 12-18-402(b) and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(C) An employee in the victim's school or school district, a temporary caretaker, or a person in a position of trust or authority over the victim; or

(2) The person is a teacher, principal, athletic coach, or counselor in a public or private school in kindergarten through grade twelve (K-12) and the actor;

(A) Engages in sexual intercourse or deviate sexual activity with a person who is not the actor's spouse and the victim is:

(i) Less than twenty-one (21) years of age; and .

(ii) A student enrolled in the public or private school employing the actor; and

(B) Is in a position of trust or authority over the victim and uses his or her position of trust or authority over the victim to engage in sexual intercourse or deviate sexual activity.

CREDIT(S)

Acts of 2001, Act 1738, § 2, eff. Aug. 13, 2001; Acts of 2003, Act 1391, § 1, eff. July 16, 2003; Acts of 2003, Act 1469, § 2, eff. July 16, 2003; Acts of 2009, Act 748, § 10, eff. July 31, 2009; Acts of 2009, Act 758, § 2, eff. July 31, 2009; Acts of 2013, Act 1044, § 1, eff. 90 days after April 10, 2013

ARK. CODE ANN. § 5-14-125 (2013). Sexual assault in the second degree.

(a) A person commits sexual assault in the second degree if the person:

(1) Engages in sexual contact with another person by forcible compulsion;

(2) Engages in sexual contact with another person who is incapable of consent because he or she is:

(A) Physically helpless;

(B) Mentally defective; or

(C) Mentally incapacitated;

(3) Being eighteen (18) years of age or older, engages in sexual contact with another person who is:

(A) Less than fourteen (14) years of age; and.

(B) Not the person's spouse;

(4)

(A) Engages in sexual contact with a minor and the actor is:

(i) Employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the actor;

(ii) A mandated reporter under § 12-18-402(b) and is in a position of trust or authority over the minor; or

(iii) The minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.

(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to a prosecution;

(5)

(A) Being a minor, engages in sexual contact with another person who is:

(i) Less than fourteen (14) years of age; and

(ii) Not the person's spouse.

(B) It is an affirmative defense to a prosecution under this subdivision (a)(5) that the actor was not more than:

(i) Three (3) years older than the victim if the victim is less than twelve (12) years of age; or

(ii) Four (4) years older than the victim if the victim is twelve (12) years of age or older; or

(6) Is a teacher, principal, athletic coach, or counselor in a public or private school in a grade kindergarten through twelve (K-12), in a position of trust or authority, and uses his or her position of trust or authority over the victim to engage in sexual contact with a victim who is:

(A) A student enrolled in the public or private school; and.

(B) Less than twenty-one (21) years of age.

(b)

(1) Sexual assault in the second degree is a Class B felony.

(2) Sexual assault in the second degree is a Class D felony if committed by a minor with another person who is:

(A) Less than fourteen (14) years of age; and

(B) Not the person's spouse.

CREDIT(S)

(Acts 2001, No. 1738, § 3; 2003, No. 1323, § 1; 2003, No. 1720, § 2; 2009, No. 748, §§ 11-13; 2009, No. 758, § 3; 2011, No. 1129, § 1. Amended by 2013, No. 1086, § 2, eff. 90 days after May 17, 2013)

ARK. CODE ANN. § 5-14-126 (2013). Sexual assault in the third degree.

(a) A person commits sexual assault in the third degree if the person:

(1) Engages in sexual intercourse or deviate sexual activity with another person who is not the actor's spouse, and the actor is:

(A) Employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail;

(B) Employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or

(C) A mandated reporter under § 12-18-402(b) or a member of the clergy and is in a position of trust or authority over the victim and uses the position of trust or authority to engage in sexual intercourse or deviate sexual activity; or

(2) (A) Being a minor, engages in sexual intercourse or deviate sexual activity with another person who is:

(i) Less than fourteen (14) years of age; and

(ii) Not the person's spouse.

(B) It is an affirmative defense under this subdivision (a)(2) that the actor was not more than three (3) years older than the victim.

(b) It is no defense to a prosecution under this section that the victim consented to the conduct.

(c) Sexual assault in the third degree is a Class C felony.

CREDIT(S)

(Acts 2001, No. 1738, § 4; 2003, No. 1324, § 1; 2007, No. 363, § 1; 2009, No. 748, § 14; 2009, No. 758, § 4.)

ARK. CODE ANN. § 5-14-127 (2013). Sexual assault in the fourth degree.

(a) A person commits sexual assault in the fourth degree if the person:

(1) Being twenty (20) years of age or older:

(A) Engages in sexual intercourse or deviate sexual activity with another person who is:

(i) Less than sixteen (16) years of age; and

(ii) Not the person's spouse; or

(B) Engages in sexual contact with another person who is:

(i) Less than sixteen (16) years of age; and

(ii) Not the person's spouse; or

(2) Engages in sexual contact with another person who is not the actor's spouse, and the actor is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or a city or county jail.

(b)

(1) Sexual assault in the fourth degree under subdivisions (a)(1)(A) and (a)(2) of this section is a Class D felony.

(2) Sexual assault in the fourth degree under subdivision (a)(1)(B) of this section is a Class A misdemeanor if the person engages only in sexual contact with another person as described in subdivision (a)(1)(B) of this section.

CREDIT(S)

(Acts 2001, No. 1738, § 5; 2003, No. 1325, § 1; 2009, No. 630, § 1.)

ARK. CODE ANN. § 5-16-102 (2013). Voyeurism.

(a) As used in this section:

(1) "Nude or partially nude" means any person who has less than a fully opaque covering over the genitals, pubic area, buttocks, or breast of a female;

(2) "Private place" means a place where a person may reasonably expect to be safe from being observed without his or her knowledge and consent; and

(3) "Public accommodation" means a business, accommodation, refreshment, entertainment, recreation, or transportation facility where a good, service, facility,

privilege, advantage, or accommodation is offered, sold, or otherwise made available to the public.

(b) A person commits the offense of voyeurism if for the purpose of sexual arousal or gratification, he or she knowingly:

(1) Without the consent of each person who is present in the private place, looks into a private place that is, or is part of, a public accommodation and in which a person may reasonably be expected to be nude or partially nude; or

(2) Enters another person's private property without the other person's consent and looks into any person's dwelling unit if all of the following apply:

(A) The person looks into the dwelling with the intent to intrude upon or interfere with a person's privacy;

(B) The person looks into a part of the dwelling in which an individual is present;

(C) The individual present has a reasonable expectation of privacy in that part of the dwelling; and

(D) The individual present does not consent to the person's looking into that part of the dwelling.

(c) (1) Except as provided in subdivision (c)(2) of this section, a violation of this section is a Class A misdemeanor.

(2) A violation of this section is a Class D felony if:

(A) A victim is under seventeen (17) years of age; and

(B) The person who commits the offense holds a position of trust or authority over the victim.

CREDIT(S)

(Acts 2005, No. 1642, § 1; 2007, No. 187, § 2.)

ARK. CODE ANN. § 5-27-221 (2013). Permitting abuse of a minor.

(a) A person commits the offense of permitting abuse of a minor if, being a parent, guardian, or person legally charged with the care or custody of a minor, he or she recklessly fails to take action to prevent the abuse of a minor.

(b) It is a defense to a prosecution for the offense of permitting abuse of a minor if the parent, guardian, or person legally charged with the care or custody of the minor takes

immediate steps to end the abuse of the minor, including prompt notification of a medical or law enforcement authority, upon first knowing or having good reason to know that abuse has occurred.

(c) Permitting abuse of a minor is a:

(1) Class B felony if the abuse of the minor:

(A) Consisted of sexual intercourse;

(B) Consisted of deviate sexual activity; or

(C) Caused serious physical injury or death to the minor; or

(2) Class D felony if the abuse of the minor:

(A) Consisted of sexual contact; or

(B) Caused physical injury to the minor.

(d) As used in this section:

(1) "Abuse" means only sexual intercourse, deviate sexual activity, sexual contact, or causing physical injury, serious physical injury, or death, which could be prosecuted as a delinquent or criminal act; and

(1) "Minor" means a person under eighteen (18) years of age.

CREDIT(S)

(Acts 1985, No. 990, §§ 1-3; A.S.A. 1947, §§ 41-2472 -- 41-2474; Acts 1993, No. 1126, § 9; 2001, No. 1374, § 1; 2003, No. 1318, § 1.)

ARK. CODE ANN. § 5-27-402 (2013). Employing or consenting to the use of a child in a sexual performance.

(a) It is unlawful for any person, knowing the character and content of the performance, to employ, authorize, or induce a child under eighteen (18) years of age to engage in a sexual performance.

(b) It is also unlawful for a parent or legal guardian or custodian of a child under eighteen (18) years of age to consent to the participation by the child in a sexual performance.

(c) Any person violating this section upon conviction is guilty of a:

(1) Class C felony for the first offense; and

(2) Class B felony for a subsequent offense.

CREDIT(S)

(Acts 1983, No. 451, § 2; A.S.A. 1947, § 41-4207; Acts 2011, No. 1190, § 3.)

CALIFORNIA

CAL. PENAL CODE § 220 (2013). Assault with intent to commit mayhem or specified sex offenses; Assault of person under 18 years of age with intent to commit specified sex offenses; Such assault in commission of first degree burglary

(a)

(1) Except as provided in subdivision (b), any person who assaults another with intent to commit mayhem, rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for two, four, or six years.

(2) Except as provided in subdivision (b), any person who assaults another person under 18 years of age with the intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for five, seven, or nine years.

(b) Any person who, in the commission of a burglary of the first degree, as defined in subdivision (a) of Section 460, assaults another with intent to commit rape, sodomy, oral copulation, or any violation of Section 264.1, 288, or 289 shall be punished by imprisonment in the state prison for life with the possibility of parole.

CREDIT(S)

Enacted 1872. Amended Stats 1937 ch 553 § 1; Stats 1975 ch 71 § 4; Stats 1976 ch 1139 § 144, operative July 1, 1977; Stats 1978 ch 579 § 12; Stats 1979 ch 944 § 3; Stats 2006 ch 337 § 5 (SB 1128), effective September 20, 2006. Amendment approved by voters, Prop. 83 § 4, effective November 8, 2006; Stats 2010 ch 219 § 2 (AB 1844), effective September 9, 2010.

CAL. PENAL CODE § 243.4 (2013) Sexual battery; Seriously disabled or medically incapacitated victims

(a) Any person who touches an intimate part of another person while that person is unlawfully restrained by the accused or an accomplice, and if the touching is against the will of the person touched and is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by

imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(b) Any person who touches an intimate part of another person who is institutionalized for medical treatment and who is seriously disabled or medically incapacitated, if the touching is against the will of the person touched, and if the touching is for the purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(c) Any person who touches an intimate part of another person for the purpose of sexual arousal, sexual gratification, or sexual abuse, and the victim is at the time unconscious of the nature of the act because the perpetrator fraudulently represented that the touching served a professional purpose, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(d) Any person who, for the purpose of sexual arousal, sexual gratification, or sexual abuse, causes another, against that person's will while that person is unlawfully restrained either by the accused or an accomplice, or is institutionalized for medical treatment and is seriously disabled or medically incapacitated, to masturbate or touch an intimate part of either of those persons or a third person, is guilty of sexual battery. A violation of this subdivision is punishable by imprisonment in a county jail for not more than one year, and by a fine not exceeding two thousand dollars (\$2,000); or by imprisonment in the state prison for two, three, or four years, and by a fine not exceeding ten thousand dollars (\$10,000).

(e)

(1) Any person who touches an intimate part of another person, if the touching is against the will of the person touched, and is for the specific purpose of sexual arousal, sexual gratification, or sexual abuse, is guilty of misdemeanor sexual battery, punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. However, if the defendant was an employer and the victim was an employee of the defendant, the misdemeanor sexual battery shall be punishable by a fine not exceeding three thousand dollars (\$3,000), by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Notwithstanding any other provision of law, any amount of a fine above two thousand dollars (\$2,000) which is collected from a defendant for a violation of this subdivision shall be transmitted to the State Treasury and, upon appropriation by the Legislature, distributed to the Department of Fair Employment and Housing for the purpose of enforcement of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the

Government Code), including, but not limited to, laws that proscribe sexual harassment in places of employment. However, in no event shall an amount over two thousand dollars (\$2,000) be transmitted to the State Treasury until all fines, including any restitution fines that may have been imposed upon the defendant, have been paid in full.

(2) As used in this subdivision, "touches" means physical contact with another person, whether accomplished directly, through the clothing of the person committing the offense, or through the clothing of the victim.

(f) As used in subdivisions (a), (b), (c), and (d), "touches" means physical contact with the skin of another person whether accomplished directly or through the clothing of the person committing the offense.

(g) As used in this section, the following terms have the following meanings:

(1) "Intimate part" means the sexual organ, anus, groin, or buttocks of any person, and the breast of a female.

(2) "Sexual battery" does not include the crimes defined in Section 261 or 289.

(3) "Seriously disabled" means a person with severe physical or sensory disabilities.

(4) "Medically incapacitated" means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) "Institutionalized" means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) "Minor" means a person under 18 years of age.

(h) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars (\$10,000).

CREDIT(S)

(Added Stats 1982 ch 1111 § 1. Amended Stats 1984 ch 1418 § 1, ch 1495 § 1; Stats 1985 ch 782 § 1, ch 1257 § 1.1; Stats 1987 ch 828 § 12.5; Stats 1989 ch 1034 § 1; Stats

1991 ch 149 § 1 (AB 180); Stats 1992 ch 1219 § 1 (AB 3388); Stats 1996 ch 917 § 1 (AB 2127); Stats 1997 ch 821 § 2 (AB 290), effective October 6, 1997; Stats 2002 ch 302 § 1 (SB 1421).)

CAL. PENAL CODE § 261.5 (2013). Unlawful sexual intercourse with a minor; Misdemeanor or felony violation; Civil penalties

(a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170 for two, three, or four years.

(e)

(1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars (\$2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars (\$5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars (\$10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature..

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

CREDIT(S)

(Added Stats 1970 ch 1301 § 2. Amended Stats 1993 ch 596 § 1 (SB 22); Stats 1996 ch 789 § 3 (AB 1490); Stats 1998 ch 925 § 1 (AB 1290); Stats 1999 ch 853 § 10 (SB 832); Stats 2011 ch 15 § 302 (AB 109), effective April 4, 2011, operative October 1, 2011.)

CAL. PENAL CODE § 266j (2013). Procurement of child

Any person who intentionally gives, transports, provides, or makes available, or who offers to give, transport, provide, or make available to another person, a child under the age of 16 for the purpose of any lewd or lascivious act as defined in Section 288, or who causes, induces, or persuades a child under the age of 16 to engage in such an act with another person, is guilty of a felony and shall be imprisoned in the state prison for a term of three, six, or eight years, and by a fine not to exceed fifteen thousand dollars (\$15,000).

CREDIT(S)

(Added Stats 1981 ch 1043 § 3, effective September 30, 1981. Amended Stats 1987 ch 1068 § 1.)

CAL. PENAL CODE § 269 (2013). Aggravated sexual assault of child

(a) Any person who commits any of the following acts upon a child who is under 14 years of age and seven or more years younger than the person is guilty of aggravated sexual assault of a child:

- (1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.
 - (2) Rape or sexual penetration, in concert, in violation of Section 264.1.
 - (3) Sodomy, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 286.
 - (4) Oral copulation, in violation of paragraph (2) or (3) of subdivision (c), or subdivision (d), of Section 288a.
 - (5) Sexual penetration, in violation of subdivision (a) of Section 289.
- (b) Any person who violates this section is guilty of a felony and shall be punished by imprisonment in the state prison for 15 years to life.
- (c) The court shall impose a consecutive sentence for each offense that results in a conviction under this section if the crimes involve separate victims or involve the same victim on separate occasions as defined in subdivision (d) of Section 667.6.

CREDIT(S)

(Added Stats 1st Ex Sess 1993-94 ch 48 § 1 (SB 30 X), effective November 30, 1994. Amended Stats 2006 ch 337 § 6 (SB 1128), effective September 20, 2006. Amendment approved by voters, Prop. 83 § 5, effective November 8, 2006.)

CAL. PENAL CODE § 272 (2013). Contributing to delinquency of minor; Luring minor under 14 away from home

(a)

(1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code or which act or omission contributes thereto, or any person who, by any act or omission, or by threats, commands, or persuasion, induces or endeavors to induce any person under the age of 18 years or any ward or dependent child of the juvenile court to fail or refuse to conform to a lawful order of the juvenile court, or to do or to perform any act or to follow any course of conduct or to so live as would cause or manifestly tend to cause that person to become or to remain a person within the provisions of Section 300, 601, or 602 of the Welfare and Institutions Code, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment in a county jail, or may be released on probation for a period not exceeding five years.

(2) For purposes of this subdivision, a parent or legal guardian to any person under the age of 18 years shall have the duty to exercise reasonable care, supervision, protection,

and control over their minor child.

(b)

(1) An adult stranger who is 21 years of age or older, who knowingly contacts or communicates with a minor who is under 14 years of age, who knew or reasonably should have known that the minor is under 14 years of age, for the purpose of persuading and luring, or transporting, or attempting to persuade and lure, or transport, that minor away from the minor's home or from any location known by the minor's parent, legal guardian, or custodian, to be a place where the minor is located, for any purpose, without the express consent of the minor's parent or legal guardian, and with the intent to avoid the consent of the minor's parent or legal guardian, is guilty of an infraction or a misdemeanor, subject to subdivision (d) of Section 17.

(2) This subdivision shall not apply in an emergency situation.

(3) As used in this subdivision, the following terms are defined to mean:

(A) "Emergency situation" means a situation where the minor is threatened with imminent bodily harm, emotional harm, or psychological harm.

(B) "Contact" or "communication" includes, but is not limited to, the use of a telephone or the Internet, as defined in Section 17538 of the Business and Professions Code.

(C) "Stranger" means a person of casual acquaintance with whom no substantial relationship exists, or an individual with whom a relationship has been established or promoted for the primary purpose of victimization, as defined in subdivision (e) of Section 6600 of the Welfare and Institutions Code.

(D) "Express consent" means oral or written permission that is positive, direct, and unequivocal, requiring no inference or implication to supply its meaning.

(4) This section shall not be interpreted to criminalize acts of persons contacting minors within the scope and course of their employment, or status as a volunteer of a recognized civic or charitable organization.

(5) This section is intended to protect minors and to help parents and legal guardians exercise reasonable care, supervision, protection, and control over minor children.

CREDIT(S)

Added Stats 1961 ch 1616 § 3 p 3503; Amended Stats 1972 ch 579 § 34; Stats 1976 ch 1125 § 16; Stats 1979 ch 373 § 237. Amended Stats 1988 ch 1256 § 2, effective September 23, 1988; Stats 2000 ch 621 § 1 (AB 2021); Stats 2001 ch 159 § 161 (SB 662); Stats 2005 ch 461 § 1 (AB 33), effective January 1, 2006.

CAL. PENAL CODE § 273.4 (2013). Female genital mutilation

(a) If the act constituting a felony violation of subdivision (a) of Section 273a was female genital mutilation, as defined in subdivision (b), the defendant shall be punished by an additional term of imprisonment in the state prison for one year, in addition and consecutive to the punishment prescribed by Section 273a.

(b) "Female genital mutilation" means the excision or infibulation of the labia majora, labia minora, clitoris, or vulva, performed for nonmedical purposes.

(c) Nothing in this section shall preclude prosecution under Section 203, 205, or 206 or any other provision of law.

CREDIT(S)

(Added Stats 1996 ch 790 § 4 (AB 2125). Amended Stats 2011 ch 15 § 308 (AB 109), effective April 4, 2011, operative October 1, 2011, ch 39 § 12 (AB 117), effective June 30, 2011, operative October 1, 2011.)

CAL. PENAL CODE § 286 (2013). Sodomy

(a) Sodomy is sexual conduct consisting of contact between the penis of one person and the anus of another person. Any sexual penetration, however slight, is sufficient to complete the crime of sodomy.

(b)

(1) Except as provided in Section 288, any person who participates in an act of sodomy with another person who is under 18 years of age shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sodomy with another person who is under 16 years of age shall be guilty of a felony.

(c)

(1) Any person who participates in an act of sodomy with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2)

(A) Any person who commits an act of sodomy when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of

immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of sodomy with another person who is under 14 years of age when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 9, 11, or 13 years.

(C) Any person who commits an act of sodomy with another person who is a minor 14 years of age or older when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of sodomy where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d)

(1) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person or where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of sodomy upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the

victim or another person, shall be punished by imprisonment in the state prison for 7, 9, or 11 years.

(4) This subdivision does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of sodomy with any person of any age while confined in any state prison, as defined in Section 4504, or in any local detention facility, as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year.

(f) Any person who commits an act of sodomy, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), a person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of sodomy, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for not more than one year. Notwithstanding the existence of a conservatorship pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the

Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of sodomy, where the victim is prevented from resisting by an intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for three, six, or eight years..

(j) Any person who commits an act of sodomy, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for three, six, or eight years..

(k) Any person who commits an act of sodomy, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court, however, shall take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

CREDIT(S)

(Enacted 1872. Amended Stats 1921 ch 90 § 1; Stats Ex Sess 1949 ch 15 § 1; Stats 1st Ex Sess 1952 ch 23 § 2; Stats 1975 ch 71 § 7, ch 877 § 1; Stats 1976 ch 1139 § 175, operative July 1, 1977; Stats 1977 ch 490 § 1; Stats 1978 ch 579 § 16; Stats 1979 ch 944 § 6; Stats 1980 ch 915 § 1; Stats 1981 ch 896 § 1; Stats 1983 ch 949 § 2. Amended Stats 1985 ch 929 § 1, ch 1063 § 1, ch 1085 § 2; Stats 1986 ch 1299 § 3; Stats 1988 ch 1243 § 6; Stats 1991 ch 144 § 1 (AB 419); Stats 1993 ch 595 § 4 (AB 187); Stats 1st Ex Sess 1993-94 ch 40 § 2 (AB 85 X), effective November 30, 1994; Stats 1998 ch 936 § 4 (AB 105), effective September 28, 1998; Stats 2002 ch 302 § 3 (SB 1421); Stats 2010 ch 219 § 6 (AB 1844), effective September 9, 2010.)

CAL. PENAL CODE § 288 (2013). Lewd or lascivious acts involving children

(a) Except as provided in subdivision (i), any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b)

(1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for 5, 8, or 10 years.

(c)

(1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

(d) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) "Caretaker" means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.

(E) Secondary schools that serve dependent persons and postsecondary educational institutions that serve dependent persons or elders.

(F) Sheltered workshops.

(G) Camps.

(H) Community care facilities, as defined by Section 1402 of the Health and Safety Code, and residential care facilities for the elderly, as defined in Section 1569.2 of the Health and Safety Code.

(I) Respite care facilities.

(J) Foster homes.

(K) Regional centers for persons with developmental disabilities.

(L) A home health agency licensed in accordance with Chapter 8 (commencing with Section 1725) of Division 2 of the Health and Safety Code.

(M) An agency that supplies in-home supportive services.

(N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent persons, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) "Board and care facilities" means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) "Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent person under care.

(i)

(1) Any person convicted of a violation of subdivision (a) shall be imprisoned in the state prison for life with the possibility of parole if the defendant personally inflicted bodily harm upon the victim.

(2) The penalty provided in this subdivision shall only apply if the fact that the defendant personally inflicted bodily harm upon the victim is pled and proved.

(3) As used in this subdivision, "bodily harm" means any substantial physical injury resulting from the use of force that is more than the force necessary to commit the offense.

CREDIT(S)

(Added Stats 1901 ch 204 § 1. Amended Stats 1933 ch 405 § 1; Stats 1937 ch 545 § 1; Stats 1976 ch 1139 § 177, operative July 1, 1977; Stats 1978 ch 579 § 17; Stats 1979 ch 944 § 6.5; Stats 1981 ch 1064 § 1. Amended Stats 1986 ch 1299 § 4; Stats 1987 ch 1068 § 3; Stats 1988 ch 1398 § 1; Stats 1989 ch 1402 § 3; Stats 1st Ex Sess 1993-94 ch 60 § 1 (AB 29 X), effective November 30, 1994; Stats 1995 ch 890 § 1 (SB 1161); Stats 1998 ch 925 § 2 (AB 1290); Stats 2004 ch 823 § 7 (AB 20); Stats 2010 ch 219 § 7 (AB 1844), effective September 9, 2010.)

CAL. PENAL CODE § 288.3 (2013). Contact or communication with minor with knowledge and intent to commit specified offenses punishable by imprisonment; Additional punishment for repeat violation

(a) Every person who contacts or communicates with a minor, or attempts to contact or communicate with a minor, who knows or reasonably should know that the person is a minor, with intent to commit an offense specified in Section 207, 209, 261, 264.1, 273a, 286, 288, 288a, 288.2, 289, 311.1, 311.2, 311.4 or 311.11 involving the minor shall be punished by imprisonment in the state prison for the term prescribed for an attempt to commit the intended offense.

(b) As used in this section, "contacts or communicates with" shall include direct and indirect contact or communication that may be achieved personally or by use of an agent or agency, any print medium, any postal service, a common carrier or communication common carrier, any electronic communications system, or any telecommunications, wire, computer, or radio communications device or system.

(c) A person convicted of a violation of subdivision (a) who has previously been convicted of a violation of subdivision (a) shall be punished by an additional and consecutive term of imprisonment in the state prison for five years.

CREDIT(S)

(Adopted by voters, Prop. 83 § 6, effective November 8, 2006.)

CAL. PENAL CODE § 288.4 (2013). Arrangement of meeting with minor for purpose of engaging in certain lewd and lascivious behavior; Punishment

(a)

(1) Every person who, motivated by an unnatural or abnormal sexual interest in children, arranges a meeting with a minor or a person he or she believes to be a minor for the purpose of exposing his or her genitals or pubic or rectal area, having the child expose his or her genitals or pubic or rectal area, or engaging in lewd or lascivious behavior, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who violates this subdivision after a prior conviction for an offense listed in subdivision (c) of Section 290 shall be punished by imprisonment in the state prison.

(b) Every person described in paragraph (1) of subdivision (a) who goes to the arranged meeting place at or about the arranged time, shall be punished by imprisonment in the state prison for two, three, or four years.

(c) Nothing in this section shall preclude or prohibit prosecution under any other provision of law.

CREDIT(S)

(Added Stats 2006 ch 337 § 7 (SB 1128), as Pen C § 288.3, effective September 20, 2006. Amended and renumbered by Stats 2007 ch 579 § 5 (SB 172), effective October 13, 2007.)

CAL. PENAL CODE § 288.5 (2013). Continuous sexual abuse of child

[Note: California's determinate sentencing law held unconstitutional in *Cunningham v. California*, 2007 U.S. Lexis 1324]

(a) Any person who either resides in the same home with the minor child or has recurring access to the child, who over a period of time, not less than three months in duration, engages in three or more acts of substantial sexual conduct with a child under the age of 14 years at the time of the commission of the offense, as defined in subdivision (b) of Section 1203.066, or three or more acts of lewd or lascivious conduct, as defined in Section 288, with a child under the age of 14 years at the time of the commission of the

offense is guilty of the offense of continuous sexual abuse of a child and shall be punished by imprisonment in the state prison for a term of 6, 12, or 16 years.

(b) To convict under this section the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred not on which acts constitute the requisite number.

(c) No other act of substantial sexual conduct, as defined in subdivision (b) of Section 1203.066, with a child under 14 years of age at the time of the commission of the offenses, or lewd and lascivious acts, as defined in Section 288, involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section unless more than one victim is involved in which case a separate count may be charged for each victim.

CREDIT(S)

(Added Stats 1989 ch 1402 § 4. Amended Stats 2006 ch 337 § 8 (SB 1128), effective September 20, 2006.)

CAL. PENAL CODE § 288.7 (2013). Sexual acts with child 10 years old or younger; Punishment as felony

(a) Any person 18 years of age or older who engages in sexual intercourse or sodomy with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 25 years to life.

(b) Any person 18 years of age or older who engages in oral copulation or sexual penetration, as defined in Section 289, with a child who is 10 years of age or younger is guilty of a felony and shall be punished by imprisonment in the state prison for a term of 15 years to life.

CREDIT(S)

(Added Stats 2006 ch 337 § 9 (SB 1128), effective September 20, 2006.)

CAL. PENAL CODE § 288a (2013). Oral copulation

(a) Oral copulation is the act of copulating the mouth of one person with the sexual organ or anus of another person.

(b)

(1) Except as provided in Section 288, any person who participates in an act of oral copulation with another person who is under 18 years of age shall be punished by

imprisonment in the state prison, or in a county jail for a period of not more than one year.

(2) Except as provided in Section 288, any person over the age of 21 years who participates in an act of oral copulation with another person who is under 16 years of age is guilty of a felony.

(c)

(1) Any person who participates in an act of oral copulation with another person who is under 14 years of age and more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(2)

(A) Any person who commits an act of oral copulation when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years.

(B) Any person who commits an act of oral copulation upon a person who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of oral copulation upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(3) Any person who commits an act of oral copulation where the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(d)

(1) Any person who, while voluntarily acting in concert with another person, either personally or by aiding and abetting that other person, commits an act of oral copulation (1) when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, or (2) where the act is accomplished against the victim's will by threatening to retaliate in the future

against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, or (3) where the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison for five, seven, or nine years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime described under paragraph (3), that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(2) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is under 14 years of age, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 10, 12, or 14 years.

(3) Any person who, while voluntarily acting in concert with another person, either personally or aiding and abetting that other person, commits an act of oral copulation upon a victim who is a minor 14 years of age or older, when the act is accomplished against the victim's will by means of force or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(4) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(e) Any person who participates in an act of oral copulation while confined in any state prison, as defined in Section 4504 or in any local detention facility as defined in Section 6031.4, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year.

(f) Any person who commits an act of oral copulation, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act, shall be punished by imprisonment in the state prison for a period of three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the oral copulation served a professional purpose when it served no professional purpose.

(g) Except as provided in subdivision (h), any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, shall be punished by imprisonment in the state prison, for three, six, or eight years. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving consent.

(h) Any person who commits an act of oral copulation, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act, and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(i) Any person who commits an act of oral copulation, where the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(j) Any person who commits an act of oral copulation, where the victim submits under the belief that the person committing the act is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(k) Any person who commits an act of oral copulation, where the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(l) As used in subdivisions (c) and (d), "threatening to retaliate" means a threat to kidnap or falsely imprison, or to inflict extreme pain, serious bodily injury, or death.

(m) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates this section, with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

CREDIT(S)

(Added Stats 1921 ch 848 § 2. Amended Stats 1st Ex Sess 1950 ch 56 § 1; Stats 1st Ex Sess 1952 ch 23 § 2; Stats 1955 ch 274 § 1; Stats 1975 ch 71 § 10, ch 877 § 2; Stats 1976 ch 1139 § 178, operative July 1, 1977; Stats 1977 ch 490 § 2; Stats 1978 ch 579 § 18; Stats 1979 ch 944 § 7; Stats 1980 ch 915 § 2; Stats 1981 ch 896 § 2; Stats 1982 ch 1111 § 5; Stats 1983 ch 949 § 3. Amended Stats 1985 ch 929 § 2, ch 1062 § 1, ch 1085 § 5; Stats 1986 ch 1299 § 5; Stats 1988 ch 1243 § 7; Stats 1993 ch 595 § 5 (AB 187); Stats 1st Ex Sess 1993-94 ch 40 § 3 (AB 85 X), effective November 30, 1994; Stats 1998 ch 936 § 5 (AB 105), effective September 28, 1998; Stats 2002 ch 302 § 4 (SB 1421); Stats 2010 ch 219 § 8 (AB 1844), effective September 9, 2010.)

CAL. PENAL CODE § 289 (2013). Penetration by foreign object

(a)

(1)

(A) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person shall be punished by imprisonment in the state prison for three, six, or eight years..

(B) Any person who commits an act of sexual penetration upon a child who is under 14 years of age, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 8, 10, or 12 years.

(C) Any person who commits an act of sexual penetration upon a minor who is 14 years of age or older, when the act is accomplished against the victim's will by means of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, shall be punished by imprisonment in the state prison for 6, 8, or 10 years.

(D) This paragraph does not preclude prosecution under Section 269, Section 288.7, or any other provision of law.

(2) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to retaliate in the future against the victim or any other person, and there is a reasonable possibility that the perpetrator will execute the threat, shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) Except as provided in subdivision (c), any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. Notwithstanding the appointment of a conservator with respect to the victim pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(c) Any person who commits an act of sexual penetration, and the victim is at the time incapable, because of a mental disorder or developmental or physical disability, of giving legal consent, and this is known or reasonably should be known to the person committing the act or causing the act to be committed and both the defendant and the victim are at the time confined in a state hospital for the care and treatment of the mentally disordered or in any other public or private facility for the care and treatment of the mentally disordered approved by a county mental health director, shall be punished by imprisonment in the state prison, or in a county jail for a period of not more than one year. Notwithstanding the existence of a conservatorship pursuant to the provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code), the prosecuting attorney shall prove, as an element of the crime, that a mental disorder or developmental or physical disability rendered the alleged victim incapable of giving legal consent.

(d) Any person who commits an act of sexual penetration, and the victim is at the time unconscious of the nature of the act and this is known to the person committing the act or causing the act to be committed, shall be punished by imprisonment in the state prison for three, six, or eight years. As used in this subdivision, "unconscious of the nature of the act" means incapable of resisting because the victim meets one of the following conditions:

(1) Was unconscious or asleep.

(2) Was not aware, knowing, perceiving, or cognizant that the act occurred.

(3) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraud in fact.

(4) Was not aware, knowing, perceiving, or cognizant of the essential characteristics of the act due to the perpetrator's fraudulent representation that the sexual penetration served a professional purpose when it served no professional purpose.

(e) Any person who commits an act of sexual penetration when the victim is prevented from resisting by any intoxicating or anesthetic substance, or any controlled substance, and this condition was known, or reasonably should have been known by the accused, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(f) Any person who commits an act of sexual penetration when the victim submits under the belief that the person committing the act or causing the act to be committed is the victim's spouse, and this belief is induced by any artifice, pretense, or concealment practiced by the accused, with intent to induce the belief, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

(g) Any person who commits an act of sexual penetration when the act is accomplished against the victim's will by threatening to use the authority of a public official to incarcerate, arrest, or deport the victim or another, and the victim has a reasonable belief that the perpetrator is a public official, shall be punished by imprisonment in the state prison for a period of three, six, or eight years.

As used in this subdivision, "public official" means a person employed by a governmental agency who has the authority, as part of that position, to incarcerate, arrest, or deport another. The perpetrator does not actually have to be a public official.

(h) Except as provided in Section 288, any person who participates in an act of sexual penetration with another person who is under 18 years of age shall be punished by imprisonment in the state prison or in the county jail for a period of not more than one year.

(i) Except as provided in Section 288, any person over the age of 21 years who participates in an act of sexual penetration with another person who is under 16 years of age shall be guilty of a felony.

(j) Any person who participates in an act of sexual penetration with another person who is under 14 years of age and who is more than 10 years younger than he or she shall be punished by imprisonment in the state prison for three, six, or eight years.

(k) As used in this section:

(1) "Sexual penetration" is the act of causing the penetration, however slight, of the genital or anal opening of any person or causing another person to so penetrate the

defendant's or another person's genital or anal opening for the purpose of sexual arousal, gratification, or abuse by any foreign object, substance, instrument, or device, or by any unknown object.

(2) "Foreign object, substance, instrument, or device" shall include any part of the body, except a sexual organ.

(3) "Unknown object" shall include any foreign object, substance, instrument, or device, or any part of the body, including a penis, when it is not known whether penetration was by a penis or by a foreign object, substance, instrument, or device, or by any other part of the body.

(l) As used in subdivision (a), "threatening to retaliate" means a threat to kidnap or falsely imprison, or inflict extreme pain, serious bodily injury or death.

(m) As used in this section, "victim" includes any person who the defendant causes to penetrate the genital or anal opening of the defendant or another person or whose genital or anal opening is caused to be penetrated by the defendant or another person and who otherwise qualifies as a victim under the requirements of this section.

CREDIT(S)

(Added Stats 1978 ch 1313 § 1. Amended Stats 1980 ch 409 § 1, ch 915 § 3; Stats 1981 ch 896 § 3; Stats 1982 ch 1111 § 6. Amended Stats 1985 ch 929 § 3, ch 945 § 1; Stats 1986 ch 1299 § 6; Stats 1988 ch 404 § 1; Stats 1993 ch 595 § 6 (AB 187); Stats 1st Ex Sess 1993-94 ch 39 § 1 (AB 114 X), effective November 30, 1994, ch 40 § 4.5 (AB 85 X), effective November 30, 1994; Stats 1998 ch 936 § 6 (AB 105), effective September 28, 1998; Stats 1999 ch 706 § 5 (AB 1236), effective October 10, 1999; Stats 2002 ch 302 § 5 (SB 1421) (ch 302 prevails), ch 787 § 9 (SB 1798); Stats 2010 ch 219 § 9 (AB 1844), effective September 9, 2010.)

CAL. PENAL CODE § 647.6 (2013). Annoying or molesting children

(a)

(1) Every person who annoys or molests any child under 18 years of age shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail not exceeding one year, or by both the fine and imprisonment.

(2) Every person who, motivated by an unnatural or abnormal sexual interest in children, engages in conduct with an adult whom he or she believes to be a child under 18 years of age, which conduct, if directed toward a child under 18 years of age, would be a violation of this section, shall be punished by a fine not exceeding five thousand dollars (\$5,000), by imprisonment in a county jail for up to one year, or by both that fine and imprisonment.

(b) Every person who violates this section after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, shall be punished by imprisonment in the state prison, or in a county jail not exceeding one year, and by a fine not exceeding five thousand dollars (\$5,000).

(c)

(1) Every person who violates this section shall be punished upon the second and each subsequent conviction by imprisonment in the state prison.

(2) Every person who violates this section after a previous felony conviction under Section 261, 264.1, 269, 285, 286, 288a, 288.5, or 289, any of which involved a minor under 16 years of age, or a previous felony conviction under this section, a conviction under Section 288, or a felony conviction under Section 311.4 involving a minor under 14 years of age shall be punished by imprisonment in the state prison for two, four, or six years.

(d)

(1) In any case in which a person is convicted of violating this section and probation is granted, the court shall require counseling as a condition of probation, unless the court makes a written statement in the court record, that counseling would be inappropriate or ineffective.

(2) In any case in which a person is convicted of violating this section, and as a condition of probation, the court prohibits the defendant from having contact with the victim, the court order prohibiting contact shall not be modified except upon the request of the victim and a finding by the court that the modification is in the best interest of the victim. As used in this paragraph, "contact with the victim" includes all physical contact, being in the presence of the victim, communication by any means, any communication by a third party acting on behalf of the defendant, and any gifts.

(e) Nothing in this section prohibits prosecution under any other provision of law.

CREDIT(S)

(Added Stats 1929 ch 376 § 1, as Pen C § 647a. Amended Stats 1947 ch 730 § 1; Stats 1st Ex Sess 1949 ch 14 § 1, effective January 6, 1950; Stats 1st Ex Sess 1950 ch 34 § 1; Stats 1951 ch 1200 § 1; Stats 1st Ex Sess 1952 ch 23 § 5; Stats 1955 ch 169 § 3; Stats 1957 ch 1735 § 1; Stats 1967 ch 154 § 1; Stats 1976 ch 1139 § 262, operative July 1, 1977; Stats 1982 ch 1113 § 3; Stats 1983 ch 1092 § 315, effective September 27, 1983, operative January 1, 1984; Stats 1986 ch 264 § 2; Stats 1987 ch 423 § 1, ch 1394 § 1. Amended and renumbered by Stats 1987 ch 1418 § 4.3. Amended Stats 1995 ch 48 § 1 (AB 1491); Stats 2000 ch 657 § 1 (SB 1784); Stats 2006 ch 337 § 26 (SB 1128), effective September 20, 2006; Stats 2011 ch 15 § 431 (AB 109), effective April 4, 2011, operative October 1, 2011; Stats 2012 ch 43 § 20 (SB 1023), effective June 27, 2012.)

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COLO. REV. STAT. § 18-3-305 (2013). Enticement of a child

(1) A person commits the crime of enticement of a child if he or she invites or persuades, or attempts to invite or persuade, a child under the age of fifteen years to enter any vehicle, building, room, or secluded place with the intent to commit sexual assault or unlawful sexual contact upon said child. It is not necessary to a prosecution for attempt under this subsection (1) that the child have perceived the defendant's act of enticement.

(2) Enticement of a child is a class 4 felony. It is a class 3 felony if the defendant has a previous conviction for enticement of a child or sexual assault on a child or for conspiracy to commit or the attempted commission of either offense, or if the enticement of a child results in bodily injury to that child.

(3) When a person is convicted, pleads nolo contendere, or receives a deferred sentence for a violation of the provisions of this section and the court knows the person is a current or former employee of a school district in this state or holds a license or authorization pursuant to the provisions of article 60.5 of title 22, C.R.S., the court shall report such fact to the department of education.

CREDIT(S)

(L. 85: Entire section added, p. 715, § 2, June 7.L. 87: (2) amended, p. 606, § 12, effective July 1.L. 90: (3) added, p. 1025, § 5, effective July 1.L. 2000: (1) amended, p. 711, § 48, effective July 1; (3) amended, p. 1846, § 30, effective August 2.)

COLO. REV. STAT. § 18-3-402 (2013). Sexual assault

(1) Any actor who knowingly inflicts sexual intrusion or sexual penetration on a victim commits sexual assault if:

(a) The actor causes submission of the victim by means of sufficient consequence reasonably calculated to cause submission against the victim's will; or

(b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or

(c) The actor knows that the victim submits erroneously, believing the actor to be the victim's spouse; or

(d) At the time of the commission of the act, the victim is less than fifteen years of age and the actor is at least four years older than the victim and is not the spouse of the victim; or

(e) At the time of the commission of the act, the victim is at least fifteen years of age but

less than seventeen years of age and the actor is at least ten years older than the victim and is not the spouse of the victim; or

(f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority to coerce the victim to submit, unless the act is incident to a lawful search; or

(g) The actor, while purporting to offer a medical service, engages in treatment or examination of a victim for other than a bona fide medical purpose or in a manner substantially inconsistent with reasonable medical practices; or

(h) The victim is physically helpless and the actor knows the victim is physically helpless and the victim has not consented.

(2) Sexual assault is a class 4 felony, except as provided in subsections (3), (3.5), (4), and (5) of this section.

(3) If committed under the circumstances of paragraph (e) of subsection (1) of this section, sexual assault is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(3.5) Sexual assault is a class 3 felony if committed under the circumstances described in paragraph (h) of subsection (1) of this section.

(4) Sexual assault is a class 3 felony if it is attended by any one or more of the following circumstances:

(a) The actor causes submission of the victim through the actual application of physical force or physical violence; or

(b) The actor causes submission of the victim by threat of imminent death, serious bodily injury, extreme pain, or kidnapping, to be inflicted on anyone, and the victim believes that the actor has the present ability to execute these threats; or

(c) The actor causes submission of the victim by threatening to retaliate in the future against the victim, or any other person, and the victim reasonably believes that the actor will execute this threat. As used in this paragraph (c), "to retaliate" includes threats of kidnapping, death, serious bodily injury, or extreme pain; or

(d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission.

(e) (Deleted by amendment, L. 2002, p. 1578, § 2, effective July 1, 2002.)

(5) (a) Sexual assault is a class 2 felony if any one or more of the following

circumstances exist:

(I) In the commission of the sexual assault, the actor is physically aided or abetted by one or more other persons; or

(II) The victim suffers serious bodily injury; or

(III) The actor is armed with a deadly weapon or an article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon or represents verbally or otherwise that the actor is armed with a deadly weapon and uses the deadly weapon, article, or representation to cause submission of the victim.

(b) (I) If a defendant is convicted of sexual assault pursuant to this subsection (5), the court shall sentence the defendant in accordance with section 18-1.3-401 (8) (e). A person convicted solely of sexual assault pursuant to this subsection (5) shall not be sentenced under the crime of violence provisions of section 18-1.3-406 (2). Any sentence for a conviction under this subsection (5) shall be consecutive to any sentence for a conviction for a crime of violence under section 18-1.3-406.

(II) The provisions of this paragraph (b) shall apply to offenses committed prior to November 1, 1998.

(6) Any person convicted of felony sexual assault committed on or after November 1, 1998, under any of the circumstances described in this section shall be sentenced in accordance with the provisions of part 10 of article 1.3 of this title.

(7) A PERSON WHO IS CONVICTED ON OR AFTER JULY 1, 2013, OF A SEXUAL ASSAULT UNDER THIS SECTION, UPON CONVICTION, SHALL BE ADVISED BY THE COURT THAT THE PERSON HAS NO RIGHT:

(a) TO NOTIFICATION OF THE TERMINATION OF PARENTAL RIGHTS AND NO STANDING TO OBJECT TO THE TERMINATION OF PARENTAL RIGHTS FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(b) TO ALLOCATION OF PARENTAL RESPONSIBILITIES, INCLUDING PARENTING TIME AND DECISION-MAKING RESPONSIBILITIES FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE; .

(c) OF INHERITANCE FROM A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE; AND

(d) TO NOTIFICATION OF OR THE RIGHT TO OBJECT TO THE ADOPTION OF A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE.

CREDIT(S)

(2013 Colo. ALS 353(2013 Colo. SB. 227), § 6, effective July 1, 2013. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.)

COLO. REV. STAT. § 18-3-404 (2013). Unlawful sexual contact

(1) Any actor who knowingly subjects a victim to any sexual contact commits unlawful sexual contact if:

- (a) The actor knows that the victim does not consent; or
- (b) The actor knows that the victim is incapable of appraising the nature of the victim's conduct; or
- (c) The victim is physically helpless and the actor knows that the victim is physically helpless and the victim has not consented; or
- (d) The actor has substantially impaired the victim's power to appraise or control the victim's conduct by employing, without the victim's consent, any drug, intoxicant, or other means for the purpose of causing submission; or
- (e) Repealed
- (f) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless incident to a lawful search, to coerce the victim to submit; or
- (g) The actor engages in treatment or examination of a victim for other than bona fide medical purposes or in a manner substantially inconsistent with reasonable medical practices.

(1.5) Any person who knowingly, with or without sexual contact, induces or coerces a child by any of the means set forth in section 18-3-402 to expose intimate parts or to engage in any sexual contact, intrusion, or penetration with another person, for the purpose of the actor's own sexual gratification, commits unlawful sexual contact. For the purposes of this subsection (1.5), the term "child" means any person under the age of eighteen years.

(1.7) Repealed.

(2)

(a) Unlawful sexual contact is a class 1 misdemeanor and is an extraordinary risk crime that is subject to the modified sentencing range specified in section 18-1.3-501 (3).

(b) Notwithstanding the provisions of paragraph (a) of this subsection (2), unlawful sexual contact is a class 4 felony if the actor compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c) or if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section or subsection (1.5) of this section.

(3) If a defendant is convicted of the class 4 felony of unlawful sexual contact pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406; except that this subsection (3) shall not apply if the actor engages in the conduct described in paragraph (g) of subsection (1) of this section.

(4) A PERSON WHO IS CONVICTED ON OR AFTER JULY 1, 2013, OF UNLAWFUL SEXUAL CONTACT UNDER THIS SECTION, UPON CONVICTION, SHALL BE ADVISED BY THE COURT THAT THE PERSON HAS NO RIGHT:

(a) TO NOTIFICATION OF THE TERMINATION OF PARENTAL RIGHTS AND NO STANDING TO OBJECT TO THE TERMINATION OF PARENTAL RIGHTS FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(b) TO ALLOCATION OF PARENTAL RESPONSIBILITIES, INCLUDING PARENTING TIME AND DECISION-MAKING RESPONSIBILITIES FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(c) OF INHERITANCE FROM A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE; AND

(d) TO NOTIFICATION OF OR THE RIGHT TO OBJECT TO THE ADOPTION OF A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE.

CREDIT(S)

(2013 Colo. ALS 353(2013 Colo. SB. 227), § 7, effective July 1, 2013. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.)

COLO. REV. STAT. § 18-3-405 (2013). Sexual assault on a child

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child if the victim is less than fifteen years of age and the actor is at least four years older than the victim.

(2) Sexual assault on a child is a class 4 felony, but it is a class 3 felony if:

(a) The actor applies force against the victim in order to accomplish or facilitate sexual contact; or

(b) The actor, in order to accomplish or facilitate sexual contact, threatens imminent death, serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor has the present ability to execute the threat; or

(c) The actor, in order to accomplish or facilitate sexual contact, threatens retaliation by causing in the future the death or serious bodily injury, extreme pain, or kidnapping against the victim or another person, and the victim believes that the actor will execute the threat; or

(d) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time must be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse, whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraphs (a) to (d) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

(4) A PERSON WHO IS CONVICTED ON OR AFTER JULY 1, 2013, OF SEXUAL ASSAULT ON A CHILD UNDER THIS SECTION, UPON CONVICTION, SHALL BE ADVISED BY THE COURT THAT THE PERSON HAS NO RIGHT:

(a) TO NOTIFICATION OF THE TERMINATION OF PARENTAL RIGHTS AND NO STANDING TO OBJECT TO THE TERMINATION OF PARENTAL RIGHTS FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(b) TO ALLOCATION OF PARENTAL RESPONSIBILITIES, INCLUDING PARENTING TIME AND DECISION-MAKING RESPONSIBILITIES FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(c) OF INHERITANCE FROM A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE; AND

(d) TO NOTIFICATION OF OR THE RIGHT TO OBJECT TO THE ADOPTION OF A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE.

CREDIT(S)

(2013 Colo. ALS 353(2013 Colo. SB. 227), § 9, effective July 1, 2013. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.)

COLO. REV. STAT. § 18-3-405.3 (2013). Sexual assault on a child by one in a position of trust

(1) Any actor who knowingly subjects another not his or her spouse to any sexual contact commits sexual assault on a child by one in a position of trust if the victim is a child less than eighteen years of age and the actor committing the offense is one in a position of trust with respect to the victim.

(2) Sexual assault on a child by one in a position of trust is a class 3 felony if:

(a) The victim is less than fifteen years of age; or

(b) The actor commits the offense as a part of a pattern of sexual abuse as described in subsection (1) of this section. No specific date or time need be alleged for the pattern of sexual abuse; except that the acts constituting the pattern of sexual abuse whether charged in the information or indictment or committed prior to or at any time after the offense charged in the information or indictment, shall be subject to the provisions of section 16-5-401 (1) (a), C.R.S., concerning sex offenses against children. The offense charged in the information or indictment shall constitute one of the incidents of sexual contact involving a child necessary to form a pattern of sexual abuse as defined in section 18-3-401 (2.5).

(3) Sexual assault on a child by one in a position of trust is a class 4 felony if the victim is fifteen years of age or older but less than eighteen years of age and the offense is not committed as part of a pattern of sexual abuse, as described in paragraph (b) of subsection (2) of this section.

(4) If a defendant is convicted of the class 3 felony of sexual assault on a child pursuant to paragraph (b) of subsection (2) of this section, the court shall sentence the defendant in accordance with the provisions of section 18-1.3-406.

(5) A PERSON WHO IS CONVICTED ON OR AFTER JULY 1, 2013, OF SEXUAL ASSAULT ON A CHILD BY ONE IN A POSITION OF TRUST UNDER THIS SECTION, UPON CONVICTION, SHALL BE ADVISED BY THE COURT THAT THE PERSON HAS NO RIGHT:

(a) TO NOTIFICATION OF THE TERMINATION OF PARENTAL RIGHTS AND NO STANDING TO OBJECT TO THE TERMINATION OF PARENTAL RIGHTS FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(b) TO ALLOCATION OF PARENTAL RESPONSIBILITIES, INCLUDING PARENTING TIME AND DECISION-MAKING RESPONSIBILITIES FOR A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE;

(c) OF INHERITANCE FROM A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE; AND

(d) TO NOTIFICATION OF OR THE RIGHT TO OBJECT TO THE ADOPTION OF A CHILD CONCEIVED AS A RESULT OF THE COMMISSION OF THAT OFFENSE.

CREDIT(S)

(2013 Colo. ALS 353(2013 Colo. SB. 227), § 8, effective July 1, 2013. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.)

COLO. REV. STAT. § 18-3-411 (2013). Sex offenses against children - "unlawful sexual offense" defined - limitation for commencing proceedings - evidence - statutory privilege

(1) As used in this section, "unlawful sexual offense" means enticement of a child, as described in section 18-3-305, sexual assault, as described in section 18-3-402, when the victim at the time of the commission of the act is a child less than fifteen years of age, sexual assault in the first degree, as described in section 18-3-402, as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the second degree, as described in section 18-3-403 (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), or (1) (h), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age, or as described in section 18-3-403 (1) (e), as it existed prior to July 1, 2000, when the victim is less than fifteen years of age and the actor is at least four years older than the victim; unlawful sexual contact, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the third degree, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault on a child, as described in section 18-3-405; sexual assault on a child by one in a position of trust, as described in section 18-3-405.3; aggravated incest, as described in section 18-6-302; trafficking in children, as described in section 18-3-502; sexual exploitation of a child, as described in section 18-6-403; procurement of a child for sexual exploitation, as described in section 18-6-404; indecent

exposure, as described in section 18-7-302, soliciting for child prostitution, as described in section 18-7-402; pandering of a child, as described in section 18-7-403; procurement of a child, as described in section 18-7-403.5; keeping a place of child prostitution, as described in section 18-7-404; pimping of a child, as described in section 18-7-405; inducement of child prostitution, as described in section 18-7-405.5; patronizing a prostituted child, as described in section 18-7-406; class 4 felony internet luring of a child, as described in section 18-3-306 (3); internet sexual exploitation of a child, as described in section 18-3-405.4; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (1).

(2) No person shall be prosecuted, tried, or punished for a misdemeanor offense specified in section 18-3-402 or 18-3-404, unless the indictment, information, complaint, or action for the same is found or instituted within five years after the commission of the offense. The limitation for commencing criminal proceedings and juvenile delinquency proceedings concerning unlawful sexual offenses that are felonies shall be governed by section 16-5-401 (1) (a), C.R.S.

(3) Out-of-court statements made by a child describing any act of sexual contact, intrusion, or penetration, as defined in section 18-3-401, performed with, by, or on the child declarant, not otherwise admissible by a statute or court rule which provides an exception to the objection of hearsay, may be admissible in any proceeding in which the child is a victim of an unlawful sexual offense pursuant to the provisions of section 13-25-129, C.R.S.

(4) All cases involving the commission of an unlawful sexual offense shall take precedence before the court; the court shall hear these cases as soon as possible after they are filed.

(5) The statutory privilege between the husband and the wife shall not be available for excluding or refusing testimony in any prosecution of an unlawful sexual offense.

CREDIT(S)

(L. 82: Entire section added, p. 313, § 1, effective July 1. L. 83: (3) added, p. 630, § 2, effective May 25; (4) and (5) added, p. 694, § 3, effective June 15. L. 85: (1) and (2) amended, p. 618, § 12, effective July 1. L. 88: (5) amended, p. 713, § 19, effective July 1. L. 91: (1) amended, p. 406, § 11, effective June 6. L. 94: (1) amended, p. 1717, § 10, effective July 1. L. 2000: (1) and (2) amended, p. 704, § 29, effective July 1. L. 2002: (2) amended, p. 1128, § 2, effective June 3. L. 2006: (1) amended, p. 2056, § 8, effective July 1; (2) amended, p. 413, § 4, effective July 1. L. 2010: (1) amended, (SB 10-140), ch. 156, p. 538, § 9, effective April 21.)

COLO. REV. STAT. § 18-3-412 (2013). Habitual sex offenders against children-indictment or information-verdict of the jury

(1) For the purpose of this section, "unlawful sexual offense" means sexual assault, as described in section 18-3-402, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the first degree, as described in section 18-3-402, as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the second degree, as described in section 18-3-403 (1) (a), (1) (b), (1) (c), (1) (d), (1) (g), or (1) (h), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age, or as described in section 18-3-403 (1) (e), as it existed prior to July 1, 2000, when the victim is less than fifteen years of age and the actor is at least four years older than the victim; unlawful sexual contact, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault in the third degree, as described in section 18-3-404 (1) (a), (1) (b), (1) (c), (1) (d), (1) (f), or (1) (g), as it existed prior to July 1, 2000, when the victim at the time of the commission of the act is a child less than fifteen years of age; sexual assault on a child, as described in section 18-3-405; sexual assault on a child by one in a position of trust, as described in section 18-3-405.3; aggravated incest, as described in section 18-6-302; trafficking in children, as described in section 18-3-502; sexual exploitation of a child, as described in section 18-6-403; procurement of a child for sexual exploitation, as described in section 18-6-404; soliciting for child prostitution, as described in section 18-7-402; pandering of a child, as described in section 18-7-403; procurement of a child, as described in section 18-7-403.5; keeping a place of child prostitution, as described in section 18-7-404; pimping of a child, as described in section 18-7-405; inducement of child prostitution, as described in section 18-7-405.5; patronizing a prostituted child, as described in section 18-7-406; or criminal attempt, conspiracy, or solicitation to commit any of the acts specified in this subsection (1).

(2) Every person convicted in this state of an unlawful sexual offense who has been previously convicted upon charges prior to the commission of the present act, which were separately brought, either in this state or elsewhere, of an unlawful sexual offense or who has been previously convicted under the laws of any other state, the United States, or any territory subject to the jurisdiction of the United States of an unlawful act that, if committed within this state, would be an unlawful sexual offense shall be adjudged an habitual sex offender against children. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a felony, the court shall impose a sentence to the department of corrections of not less than three times the upper limit of the presumptive range for that class felony as set out in section 18-1.3-401. If the second or subsequent unlawful sexual offense for which a defendant is convicted constitutes a misdemeanor, the court shall impose a sentence to the county jail of not less than three times the maximum sentence for that class misdemeanor as set out in section 18-1.3-501..

(3) Any previous conviction of an unlawful sexual offense shall be set forth in apt words in the complaint, indictment, or information. For purposes of trial, a duly authenticated copy of the record of previous convictions and judgments of any court of record for any of said crimes of the party indicted, charged, or informed against shall be prima facie evidence of such convictions and may be used in evidence against such party. A duly

authenticated copy of the records of institutions of treatment or incarceration, including, but not limited to, records pertaining to identification of the party indicted, charged, or informed against, shall be prima facie evidence of the facts contained therein and may be used in evidence against such party.

(4) Any person who is subject to the provisions of this section shall not be eligible for suspension of sentence.

(5) The procedures specified in section 18-1.3-803 shall govern in a trial to which the provisions of this section are alleged to apply based on a previous conviction or convictions for an unlawful sexual offense as set out in the complaint, indictment, or information.

CREDIT(S)

(L. 82: Entire section added, p. 316, § 1, effective July 1.L. 85: (1) amended, p. 619, § 13, effective July 1.L. 96: (5) amended, p. 1846, § 18, effective July 1.L. 99: (1) amended, p. 1154, § 18, effective July 1.L. 2000: (1) amended, p. 711, § 49, effective July 1; (2) amended, p. 249, § 1, effective August 2.L. 2002: (2) and (5) amended, p. 1513, § 193, effective October 1.L. 2003: (2) and (4) amended, p. 1427, § 7, effective April 29.L. 2010: (1) amended, (SB 10-140), ch. 156, p. 539, § 10, effective April 21.)

COLO. REV. STAT. § 18-6.5-103 (2013). Crimes against at-risk adults and at-risk juveniles - classifications

(1) Crimes against at-risk adults and at-risk juveniles shall be as prescribed in this section.

(2) Any person whose conduct amounts to criminal negligence, as defined in section 18-1-501 (3), commits:

(a) A class 4 felony if such negligence results in the death of an at-risk adult or an at-risk juvenile;

(b) A class 5 felony if such negligence results in serious bodily injury to an at-risk adult or an at-risk juvenile; and

(c) A class 6 felony if such negligence results in bodily injury to an at-risk adult or an at-risk juvenile.

(3)

(a) Any person who commits a crime of assault in the first degree, as such crime is described in section 18-3-202, and the victim is an at-risk adult or an at-risk juvenile commits a class 4 felony if the circumstances described in section 18-3-202 (2) (a) are present and a class 2 felony if such circumstances are not present.

(b) Any person who commits a crime of assault in the second degree, as such crime is described in section 18-3-203, and the victim is an at-risk adult or an at-risk juvenile commits a class 5 felony if the circumstances described in section 18-3-203 (2) (a) are present and a class 3 felony if such circumstances are not present.

(c) Any person who commits a crime of assault in the third degree, as such crime is described in section 18-3-204, and the victim is an at-risk adult or an at-risk juvenile commits a class 6 felony.

(4) Any person who commits robbery, as such crime is described in section 18-4-301 (1), and the victim is an at-risk adult or an at-risk juvenile, commits a class 3 felony. If the offender is convicted of robbery of an at-risk adult or an at-risk juvenile, the court shall sentence the defendant to the department of corrections for at least the presumptive sentence under section 18-1.3-401 (1).

(5) Any person who commits theft, and commits any element or portion of the offense in the presence of the victim, as such crime is described in section 18-4-401 (1), and the victim is an at-risk adult or an at-risk juvenile, or who commits theft against an at-risk adult or an at-risk juvenile while acting in a position of trust, whether or not in the presence of the victim, commits a class 5 felony if the value of the thing involved is less than five hundred dollars or a class 3 felony if the value of the thing involved is five hundred dollars or more. Theft from the person of an at-risk adult or an at-risk juvenile by means other than the use of force, threat, or intimidation is a class 4 felony without regard to the value of the thing taken.

(5.5) A PERSON WHO COMMITS THEFT, AND COMMITS ANY ELEMENT OR PORTION OF THE OFFENSE IN THE PRESENCE OF THE VICTIM, AS SUCH CRIME IS DESCRIBED IN SECTION 18-4-401 (1), AND THE VICTIM IS AN AT-RISK ELDER, OR WHO COMMITS THEFT AGAINST AN AT-RISK ELDER WHILE ACTING IN A POSITION OF TRUST, WHETHER OR NOT IN THE PRESENCE OF THE VICTIM, OR COMMITS THEFT AGAINST AN AT-RISK ELDER KNOWING THE VICTIM IS AN AT-RISK ELDER, WHETHER IN THE PRESENCE OF THE VICTIM OR NOT, COMMITS A CLASS 5 FELONY IF THE VALUE OF THE THING INVOLVED IS LESS THAN FIVE HUNDRED DOLLARS OR A CLASS 3 FELONY IF THE VALUE OF THE THING INVOLVED IS FIVE HUNDRED DOLLARS OR MORE. THEFT FROM THE PERSON OF AN AT-RISK ELDER BY MEANS OTHER THAN THE USE OF FORCE, THREAT, OR INTIMIDATION IS A CLASS 4 FELONY WITHOUT REGARD TO THE VALUE OF THE THING TAKEN.

(6) Any person who knowingly COMMITS CARETAKER NEGLECT AGAINST an at-risk adult, AN AT-RISK ELDER, or an at-risk juvenile or knowingly acts in a manner likely to be injurious to the physical or mental welfare of an at-risk adult, AN AT-RISK ELDER, or an at-risk juvenile commits a class 1 misdemeanor.

(7)

(a) Any person who commits a crime of sexual assault, as such crime is described in section 18-3-402, sexual assault in the first degree, as such crime was described in section 18-3-402, as it existed prior to July 1, 2000, and the victim is an at-risk adult or an at-risk juvenile commits a class 2 felony.

(b) Any person who commits a crime of sexual assault in the second degree, as such crime was described in section 18-3-403, as it existed prior to July 1, 2000, and the victim is an at-risk adult or an at-risk juvenile, commits a class 3 felony.

(c) Any person who commits unlawful sexual contact, as such crime is described in section 18-3-404 or sexual assault in the third degree, as such crime was described in section 18-3-404, as it existed prior to July 1, 2000, and the victim is an at-risk adult or an at-risk juvenile, commits a class 6 felony; except that the person commits a class 3 felony if the person compels the victim to submit by use of such force, intimidation, or threat as specified in section 18-3-402 (4) (a), (4) (b), or (4) (c), or if the actor engages in the conduct described in section 18-3-404 (1) (g) or (1.5).

(d) Any person who commits sexual assault on a child, as such crime is described in section 18-3-405, and the victim is an at-risk juvenile, commits a class 3 felony; except that, if the circumstances described in section 18-3-405 (2) (a), (2) (b), (2) (c), or (2) (d) are present, the person commits a class 2 felony.

(e) Any person who commits sexual assault on a child by one in a position of trust, as such crime is described in section 18-3-405.3, and the victim is an at-risk juvenile, commits a class 2 felony if the victim is less than fifteen years of age or a class 3 felony if the victim is fifteen years of age or older but less than eighteen years of age.

(f) Any person who commits sexual assault on a client by a psychotherapist, as such crime is described in section 18-3-405.5, and the victim is an at-risk adult or an at-risk juvenile, commits a class 3 felony if the circumstances described in section 18-3-405.5 (1) exist or a class 6 felony if such circumstances are not present.

(7.5) ANY PERSON WHO EXERCISES UNDUE INFLUENCE TO CONVERT OR TAKE POSSESSION OF AN AT-RISK ELDER'S MONEY, ASSETS, OR OTHER PROPERTY COMMITS THEFT, AS DEFINED IN SECTION 18-4-401.

(8) For purposes of SUBSECTIONS (3) TO (7.5) of this section, commission of the offenses described in said subsections shall include the attempt, solicitation, or conspiracy to commit such offenses.

CREDIT(S)

(2013 Colo. ALS 233(2013 Colo. SB. 111), § 4, effective May 16, 2013. For specific contingencies, applicability and any sunset provisions, please see the specific ALS affecting this section.)

CONNECTICUT

CONN. GEN. STAT. § 53-21 (2013). Injury or risk of injury to, or impairing morals of, children. Sale of children.

(a) Any person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child, or (2) has contact with the intimate parts, as defined in section 53a-65, of a child under the age of sixteen years or subjects a child under sixteen years of age to contact with the intimate parts of such person, in a sexual and indecent manner likely to impair the health or morals of such child, or (3) permanently transfers the legal or physical custody of a child under the age of sixteen years to another person for money or other valuable consideration or acquires or receives the legal or physical custody of a child under the age of sixteen years from another person upon payment of money or other valuable consideration to such other person or a third person, except in connection with an adoption proceeding that complies with the provisions of chapter 803, shall be guilty of a class C felony for a violation of subdivision (1) or (3) of this subsection and a class B felony for a violation of subdivision (2) of this subsection, except that, if the violation is of subdivision (2) of this subsection and the victim of the offense is under thirteen years of age, such person shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court.

(b) The act of a parent or agent leaving an infant thirty days or younger with a designated employee pursuant to section 17a-58 shall not constitute a violation of this section.

CREDIT(S)

(1949 Rev., S. 8369; P.A. 95-142, S. 1; P.A. 97-147, S. 1; P.A. 00-207, S. 6; P.A. 02-138, S. 4; P.A. 07-143, S. 4.)

CONN. GEN. STAT. § 53a-70 (2013). Sexual assault in the first degree: Class B or A felony.

(a) A person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person, or (2) engages in sexual intercourse with another person and such other person is under thirteen years of age and the actor is more than two years older than such person, or (3) commits sexual assault in the second degree as provided in section 53a-71 and in the commission of such offense is aided by two or more other persons actually present, or (4) engages in sexual intercourse with another person and such other person is mentally incapacitated to the extent that such other person is unable

to consent to such sexual intercourse.

(b) (1) Except as provided in subdivision (2) of this subsection, sexual assault in the first degree is a class B felony for which two years of the sentence imposed may not be suspended or reduced by the court or, if the victim of the offense is under ten years of age, for which ten years of the sentence imposed may not be suspended or reduced by the court.

(2) Sexual assault in the first degree is a class A felony if the offense is a violation of subdivision (1) of subsection (a) of this section and the victim of the offense is under sixteen years of age or the offense is a violation of subdivision (2) of subsection (a) of this section. Any person found guilty under said subdivision (1) or (2) shall be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court if the victim is under ten years of age or of which five years of the sentence imposed may not be suspended or reduced by the court if the victim is under sixteen years of age.

(3) Any person found guilty under this section shall be sentenced to a term of imprisonment and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of at least ten years.

CREDIT(S)

(1969, P.A. 828, S. 71; 1971, P.A. 871, S. 19; 1972, P.A. 127, S. 78; P.A. 75-619, S. 3; P.A. 82-428, S. 2; P.A. 89-359; P.A. 92-87, S. 3; P.A. 93-340, S. 14; P.A. 95-142, S. 13; June Sp. Sess. P.A. 99-2, S. 49; P.A. 00-161, S. 1; P.A. 02-138, S. 5.)

CONN. GEN. STAT. § 53a-70a (2013). Aggravated sexual assault in the first degree: Class B or A felony.

(a) A person is guilty of aggravated sexual assault in the first degree when such person commits sexual assault in the first degree as provided in section 53a-70, and in the commission of such offense (1) such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a deadly weapon, (2) with intent to disfigure the victim seriously and permanently, or to destroy, amputate or disable permanently a member or organ of the victim's body, such person causes such injury to such victim, (3) under circumstances evincing an extreme indifference to human life such person recklessly engages in conduct which creates a risk of death to the victim, and thereby causes serious physical injury to such victim, or (4) such person is aided by two or more other persons actually present. No person shall be convicted of sexual assault in the first degree and aggravated sexual assault in the first degree upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b) Aggravated sexual assault in the first degree is a class B felony or, if the victim of the offense is under sixteen years of age, a class A felony. Any person found guilty under this

section shall be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court, except that, if such person committed sexual assault in the first degree by violating subdivision (1) of subsection (a) of section 53a-70, and the victim of the offense is under sixteen years of age, twenty years of the sentence imposed may not be suspended or reduced by the court. Any person found guilty under this section shall be sentenced to a period of special parole pursuant to subsection (b) of section 53a-28 of at least five years.

CREDIT(S)

(P.A. 75-619, S. 9; P.A. 80-442, S. 20, 28; P.A. 87-246; P.A. 92-87, S. 2; June Sp. Sess. P.A. 99-2, S. 50; P.A. 02-138, S. 6.)

CONN. GEN. STAT. § 53a-70c (2013). Aggravated sexual assault of a minor: Class A felony.

(a) A person is guilty of aggravated sexual assault of a minor when such person commits a violation of subdivision (2) of subsection (a) of section 53-21 or section 53a-70, 53a-70a, 53a-71, 53a-86, 53a-87 or 53a-196a and the victim of such offense is under thirteen years of age, and (1) such person kidnapped or illegally restrained the victim, (2) such person stalked the victim, (3) such person used violence to commit such offense against the victim, (4) such person caused serious physical injury to or disfigurement of the victim, (5) there was more than one victim of such offense under thirteen years of age, (6) such person was not known to the victim, or (7) such person has previously been convicted of a violent sexual assault.

(b) Aggravated sexual assault of a minor is a class A felony and any person found guilty under this section shall, for a first offense, be sentenced to a term of imprisonment of twenty-five years which may not be suspended or reduced by the court and, for any subsequent offense, be sentenced to a term of imprisonment of fifty years which may not be suspended or reduced by the court.

CREDIT(S)

(P.A. 07-143, S. 3.)

CONN. GEN. STAT. § 53a-71 (2013). Sexual assault in the second degree: Class C or B felony. [Effective until October 1, 2013]

(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is mentally defective to the extent that such other person is unable to consent to such sexual intercourse; or (3) such other person is physically helpless; or (4) such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of

such person's welfare; or (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (6) the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or (7) the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or (8) the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (9) the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (10) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age; or (11) such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the second degree is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which nine months of the sentence imposed may not be suspended or reduced by the court.

CREDIT(S)

(1969, P.A. 828, S. 72; P.A. 75-619, S. 4; P.A. 82-428, S. 3; P.A. 83-326, S. 1; P.A. 85-341, S. 2; P.A. 93-340, S. 2; P.A. 94-221, S. 18; P.A. 00-161, S. 2; P.A. 02-106, S. 1; 02-138, S. 7; P.A. 04-130, S. 1; P.A. 07-143, S. 1; P.A. 11-113, S. 1.)

CONN. GEN. STAT. § 53a-71 (2013). Sexual assault in the second degree: Class C or B felony. [Effective October 1, 2013]

(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (1) Such other person is thirteen years of age or older but under sixteen years of age and the actor is more than three years older than such other person; or (2) such other person is impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual intercourse; or (3) such other person is physically helpless; or (4) such other person is less than eighteen years old and the actor is such person's guardian or otherwise responsible for the general supervision of such person's welfare; or (5) such other person

is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (6) the actor is a psychotherapist and such other person is (A) a patient of the actor and the sexual intercourse occurs during the psychotherapy session, (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual intercourse occurs by means of therapeutic deception; or (7) the actor accomplishes the sexual intercourse by means of false representation that the sexual intercourse is for a bona fide medical purpose by a health care professional; or (8) the actor is a school employee and such other person is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (9) the actor is a coach in an athletic activity or a person who provides intensive, ongoing instruction and such other person is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (10) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and such other person is under eighteen years of age; or (11) such other person is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the second degree is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which nine months of the sentence imposed may not be suspended or reduced by the court.

CREDIT(S)

(1969, P.A. 828, S. 72; P.A. 75-619, S. 4; P.A. 82-428, S. 3; P.A. 83-326, S. 1; P.A. 85-341, S. 2; P.A. 93-340, S. 2; P.A. 94-221, S. 18; P.A. 00-161, S. 2; P.A. 02-106, S. 1; 02-138, S. 7; P.A. 04-130, S. 1; P.A. 07-143, S. 1; P.A. 11-113, S. 1; P.A. 13-47, S. 1, eff. Oct. 1, 2013.)

CONN. GEN. STAT. § 53a-72a (2013). Sexual assault in the third degree: Class D or C felony.

(a) A person is guilty of sexual assault in the third degree when such person (1) compels another person to submit to sexual contact (A) by the use of force against such other person or a third person, or (B) by the threat of use of force against such other person or against a third person, which reasonably causes such other person to fear physical injury to himself or herself or a third person, or (2) engages in sexual intercourse with another person whom the actor knows to be related to him or her within any of the degrees of kindred specified in section 46b-21.

(b) Sexual assault in the third degree is a class D felony or, if the victim of the offense is under sixteen years of age, a class C felony.

CREDIT(S)

(P.A. 75-619, S. 5; P.A. 80-346, S. 1; P.A. 92-260, S. 33; P.A. 02-138, S. 8.)

CONN. GEN. STAT. § 53a-72b (2013). Sexual assault in the third degree with a firearm: Class C or B felony.

(a) A person is guilty of sexual assault in the third degree with a firearm when such person commits sexual assault in the third degree as provided in section 53a-72a, and in the commission of such offense, such person uses or is armed with and threatens the use of or displays or represents by such person's words or conduct that such person possesses a pistol, revolver, machine gun, rifle, shotgun or other firearm. No person shall be convicted of sexual assault in the third degree and sexual assault in the third degree with a firearm upon the same transaction but such person may be charged and prosecuted for both such offenses upon the same information.

(b) Sexual assault in the third degree with a firearm is a class C felony or, if the victim of the offense is under sixteen years of age, a class B felony, and any person found guilty under this section shall be sentenced to a term of imprisonment of which two years of the sentence imposed may not be suspended or reduced by the court and a period of special parole pursuant to subsection (b) of section 53a-28 which together constitute a sentence of ten years.

CREDIT(S)

(P.A. 75-619, S. 10; June Sp. Sess. P.A. 99-2, S. 51; P.A. 02-138, S. 9.)

CONN. GEN. STAT. § 53a-73a (2013). Sexual assault in the fourth degree: Class A misdemeanor or class D felony. [Effective until October 1, 2013]

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) mentally defective or mentally incapacitated to the extent that such other person is unable to consent to such sexual contact, or (D) physically helpless, or (E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the

actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.

CREDIT(S)

(P.A. 75-619, S. 6; P.A. 83-326, S. 2; P.A. 93-340, S. 3; P.A. 94-221, S. 19; P.A. 02-106, S. 2; 02-138, S. 10; P.A. 04-130, S. 2; P.A. 07-143, S. 2; P.A. 11-113, S. 2.)

CONN. GEN. STAT. § 53a-73a. Sexual assault in the fourth degree: Class A misdemeanor or class D felony. [Effective October 1, 2013]

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is (A) under thirteen years of age and the actor is more than two years older than such other person, or (B) thirteen years of age or older but under fifteen years of age and the actor is more than three years older than such other person, or (C) mentally incapacitated or impaired because of mental disability or disease to the extent that such other person is unable to consent to such sexual contact, or (D) physically helpless, or (E) less than eighteen years old and the actor is such other person's guardian or otherwise responsible for the general supervision of such other person's welfare, or (F) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person; or (2) such person subjects another person to sexual contact without such other person's consent; or (3) such person engages in sexual contact with an animal or dead body; or (4) such person is a psychotherapist and subjects another person to sexual contact who is (A) a patient of the actor and the sexual contact occurs during the psychotherapy session, or (B) a patient or former patient of the actor and such patient or former patient is emotionally dependent upon the actor, or (C) a patient or former patient of the actor and the sexual

contact occurs by means of therapeutic deception; or (5) such person subjects another person to sexual contact and accomplishes the sexual contact by means of false representation that the sexual contact is for a bona fide medical purpose by a health care professional; or (6) such person is a school employee and subjects another person to sexual contact who is a student enrolled in a school in which the actor works or a school under the jurisdiction of the local or regional board of education which employs the actor; or (7) such person is a coach in an athletic activity or a person who provides intensive, ongoing instruction and subjects another person to sexual contact who is a recipient of coaching or instruction from the actor and (A) is a secondary school student and receives such coaching or instruction in a secondary school setting, or (B) is under eighteen years of age; or (8) such person subjects another person to sexual contact and (A) the actor is twenty years of age or older and stands in a position of power, authority or supervision over such other person by virtue of the actor's professional, legal, occupational or volunteer status and such other person's participation in a program or activity, and (B) such other person is under eighteen years of age; or (9) such person subjects another person to sexual contact who is placed or receiving services under the direction of the Commissioner of Developmental Services in any public or private facility or program and the actor has supervisory or disciplinary authority over such other person.

(b) Sexual assault in the fourth degree is a class A misdemeanor or, if the victim of the offense is under sixteen years of age, a class D felony.

CREDIT(S)

(P.A. 75-619, S. 6; P.A. 83-326, S. 2; P.A. 93-340, S. 3; P.A. 94-221, S. 19; P.A. 02-106, S. 2; 02-138, S. 10; P.A. 04-130, S. 2; P.A. 07-143, S. 2; P.A. 11-113, S. 2; P.A. 13-28, S. 1, eff. Oct. 1, 2013; P.A. 13-47, S. 2, eff. Oct. 1, 2013.)

CONN. GEN. STAT. § 53a-90a (2013). Enticing a minor. Penalties.

(a) A person is guilty of enticing a minor when such person uses an interactive computer service to knowingly persuade, induce, entice or coerce any person under sixteen years of age to engage in prostitution or sexual activity for which the actor may be charged with a criminal offense. For purposes of this section, "interactive computer service" means any information service, system or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

(b)

(1) Except as provided in subdivision (2) of this subsection, enticing a minor is a class D felony for a first offense, a class C felony for a second offense and a class B felony for any subsequent offense.

(2) Enticing a minor is a class B felony if the victim of the offense is under thirteen

years of age and any person found guilty of such class B felony shall, for a first offense, be sentenced to a term of imprisonment of which five years of the sentence imposed may not be suspended or reduced by the court and, for any subsequent offense, be sentenced to a term of imprisonment of which ten years of the sentence imposed may not be suspended or reduced by the court.

CREDIT(S)

(P.A. 99-113; P.A. 04-139, S. 1; P.A. 07-143, S. 5.)

CONN. GEN. STAT. § 53a-90b (2013). Misrepresentation of age to entice a minor: Class C felony.

(a) A person is guilty of misrepresentation of age to entice a minor when such person, in the course of and in furtherance of the commission of a violation of section 53a-90a, intentionally misrepresents such person's age.

(b) Misrepresentation of age to entice a minor is a class C felony.

CREDIT(S)

(June Sp. Sess. P.A. 07-4, S. 97.)

DELAWARE

DEL. CODE ANN. tit. 11, § 761 (2013). Definitions generally applicable to sexual offenses

(a) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.

(b) "Cunnilingus" means any oral contact with the female genitalia.

(c) "Fellatio" means any oral contact with the male genitalia.

(d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

(e) "Position of trust, authority or supervision over a child" includes, but is not limited to:

(1) Familial, guardianship or custodial authority or supervision; or

(2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or

(3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or

(4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or

(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or

(6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

(7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

(f) "Sexual contact" means:

(1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or.

(2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia; or

(3) Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks or genitalia which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. Sexual contact shall also include touching when covered by clothing.

(g) "Sexual intercourse" means:

(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or.

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(h) "Sexual offense" means any offense defined by §§ 763-780 and §§ 1108-1112A, 1352(2) and 1353(2) of this title.

(i) "Sexual penetration" means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(j) "Without consent" means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such

person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists; or

(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(k) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.

CREDIT(S)

(11 Del. C. 1953, § 773; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 416, § 1; 61 Del. Laws, c. 56; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, §§ 27, 28; 69 Del. Laws, c. 44, § 1; 69 Del. Laws, c. 440, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 3-7; 71 Del. Laws, c. 467, § 6; 72 Del. Laws, c. 109, § 1; 74 Del. Laws, c. 345, § 2; 75 Del. Laws, c. 392, § 2; 76 Del. Laws, c. 66, § 1; 77 Del. Laws, c. 150, §§ 1-3; 77 Del. Laws, c. 318, § 1.)

DEL. CODE ANN. tit. 11, § 762 (2013). Provisions generally applicable to sexual offenses

(a) Mistake as to age.-- Whenever in the definition of a sexual offense, the criminality of conduct or the degree of the offense depends on whether the person has reached that person's sixteenth birthday, it is no defense that the actor did not know the person's age, or that the actor reasonably believed that the person had reached that person's sixteenth birthday.

(b) Gender.-- Unless a contrary meaning is clearly required, the male pronoun shall be deemed to refer to both male and female.

(c) Separate acts of sexual contact, penetration and sexual intercourse.-- Nothing in this title precludes a defendant from being charged with separate offenses when multiple acts of sexual contact, penetration or intercourse are committed against the same victim.

(d) Teenage defendant.-- As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached that victim's sixteenth birthday, where the person committing the sexual act is no more than 4 years older than the victim, it is an affirmative defense that the victim consented to the act "knowingly" as defined in § 231 of this title. Sexual conduct pursuant to this section will not be a crime. This affirmative defense will not apply if the victim had not yet reached that victim's twelfth birthday at the time of the act.

CREDIT(S)

(11 Del. C. 1953, § 772; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 3; 61 Del. Laws, c. 56, § 3; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, §§ 33, 34; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 285, §§ 8, 9; 75 Del. Laws, c. 392, § 3.)

DEL. CODE ANN. tit. 11, § 765 (2013). Indecent exposure in the first degree; class A misdemeanor

(a) A male is guilty of indecent exposure in the first degree if he exposes his genitals or buttocks to a person who is less than 16 years of age under circumstances in which he knows his conduct is likely to cause affront or alarm.

(b) A female is guilty of indecent exposure in the first degree if she exposes her genitals, breast or buttocks to a person who is less than 16 years of age under circumstances in which she knows her conduct is likely to cause affront or alarm.

Indecent exposure in the first degree is a class A misdemeanor.

CREDIT(S)

(11 Del. C. 1953, § 768; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 18; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

DEL. CODE ANN. tit. 11, § 768 (2013). Unlawful sexual contact in the second degree; class F felony

A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person.

Unlawful sexual contact in the second degree is a class F felony.

CREDIT(S)

(11 Del. C. 1953, §§ 761, 762; 58 Del. Laws, c. 497, § 1; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 20; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 364, § 1; 77 Del. Laws, c. 148, § 33.)

DEL. CODE ANN. tit. 11, § 769 (2013). Unlawful sexual contact in the first degree; class D felony

(a) A person is guilty of unlawful sexual contact in the first degree when:

(1) In the course of committing unlawful sexual contact in the third degree or in the course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

(2) [Repealed.]

(3) The person intentionally has sexual contact with another person who is less than 13 years of age or causes the victim to have sexual contact with the person or a third person.

(b) Unlawful sexual contact in the first degree is a class D felony.

CREDIT(S)

(11 Del. C. 1953, § 767; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 56, § 2; 65 Del. Laws, c. 494, § 1; 66 Del. Laws, c. 269, § 21; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 75 Del. Laws, c. 392, § 1; 76 Del. Laws, c. 364, § 2; 77 Del. Laws, c. 148, § 34; 77 Del. Laws, c. 318, § 7.)

DEL. CODE ANN. tit. 11, § 770 (2013). Rape in the fourth degree; class C felony

(a) A person is guilty of rape in the fourth degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or

(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or

(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent; or

b. The victim has not reached that victim's sixteenth birthday.

(4) [Repealed.]

(b) Paragraph (a)(3) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

Rape in the fourth degree is a class C felony.

CREDIT(S)

(71 Del. Laws, c. 285, § 10; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 318, §§ 7, 9.)

DEL. CODE ANN. tit. 11, § 771 (2013). Rape in the third degree; class B felony

(a) A person is guilty of rape in the third degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached that victim's sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached that victim's fourteenth birthday and the person has reached that person's nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

b. The victim has not reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.

(3) [Repealed.]

(b) Paragraph (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian or guardians, the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Rape in the third degree is a class B felony.

CREDIT(S)

(71 Del. Laws, c. 285, § 11; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 271, §§ 4-6; 77 Del. Laws, c. 318, §§ 7, 8.)

DEL. CODE ANN. tit. 11, § 772 (2013). Rape in the second degree; class B felony

(a) A person is guilty of rape in the second degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:

1. Any felony; or

2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or

c. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

e. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

g. The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

h. [Repealed.]

(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.

Rape in the second degree is a class B felony.

CREDIT(S)

71 Del. Laws, c. 285, § 12; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.

DEL. CODE ANN. tit. 11, § 773 (2013). Rape in the first degree; class A felony

(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:

a. Any felony; or

b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or

(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

(5) The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

(6) [Repealed.]

(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

(1) The victim had not yet reached that victim's sixteenth birthday at the time of the offense and the person inflicts serious physical injury on the victim; or.

(2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

(3) The person is convicted of rape against 3 or more separate victims; or

(4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

Rape in the first degree is a class A felony.

CREDIT(S)

(71 Del. Laws, c. 285, § 13; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 93, § 3; 77 Del. Laws, c. 318, § 7.)

DEL. CODE ANN. tit. 11, § 776 (2013). Continuous sexual abuse of a child; class B felony

(a) A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in 3 or more acts of sexual conduct with a child under the age of 18 years of age over a period of time, not less than 3 months in duration.

(b) Sexual conduct under this section is defined as any of those criminal sexual acts defined under § 768, § 769, § 770, § 771, § 772, § 773, 777A, § 778, § 778A or § 1108 of this title.

(c) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.

(d) Continuous sexual abuse of a child is a class B felony.

CREDIT(S)

(69 Del. Laws, c. 442, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 392, § 4; 77 Del. Laws, c. 318, §§ 3, 4, 6.)

DEL. CODE ANN. tit. 11, § 777 (2013). Dangerous crime against a child, definitions, sentences

(a) A "dangerous crime against a child" is defined as any criminal sexual conduct against a minor under the age of 14 years as defined in §§ 770-773, § 777A, §§ 778-778A, or §§ 1108-1112A of this title. For purposes of this section only, and § 762(a) of this title to the contrary notwithstanding, the defendant may use as an affirmative defense that the defendant believed that the victim of the crime was over the age of 16 years of age.

(b) Except as otherwise provided in this title, a person who is at least 18 years of age, or who has been tried as an adult and who is convicted of a dangerous crime against a child as defined in subsection (a) of this section, shall be guilty of a class B felony. For a second offense under this section, the Court shall impose a mandatory sentence of life imprisonment.

(c) A person sentence pursuant to this section shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the Court has been served.

CREDIT(S)

(70 Del. Laws, c. 124, § 1; 71 Del. Laws, c. 467, § 7; 77 Del. Laws, c. 318, §§ 5, 6.)

DEL. CODE ANN. tit. 11, § 777A (2013). Sex offender unlawful sexual conduct against a child

(a) A sex offender who knowingly commits any sexual offense against a child is guilty of sex offender unlawful sexual conduct against a child.

(b) For purposes of this section, the term "sex offender" shall mean any person registered or required to be registered pursuant to §§ 4120(b)(1) and 4121(a)(4) of this title, or the laws of any other state, the United States or any territory of the United States.

(c) For purposes of this section, the term "sexual offense" shall mean any offense designated as a sexual offense by § 761(h) of this title.

(d) For purposes of this section, the term "child" shall mean any individual who has not reached that child's eighteenth birthday. If the underlying sexual offense involves an offense defined by §§ 1108, 1109, 1110, 1111 and 1112A of this title, the term "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.

(e) Sex offender unlawful sexual conduct against a child shall be punished as follows:

(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender unlawful sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(2) If the underlying sexual offense is a class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony 1 grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(3) If the underlying sexual offense is a misdemeanor and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(4) If the underlying sexual offense is a class C, D, E, F, or G felony and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

(f) The provisions of this section shall not apply if the defendant is also a child.

CREDIT(S)

(76 Del. Laws, c. 66, § 2; 77 Del. Laws, c. 149, §§ 1, 2; 77 Del. Laws, c. 150, § 4; 77 Del. Laws, c. 318, § 6.)

DEL. CODE ANN. tit. 11, § 778 (2013). Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:

(1) Intentionally engages in sexual intercourse with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2) Intentionally engages in sexual penetration with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(3) Intentionally engages in sexual intercourse or sexual penetration with a child who has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(4) Intentionally engages in sexual intercourse or sexual penetration with a child and the victim has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(5) Engages in an act of sexual extortion, as defined in § 774 of this title, against a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(6)

a.

1. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (1) of this section is a class A felony.

2. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

A. At the time of the offense the person inflicts serious physical injury on the victim; or

B. The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

C. The person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) against 3 or more separate victims; or

D. The person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

b. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section is a class B felony.

Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section shall be 10 years at Level V.

c. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (3) of this section is a class B felony..

d. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (4) of this section is a class C felony..

e. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (5) of this section is a class D felony

(7) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

CREDIT(S)

(77 Del. Laws, c. 318, § 6; 70 Del. Laws, c. 186, § 1.)

DEL. CODE ANN. tit. 11, § 778A (2013). Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree when the person:

(1) Intentionally has sexual contact with a child who has not yet reached that child's sixteenth birthday or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2)

a. Is a male who intentionally exposes his genitals or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

b. Is a female who intentionally exposes her genitals, breast or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(3) Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child who has not yet reached that child's sixteenth birthday to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(4)

a. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (1) of this section is a class D felony.

b. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (2) of this section is a class F felony.

c. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (3) of this section is a class G felony.

(5) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

CREDIT(S)

(77 Del. Laws, c. 318, § 6; 70 Del. Laws, c. 186, § 1.)

DEL. CODE ANN. tit. 11, § 780 (2013). Female genital mutilation

(a) A person is guilty of female genital mutilation when:

(1) A person knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a female minor; or

(2) A parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision or infibulation, in whole or in part, of such minor's labia majora, labia minora or clitoris.

(b) Female genital mutilation is a class E felony.

(c) It is not a defense to a violation that the conduct described in subsection (a) of this section above is required as a matter of custom, ritual or standard practice, or that the minor on whom it is performed or the minor's parent or legal guardian consented to the procedure.

(d) A surgical procedure is not a violation of this section if the procedure is:

(1) Necessary to the health of the minor on whom it is performed and is performed by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician; or

(2) Performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician, or a licensed midwife under § 3336 of Title 18.

CREDIT(S)

(70 Del. Laws, c. 438, § 1.)

DEL. CODE ANN. tit. 11, § 1100 (2013). Definitions relating to children

When used in this subchapter:

(1) "Abuse" means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

(2) "Child" shall mean any individual less than 18 years of age. For the purposes of §§ 1108, 1109, 1110, 1111 and 1112A of this title, "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

(3) "Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.

(4) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(5) "Physical injury" to a child shall mean any impairment of physical condition or

(6) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

b. Are not so closely related to each other or connected in point of time and place that they constitute a single event.

A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this subchapter, including an act used as proof of a previous pattern as defined in this paragraph. A conviction for any act of abuse or neglect, including 1 which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this subchapter.

(7) "Prohibited sexual act" shall include:

a. Sexual intercourse;

b. Anal intercourse;

c. Masturbation;

d. Bestiality;

e. Sadism;

f. Masochism;

g. Fellatio;

h. Cunnilingus;

i. Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

j. Sexual contact;

k. Lascivious exhibition of the genitals or pubic area of any child;

l. Any other act which is intended to be a depiction or simulation of any act described in this paragraph.

(8) "Serious physical injury" shall mean physical injury which creates a risk of death, or which causes disfigurement, impairment of health or loss or impairment of the function of any bodily organ or limb, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(9) "Significant intellectual or developmental disabilities" means impairment in the intellectual or physical capacity of a child as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

(10) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

(11) "Visual depiction" includes, but is not limited to:

a. Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

b. Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

c. Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

CREDIT(S)

(11 Del. C. 1953, § 1103; 58 Del. Laws, c. 497, § 1; 59 Del. Laws, c. 547, § 7; 60 Del. Laws, c. 449, § 2; 61 Del. Laws, c. 179, §§ 1, 2; 61 Del. Laws, c. 334, § 4; 63 Del. Laws, c. 290, § 8; 65 Del. Laws, c. 494, § 2; 70 Del. Laws, c. 266, §§ 3, 4; 72 Del. Laws, c. 346, § 17; 72 Del. Laws, c. 480, §§ 1-4; 74 Del. Laws, c. 175, § 13; 76 Del. Laws, c. 136, § 8; 78 Del. Laws, c. 406, § 1.)

DEL. CODE ANN. tit. 11, § 1102 (2013). Endangering the welfare of a child; class E or G felony

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:

a. Intentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family.

(5) The person commits the offense of driving under the influence as set forth in § 4177 of Title 21, or the offense of operating a vessel or boat under the influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(7) The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in §§ 4714, 4716, 4718, 4720, and 4722 of Title 16.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(g) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in subdivision (b)(1), (b)(2) or (b)(3) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child or sexual offense against the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.

CREDIT(S)

(11 Del. C. 1953, § 1102; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 334, § 6; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 451, §§ 1, 2; 71 Del. Laws, c. 424, § 3; 73 Del. Laws, c. 208, §§ 1, 2, 3; 77 Del. Laws, c. 34, § 1; 78 Del. Laws, c. 242, § 1; 78 Del. Laws, c. 406, § 2.)

DEL. CODE ANN. tit. 11, § 1103 (2013). Child abuse in the third degree; class A misdemeanor

(a) A person is guilty of child abuse in the third degree when:

(1) The person recklessly or intentionally causes physical injury to a child through an act of abuse and/or neglect of such child; or

(2) The person recklessly or intentionally causes physical injury to a child when the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) This offense shall be a class A misdemeanor.

CREDIT(S)

(78 Del. Laws, c. 406, § 3.)

DEL. CODE ANN. tit. 11, § 1103A (2013). Child abuse in the second degree; class G felony

(a) A person is guilty of child abuse in the second degree when:

- (1) The person intentionally or recklessly causes physical injury to a child who is 3 years of age or younger; or
- (2) The person intentionally or recklessly causes physical injury to a child who has significant intellectual or developmental disabilities;
- (3) The person intentionally or recklessly causes physical injury to a child by means of a deadly weapon or dangerous instrument.

(b) This offense shall be a class G felony.

CREDIT(S)

(78 Del. Laws, c. 406, § 3.)

DEL. CODE ANN. tit. 11, § 1103B (2013). Child abuse in the first degree; class B felony

A person is guilty of child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child:

- (1) Through an act of abuse and/or neglect of such child; or
- (2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

Child abuse in the first degree is a class B felony.

CREDIT(S)

(72 Del. Laws, c. 197, § 1; 78 Del. Laws, c. 406, § 3.)

DEL. CODE ANN. tit. 11, § 1106 (2013). Unlawfully dealing with a child; class B misdemeanor

A person is guilty of unlawfully dealing with a child when:

- (1) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful narcotics or dangerous drugs activity is maintained or conducted; or

(2) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful sexual activity is maintained or conducted; or

(3) The person knowingly permits a child less than 18 years old to enter or remain in a place where gambling activity which is made unlawful by this Criminal Code is maintained or conducted; or

(4) The person, being the proprietor or person in charge of any dance house, concert saloon, theater, museum or similar place of amusement, where wines or spirituous or malt liquors are sold or given away, knowingly admits or permits to remain therein any minor under the age of 18 years, unless accompanied by a parent or guardian.

Unlawfully dealing with a child is a class B misdemeanor.

CREDIT(S)

(11 Del. C. 1953, § 1106; 58 Del. Laws, c. 497, § 1; 67 Del. Laws, c. 130, § 8; 68 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 318, § 1; 73 Del. Laws, c. 425, §§ 1, 2.)

DEL. CODE ANN. tit. 11, § 1108 (2013). Sexual exploitation of a child; class B felony

A person is guilty of sexual exploitation of a child when:

(1) The person knowingly, photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly, finances or produces any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) The person knowingly publishes or makes available for public distribution or sale by any means, including but not limited to computer, any book, magazine, periodical, pamphlet, photograph, Internet site or web page which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly publishes or makes available for public distribution or sale by any means, including computer, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(4) The person permits, causes, promotes, facilitates, finances, produces or otherwise advances an exhibition, display or performances of a child engaging in a prohibited sexual act or the simulation of such an act.

Sexual exploitation of a child is a class B felony.

CREDIT(S)

(61 Del. Laws, c. 179, § 3; 63 Del. Laws, c. 28, § 1; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 480, §§ 5-7.)

DEL. CODE ANN. tit. 11, § 1110 (2013). Subsequent convictions of § 1108 or § 1109 of this title

Any person convicted under § 1109 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted under § 1108 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment.

CREDIT(S)

(61 Del. Laws, c. 179, § 5; 67 Del. Laws, c. 130, § 8.)

DEL. CODE ANN. tit. 11, § 1112A (2013). Sexual solicitation of a child; class C felony

(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Solicits, requests, commands, importunes or otherwise attempts to cause any child who has not yet reached that child's eighteenth birthday to engage in a prohibited sexual act; or

(2) Solicits, requests, commands, importunes or otherwise attempts to cause any child who has not yet reached that child's sixteenth birthday to meet with such person or any other person for the purpose of engaging in a prohibited sexual act; or

(3) Compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses by any means, including by means of computer, any notice, statement, document, advertisement, file or data containing the name, telephone number, address, e-mail address, school address or location, physical characteristics or other descriptive or identifying information pertaining to any child who has not yet reached that child's sixteenth birthday for the purpose of facilitating, encouraging, offering or soliciting a prohibited sexual act involving such child and such person or any other person.

(b) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the child was within the State at the time of the prohibited conduct and the

defendant was aware of circumstances which rendered the presence of such child within Delaware a reasonable possibility.

(c) Sexual solicitation of a child is a class C felony.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

CREDIT(S)

(71 Del. Laws, c. 467, § 5; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 148, § 37.)

DISTRICT OF COLUMBIA

D.C. CODE ANN. § 22-3008 (2013). First degree child sexual abuse

Whoever, being at least 4 years older than a child, engages in a sexual act with that child or causes that child to engage in a sexual act shall be imprisoned for any term of years or for life and, in addition, may be fined an amount not to exceed \$ 250,000. However, the court may impose a prison sentence in excess of 30 years only in accordance with § 22-3020 or § 24-403.01(b-2). For purposes of imprisonment following revocation of release authorized by § 24-403.01(b)(7), the offense defined by this section is a Class A felony.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 207, 42 DCR 53; June 8, 2001, D.C. Law 13-302, § 7(b), 47 DCR 7249.)

D.C. CODE ANN. § 22-3009 (2013). Second degree child sexual abuse

Whoever, being at least 4 years older than a child, engages in sexual contact with that child or causes that child to engage in sexual contact shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not to exceed \$ 100,000.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 208, 42 DCR 53.)

D.C. CODE ANN. § 22-3009.01 (2013). First degree sexual abuse of a minor

Whoever, being 18 years of age or older, is in a significant relationship with a minor, and engages in a sexual act with that minor or causes that minor to engage in a sexual act

shall be imprisoned for not more than 15 years and may be fined in an amount not to exceed \$ 150,000, or both.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 208a, as added Apr. 24, 2007, D.C. Law 16-306, § 216(b), 53 DCR 8610.)

D.C. CODE ANN. § 22-3009.02 (2013). Second degree sexual abuse of a minor

Whoever, being 18 years of age or older, is in a significant relationship with a minor and engages in a sexual contact with that minor or causes that minor to engage in a sexual contact shall be imprisoned for not more than 7 1/2 years and may be fined in an amount not to exceed \$ 75,000, or both.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 208b, as added Apr. 24, 2007, D.C. Law 16-306, § 216(c), 53 DCR 8610.)

D.C. CODE ANN. § 22-3009.03 (2013). First degree sexual abuse of a secondary education student

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in a sexual act with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in a sexual act, shall be imprisoned for not more than 10 years, fined in an amount not to exceed \$ 100,000, or both.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 208c, as added Oct. 23, 2010, D.C. Law 18-239, § 204, 57 DCR 5405.)

D.C. CODE ANN. § 22-3009.04 (2013). Second degree sexual abuse of a secondary education student

Any teacher, counselor, principal, coach, or other person of authority in a secondary level school who engages in sexual conduct with a student under the age of 20 years enrolled in that school or school system, or causes that student to engage in sexual conduct, shall be imprisoned for not more than 5 years, fined in an amount not to exceed \$ 50,000, or both.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 208d, as added Oct. 23, 2010, D.C. Law 18-239, § 204, 57 DCR 5405.)

D.C. CODE ANN. § 22-3010 (2013). Enticing a child or minor

(a) Whoever, being at least 4 years older than a child or being in a significant relationship with a minor, (1) takes that child or minor to any place for the purpose of committing any offense set forth in §§ 22-3002 to 22-3006 and §§ 22-3008 to 22-3009.02, or (2) seduces, entices, allures, convinces, or persuades or attempts to seduce, entice, allure, convince, or persuade a child or minor to engage in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.

(b) Whoever, being at least 4 years older than the purported age of a person who represents himself or herself to be a child, attempts (1) to seduce, entice, allure, convince, or persuade any person who represents himself or herself to be a child to engage in a sexual act or contact, or (2) to entice, allure, convince, or persuade any person who represents himself or herself to be a child to go to any place for the purpose of engaging in a sexual act or contact shall be imprisoned for not more than 5 years or may be fined in an amount not to exceed \$ 50,000, or both.

(c) No person shall be consecutively sentenced for enticing a child or minor to engage in a sexual act or sexual contact under subsection (a)(2) of this section and engaging in that sexual act or sexual contact with that child or minor, provided, that the enticement occurred closely associated in time with the sexual act or sexual contact.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 209, 42 DCR 53; Apr. 24, 2007, D.C. Law 16-306, § 216(d), 53 DCR 8610; Mar. 25, 2009, D.C. Law 17-353, § 173(b), 56 DCR 1117.)

D.C. CODE ANN. § 22-3010.01 (2013). Misdemeanor sexual abuse of a child or minor

(a) Whoever, being 18 years of age or older and more than 4 years older than a child, or being 18 years of age or older and being in a significant relationship with a minor, engages in sexually suggestive conduct with that child or minor shall be imprisoned for not more than 180 days, or fined in an amount not to exceed \$ 1,000, or both.

(b) For the purposes of this section, the term "sexually suggestive conduct" means engaging in any of the following acts in a way which is intended to cause or reasonably causes the sexual arousal or sexual gratification of any person:

(1) Touching a child or minor inside his or her clothing;

(2) Touching a child or minor inside or outside his or her clothing close to the genitalia, anus, breast, or buttocks;

(3) Placing one's tongue in the mouth of the child or minor; or

(4) Touching one's own genitalia or that of a third person.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 209a, as added Apr. 24, 2007, D.C. Law 16-306, § 216(e), 53 DCR 8610.)

D.C. CODE ANN. § 22-3010.02 (2013). Arranging for a sexual contact with a real or fictitious child.

(a) It is unlawful for a person to arrange to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child at least 4 years younger than the person, or to arrange for another person to engage in a sexual act or sexual contact with an individual (whether real or fictitious) who is or who is represented to be a child of at least 4 years younger than the person. For the purposes of this section, arranging to engage in a sexual act or sexual contact with an individual who is fictitious shall be unlawful only if the arrangement is done by or with a law enforcement officer.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than 5 years, fined an amount not to exceed \$ 50,000, or both.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 209b, as added June 3, 2011, D.C. Law 18-377, § 11(a), 58 DCR 1174.)

D.C. CODE ANN. § 22-3012 (2013). State of mind proof requirement

In a prosecution under §§ 22-3008 to 22-3010, prosecuted alone or in conjunction with charges under § 22-3018 or § 22-403, the government need not prove that the defendant knew the child's age or the age difference between himself or herself and the child.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 211, 42 DCR 53.)

D.C. CODE ANN. § 22-3020 (2013). Aggravating circumstances

(a) Any person who is found guilty of an offense under this subchapter may receive a penalty up to 1 1/2 times the maximum penalty prescribed for the particular offense, and may receive a sentence of more than 30 years up to, and including life imprisonment without possibility of release for first degree sexual abuse or first degree child sexual abuse, if any of the following aggravating circumstances exists:

- (1) The victim was under the age of 12 years at the time of the offense;
- (2) The victim was under the age of 18 years at the time of the offense and the actor had a significant relationship to the victim;
- (3) The victim sustained serious bodily injury as a result of the offense;
- (4) The defendant was aided or abetted by 1 or more accomplices;
- (5) The defendant is or has been found guilty of committing sex offenses against 2 or more victims, whether in the same or other proceedings by a court of the District of Columbia, any state, or the United States or its territories; or
- (6) The defendant was armed with, or had readily available, a pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon.

(b) It is not necessary that the accomplices have been convicted for an increased punishment (or enhanced penalty) to apply under subsection (a)(4) of this section.

(c) No person who stands convicted of an offense under this subchapter shall be sentenced to increased punishment (or enhanced penalty) by reason of the aggravating factors set forth in subsection (a) of this section, unless prior to trial or before entry of a plea of guilty, the United States Attorney or the Corporation Counsel, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the aggravating factors to be relied upon.

CREDIT(S)

(May 23, 1995, D.C. Law 10-257, § 219, 42 DCR 53; May 17, 1996, D.C. Law 11-119, § 6(c), 43 DCR 528; June 8, 2001, D.C. Law 13-302, § 7(c), 47 DCR 7249.)

D.C. CODE ANN. § 22-3102 (2013). Prohibited acts [Formerly § 22-2012]

(a) It shall be unlawful in the District of Columbia for a person knowingly to use a minor in a sexual performance or to promote a sexual performance by a minor.

(1) A person is guilty of the use of a minor in a sexual performance if knowing the character and content thereof, he or she employs, authorizes, or induces a person under 18 years of age to engage in a sexual performance or being the parent, legal guardian, or

custodian of a minor, he or she consents to the participation by a minor in a sexual performance.

(2) A person is guilty of promoting a sexual performance by a minor when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a person under 18 years of age.

(b) It shall be unlawful in the District of Columbia for a person, knowing the character and content thereof, to attend, transmit, or possess a sexual performance by a minor.

(c) If the sexual performance consists solely of a still or motion picture, then this section:

(1) Shall not apply to the minor or minors depicted in a still or motion picture who possess it or transmit it to another person unless at least one of the minors depicted in it does not consent to its possession or transmission; and

(2) Shall not apply to possession of a still or motion picture by a minor, or by an adult not more than 4 years older than the minor or minors depicted in it, who receives it from a minor depicted in it unless the recipient knows that at least one of the minors depicted in the still or motion picture did not consent to its transmission.

(d) For the purposes of subsections (b) and (c) of this section, the term:

(1) "Possess," "possession," or "possessing" requires accessing the sexual performance if electronically received or available.

(2) "Still or motion picture" includes a photograph, motion picture, electronic or digital representation, video, or other visual depiction, however produced or reproduced.

(3) "Transmit" or "transmission" includes distribution, and can occur by any means, including electronically."

CREDIT(S)

(Mar. 9, 1983, D.C. Law 4-173, § 3, 29 DCR 5749; Oct. 23, 2010, D.C. Law 18-239, § 205(b), 57 DCR 5405.)

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FLA. STAT. ANN. § 794.011 (2013). Sexual battery

(1) As used in this chapter:

(a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.

(b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.

(c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.

(d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.

(e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.

(f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.

(g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.

(h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

(i) "Victim" means a person who has been the object of a sexual offense.

(j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(2)

(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.141..

(b) A person less than 18 years of age who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon

or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(4) A person who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the following circumstances, commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115:

(a) When the victim is physically helpless to resist.

(b) When the offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

(c) When the offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

(d) When the offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance which mentally or physically incapacitates the victim.

(e) When the victim is mentally defective and the offender has reason to believe this or has actual knowledge of this fact.

(f) When the victim is physically incapacitated.

(g) When the offender is a law enforcement officer, correctional officer, or correctional probation officer as defined by s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under the provisions of s. 943.1395 or is an elected official exempt from such certification by virtue of s. 943.253, or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, s. 775.084, or s. 794.0115.

(6) The offense described in subsection (5) is included in any sexual battery offense charged under subsection (3) or subsection (4).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. 944.275. This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Engages in any act with that person while the person is 12 years of age or older but less than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(g), acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) Any person who falsely accuses any person listed in paragraph (4)(g) or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(g) is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

CREDIT(S)

(S. 2, ch. 74-121; s. 17, ch. 75-298; s. 1, ch. 84-86; s. 1, ch. 89-216; s. 3, ch. 92-135; s. 1, ch. 92-310; s. 3, ch. 93-156; s. 2, ch. 95-348; s. 99, ch. 99-3; s. 8, ch. 99-188; s. 1, ch. 2002-211.)

FLA. STAT. ANN. § 794.05 (2013). Unlawful sexual activity with certain minors

(1) A person 24 years of age or older who engages in sexual activity with a person 16 or 17 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this section, "sexual activity" means oral,

anal, or vaginal penetration by, or union with, the sexual organ of another; however, sexual activity does not include an act done for a bona fide medical purpose.

(2) The provisions of this section do not apply to a person 16 or 17 years of age who has had the disabilities of nonage removed under chapter 743.

(3) The victim's prior sexual conduct is not a relevant issue in a prosecution under this section.

(4) If an offense under this section directly results in the victim giving birth to a child, paternity of that child shall be established as described in chapter 742. If it is determined that the offender is the father of the child, the offender must pay child support pursuant to the child support guidelines described in chapter 61.

CREDIT(S)

(RS 2598; s. 1, ch. 4965, 1901; GS 3521; s. 1, ch. 6974, 1915; s. 1, ch. 7732, 1918; RGS 5409; s. 1, ch. 8596, 1921; CGL 7552; s. 1, ch. 61-109; s. 759, ch. 71-136; s. 1, ch. 96-409.)

FLA. STAT. ANN. § 794.08 (2013). Female genital mutilation

(1) As used in this section, the term "female genital mutilation" means the circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of a female person.

(2) A person who knowingly commits, or attempts to commit, female genital mutilation upon a female person younger than 18 years of age commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person who knowingly removes, or causes or permits the removal of, a female person younger than 18 years of age from this state for purposes of committing female genital mutilation commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) A person who is a parent, a guardian, or in a position of familial or custodial authority to a female person younger than 18 years of age and who knowingly consents to or permits the female genital mutilation of that female person commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) This section does not apply to procedures performed by or under the direction of a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a registered nurse licensed under part I of chapter 464, a practical nurse licensed under part I of chapter 464, an advanced registered nurse practitioner licensed under part I of chapter 464, a midwife licensed under chapter 467, or a physician assistant licensed under chapter 458 or chapter 459 when necessary to preserve the physical health of a female person. This section also does not apply to any autopsy or limited dissection

conducted pursuant to chapter 406.

(6) Consent of a female person younger than 18 years of age or the consent of a parent, guardian, or person who is in a position of familial or custodial authority to the female person younger than 18 years of age is not a defense to the offense of female genital mutilation.

CREDIT(S)

(S. 1, ch. 2007-245, eff. Oct. 1, 2007.)

FLA. STAT. ANN. § 800.04 (2013). Lewd or lascivious offenses committed upon or in the presence of persons less than 16 years of age

(1) Definitions. -- As used in this section:

(a) "Sexual activity" means the oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual activity does not include an act done for a bona fide medical purpose.

(b) "Consent" means intelligent, knowing, and voluntary consent, and does not include submission by coercion.

(c) "Coercion" means the use of exploitation, bribes, threats of force, or intimidation to gain cooperation or compliance.

(d) "Victim" means a person upon whom an offense described in this section was committed or attempted or a person who has reported a violation of this section to a law enforcement officer.

(2) Prohibited defenses. -- Neither the victim's lack of chastity nor the victim's consent is a defense to the crimes proscribed by this section.

(3) Ignorance or belief of victim's age. -- The perpetrator's ignorance of the victim's age, the victim's misrepresentation of his or her age, or the perpetrator's bona fide belief of the victim's age cannot be raised as a defense in a prosecution under this section.

(4) Lewd or lascivious battery. -- A person who:

(a) Engages in sexual activity with a person 12 years of age or older but less than 16 years of age; or

(b) Encourages, forces, or entices any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity

commits lewd or lascivious battery, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5) Lewd or lascivious molestation.

(a) A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

(b) An offender 18 years of age or older who commits lewd or lascivious molestation against a victim less than 12 years of age commits a life felony, punishable as provided in s. 775.082(3)(a)4.

(c)

1. An offender less than 18 years of age who commits lewd or lascivious molestation against a victim less than 12 years of age; or

2. An offender 18 years of age or older who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) An offender less than 18 years of age who commits lewd or lascivious molestation against a victim 12 years of age or older but less than 16 years of age commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(6) Lewd or lascivious conduct.

(a) A person who:

1. Intentionally touches a person under 16 years of age in a lewd or lascivious manner; or

2. Solicits a person under 16 years of age to commit a lewd or lascivious act commits lewd or lascivious conduct.

(b) An offender 18 years of age or older who commits lewd or lascivious conduct commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits lewd or lascivious conduct commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) Lewd or lascivious exhibition.

(a) A person who:

1. Intentionally masturbates;

2. Intentionally exposes the genitals in a lewd or lascivious manner; or

3. Intentionally commits any other sexual act that does not involve actual physical or sexual contact with the victim, including, but not limited to, sadomasochistic abuse, sexual bestiality, or the simulation of any act involving sexual activity in the presence of a victim who is less than 16 years of age, commits lewd or lascivious exhibition.

(b) An offender 18 years of age or older who commits a lewd or lascivious exhibition commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) An offender less than 18 years of age who commits a lewd or lascivious exhibition commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8) Exception. -- A mother's breastfeeding of her baby does not under any circumstance constitute a violation of this section.

CREDIT(S)

(S. 1, ch. 21974, 1943; s. 1, ch. 26580, 1951; s. 780, ch. 71-136; s. 66, ch. 74-383; s. 1, ch. 75-24; s. 40, ch. 75-298; s. 291, ch. 79-400; s. 5, ch. 84-86; s. 1, ch. 90-120; s. 5, ch. 93-4; s. 6, ch. 99-201; s. 1, ch. 2000-246; s. 5, ch. 2005-28; s. 3, ch. 2008-172, eff. Oct. 1, 2008; s. 3, ch. 2008-182, eff. July 1, 2008.)

FLA. STAT. ANN. § 810.145 (2013). Video voyeurism

(1) As used in this section, the term:

(a) "Broadcast" means electronically transmitting a visual image with the intent that it be viewed by another person.

(b) "Imaging device" means any mechanical, digital, or electronic viewing device; still camera; camcorder; motion picture camera; or any other instrument, equipment, or format capable of recording, storing, or transmitting visual images of another person.

(c) "Place and time when a person has a reasonable expectation of privacy" means a place and time when a reasonable person would believe that he or she could fully disrobe in privacy, without being concerned that the person's undressing was being viewed, recorded, or broadcasted by another, including, but not limited to, the interior of a

residential dwelling, bathroom, changing room, fitting room, dressing room, or tanning booth.

(d) "Privately exposing the body" means exposing a sexual organ.

(2) A person commits the offense of video voyeurism if that person:

(a) For his or her own amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person, intentionally uses or installs an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy;

(b) For the amusement, entertainment, sexual arousal, gratification, or profit of another, or on behalf of another, intentionally permits the use or installation of an imaging device to secretly view, broadcast, or record a person, without that person's knowledge and consent, who is dressing, undressing, or privately exposing the body, at a place and time when that person has a reasonable expectation of privacy; or.

(c) For the amusement, entertainment, sexual arousal, gratification, or profit of oneself or another, or on behalf of oneself or another, intentionally uses an imaging device to secretly view, broadcast, or record under or through the clothing being worn by another person, without that person's knowledge and consent, for the purpose of viewing the body of, or the undergarments worn by, that person.

(3) A person commits the offense of video voyeurism dissemination if that person, knowing or having reason to believe that an image was created in a manner described in this section, intentionally disseminates, distributes, or transfers the image to another person for the purpose of amusement, entertainment, sexual arousal, gratification, or profit, or for the purpose of degrading or abusing another person.

(4) A person commits the offense of commercial video voyeurism dissemination if that person:

(a) Knowing or having reason to believe that an image was created in a manner described in this section, sells the image for consideration to another person; or

(b) Having created the image in a manner described in this section, disseminates, distributes, or transfers the image to another person for that person to sell the image to others.

(5) This section does not apply to any:

(a) Law enforcement agency conducting surveillance for a law enforcement purpose;

(b) Security system when a written notice is conspicuously posted on the premises stating that a video surveillance system has been installed for the purpose of security for the premises;

(c) Video surveillance device that is installed in such a manner that the presence of the device is clearly and immediately obvious; or

(d) Dissemination, distribution, or transfer of images subject to this section by a provider of an electronic communication service as defined in 18 U.S.C. s. 2510(15), or a provider of a remote computing service as defined in 18 U.S.C. s. 2711(2). For purposes of this section, the exceptions to the definition of "electronic communication" set forth in 18 U.S.C. s. 2510(12)(a), (b), (c), and (d) do not apply, but are included within the definition of the term.

(6) Except as provided in subsections (7) and (8):

(a) A person who is under 19 years of age and who violates this section commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083..

(b) A person who is 19 years of age or older and who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(7) A person who violates this section and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(8)

(a) A person who is:

1. Eighteen years of age or older who is responsible for the welfare of a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child, and who commits an offense under this section against that child;.

2. Eighteen years of age or older who is employed at a private school as defined in s. 1002.01; a school as defined in s. 1003.01; or a voluntary prekindergarten education program as described in s. 1002.53(3)(a), (b), or (c) and who commits an offense under this section against a student of the private school, school, or voluntary prekindergarten education program; or

3. Twenty-four years of age or older who commits an offense under this section against a child younger than 16 years of age, regardless of whether the person knows or has reason to know the age of the child

commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084

(b) A person who violates this subsection and who has previously been convicted of or adjudicated delinquent for any violation of this section commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(9) For purposes of this section, a person has previously been convicted of or adjudicated delinquent for a violation of this section if the violation resulted in a conviction that was sentenced separately, or an adjudication of delinquency entered separately, prior to the current offense.

CREDIT(S)

(S. 1, ch. 2004-39; s. 1, ch. 2008-188, eff. July 1, 2008; s. 7, ch. 2012-19, eff. Oct. 1, 2012; s. 1, ch. 2012-39, eff. July 1, 2012.)

FLA. STAT. ANN. § 827.03 (2013). Abuse, aggravated abuse, and neglect of a child; penalties

(1) Definitions. -- As used in this section, the term:

(a) "Aggravated child abuse" occurs when a person:

1. Commits aggravated battery on a child;
 2. Willfully tortures, maliciously punishes, or willfully and unlawfully cages a child;
- or
3. Knowingly or willfully abuses a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child.

(b) "Child abuse" means:

1. Intentional infliction of physical or mental injury upon a child;
2. An intentional act that could reasonably be expected to result in physical or mental injury to a child; or
3. Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or mental injury to a child.

(c) "Maliciously" means wrongfully, intentionally, and without legal justification or excuse. Maliciousness may be established by circumstances from which one could conclude that a reasonable parent would not have engaged in the damaging acts toward

the child for any valid reason and that the primary purpose of the acts was to cause the victim unjustifiable pain or injury.

(d) "Mental injury" means injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability of the child to function within the normal range of performance and behavior as supported by expert testimony.

(e) "Neglect of a child" means:

1. A caregiver's failure or omission to provide a child with the care, supervision, and services necessary to maintain the child's physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the child; or

2. A caregiver's failure to make a reasonable effort to protect a child from abuse, neglect, or exploitation by another person.

Except as otherwise provided in this section, neglect of a child may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or mental injury, or a substantial risk of death, to a child.

(2) Offenses.

(a) A person who commits aggravated child abuse commits a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) A person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(c) A person who knowingly or willfully abuses a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) A person who willfully or by culpable negligence neglects a child without causing great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Expert testimony.

(a) Except as provided in paragraph (b), a physician may not provide expert testimony in a criminal child abuse case unless the physician is a physician licensed under chapter

458 or chapter 459 or has obtained certification as an expert witness pursuant to s. 458.3175.

(b) A physician may not provide expert testimony in a criminal child abuse case regarding mental injury unless the physician is a physician licensed under chapter 458 or chapter 459 who has completed an accredited residency in psychiatry or has obtained certification as an expert witness pursuant to s. 458.3175.

(c) A psychologist may not give expert testimony in a criminal child abuse case regarding mental injury unless the psychologist is licensed under chapter 490.

(d) The expert testimony requirements of this subsection apply only to criminal child abuse cases and not to family court or dependency court cases.

CREDIT(S)

(S. 1, ch. 4721, 1899; s. 1, ch. 4971, 1901; GS 3236, 3238; RGS 5069, 5071; s. 1, ch. 9331, 1923; CGL 7171, 7173; s. 1, ch. 65-113; s. 1, ch. 70-8; s. 940, ch. 71-136; s. 49, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 84-238; s. 8, ch. 96-322; s. 16, ch. 99-168; s. 1, ch. 2003-130; s. 9, ch. 2012-155, eff. Oct. 1, 2012.)

FLA. STAT. ANN. § 827.04 (2013). Contributing to the delinquency or dependency of a child; penalty

(1) Any person who:

(a) Commits any act which causes, tends to cause, encourages, or contributes to a child becoming a delinquent or dependent child or a child in need of services; or

(b) Induces or endeavors to induce, by act, threat, command, or persuasion, a child to commit or perform any act, follow any course of conduct, or live in a manner that causes or tends to cause such child to become or to remain a dependent or delinquent child or a child in need of services,
commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) It is not necessary for any court exercising juvenile jurisdiction to make an adjudication that any child is delinquent or dependent or a child in need of services in order to prosecute a violation of this section. An adjudication that a child is delinquent or dependent or a child in need of services shall not preclude a subsequent prosecution of a violation of this section.

(3) A person 21 years of age or older who impregnates a child under 16 years of age commits an act of child abuse which constitutes a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A person who impregnates a child in violation of this subsection commits an offense under this subsection regardless of

whether the person is found to have committed, or has been charged with or prosecuted for, any other offense committed during the course of the same criminal transaction or episode, including, but not limited to, an offense proscribed under s. 800.04, relating to lewd, lascivious, or indecent assault or act upon any person under 16 years of age. Neither the victim's lack of chastity nor the victim's consent is a defense to the crime proscribed under this subsection.

CREDIT(S)

(S. 50, ch. 74-383; s. 30, ch. 75-298; s. 1, ch. 77-73; s. 1, ch. 77-429; s. 4, ch. 88-151; s. 8, ch. 90-53; s. 2, ch. 96-215; s. 10, ch. 96-322.)

FLA. STAT. ANN. § 827.071 (2013). Sexual performance by a child; penalties

(1) As used in this section, the following definitions shall apply:

(a) "Deviate sexual intercourse" means sexual conduct between persons not married to each other consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(b) "Intentionally view" means to deliberately, purposefully, and voluntarily view. Proof of intentional viewing requires establishing more than a single image, motion picture, exhibition, show, image, data, computer depiction, representation, or other presentation over any period of time.

(c) "Performance" means any play, motion picture, photograph, or dance or any other visual representation exhibited before an audience.

(d) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmute, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do the same.

(e) "Sadomasochistic abuse" means flagellation or torture by or upon a person, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction from inflicting harm on another or receiving such harm oneself.

(f) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, "sexual battery" does not include an act done for a bona fide medical purpose.

(g) "Sexual bestiality" means any sexual act between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other.

(h) "Sexual conduct" means actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast, with the intent to arouse or gratify the sexual desire of either party; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

(i) "Sexual performance" means any performance or part thereof which includes sexual conduct by a child of less than 18 years of age.

(j) "Simulated" means the explicit depiction of conduct set forth in paragraph (h) which creates the appearance of such conduct and which exhibits any uncovered portion of the breasts, genitals, or buttocks.

(2) A person is guilty of the use of a child in a sexual performance if, knowing the character and content thereof, he or she employs, authorizes, or induces a child less than 18 years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in a sexual performance. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) A person is guilty of promoting a sexual performance by a child when, knowing the character and content thereof, he or she produces, directs, or promotes any performance which includes sexual conduct by a child less than 18 years of age. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) It is unlawful for any person to possess with the intent to promote any photograph, motion picture, exhibition, show, representation, or other presentation which, in whole or in part, includes any sexual conduct by a child. The possession of three or more copies of such photograph, motion picture, representation, or presentation is prima facie evidence of an intent to promote. Whoever violates this subsection is guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(5)

(a) It is unlawful for any person to knowingly possess, control, or intentionally view a photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation which, in whole or in part, he or she knows to include any sexual conduct by a child. The possession, control, or intentional viewing of each such photograph, motion picture, exhibition, show, image, data, computer depiction, representation, or presentation is a separate offense. If such photograph, motion picture, exhibition, show, representation, image, data, computer depiction, or other presentation includes sexual conduct by more than one child, then each such child in each such photograph, motion picture, exhibition, show, representation, image, data, computer

depiction, or other presentation that is knowingly possessed, controlled, or intentionally viewed is a separate offense. A person who violates this subsection commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) This subsection does not apply to material possessed, controlled, or intentionally viewed as part of a law enforcement investigation.

(6) Prosecution of any person for an offense under this section shall not prohibit prosecution of that person in this state for a violation of any law of this state, including a law providing for greater penalties than prescribed in this section or any other crime punishing the sexual performance or the sexual exploitation of children.

CREDIT(S)

(S. 4, ch. 83-75; s. 1, ch. 85-273; s. 1, ch. 86-38; s. 1, ch. 91-33; s. 1, ch. 92-83; s. 1283, ch. 97-102; s. 1, ch. 2001-54; s. 4, ch. 2007-143, eff. Oct. 1, 2007; s. 15, ch. 2011-220, eff. Oct. 1, 2011; s. 3, ch. 2012-19, eff. Oct. 1, 2012.)

GEORGIA

GA. CODE ANN. § 16-5-21 (2013). Aggravated assault

(a) A person commits the offense of aggravated assault when he or she assaults:

(1) With intent to murder, to rape, or to rob;

(2) With a deadly weapon or with any object, device, or instrument which, when used offensively against a person, is likely to or actually does result in serious bodily injury; or

(3) A person or persons without legal justification by discharging a firearm from within a motor vehicle toward a person or persons.

(b) Except as provided in subsections (c) through (k) of this Code section, a person convicted of the offense of aggravated assault shall be punished by imprisonment for not less than one nor more than 20 years.

(c) A person who knowingly commits the offense of aggravated assault upon a peace officer while the peace officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(d) Any person who commits the offense of aggravated assault against a person who is 65 years of age or older shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years.

(e)

(1) As used in this subsection, the term "correctional officer" shall include superintendents, wardens, deputy wardens, guards, and correctional officers of state, county, and municipal penal institutions who are certified by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35 and employees of the Department of Juvenile Justice who are known to be employees of the department or who have given reasonable identification of their employment. The term "correctional officer" shall also include county jail officers who are certified or registered by the Georgia Peace Officer Standards and Training Council pursuant to Chapter 8 of Title 35.

(2) A person who knowingly commits the offense of aggravated assault upon a correctional officer while the correctional officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(f) Any person who commits the offense of aggravated assault in a public transit vehicle or station shall, upon conviction thereof, be punished by imprisonment for not less than three nor more than 20 years. For purposes of this Code section, "public transit vehicle" has the same meaning as in subsection (c) of Code Section 16-5-20.

(g) Any person who commits the offense of aggravated assault upon a person in the course of violating Code Section 16-8-2 where the property that was the subject of the theft was a vehicle engaged in commercial transportation of cargo or any appurtenance thereto, including without limitation any such trailer, semitrailer, container, or other associated equipment, or the cargo being transported therein or thereon, shall upon conviction be punished by imprisonment for not less than five years nor more than 20 years, a fine not less than \$50,000.00 nor more than \$200,000.00, or both such fine and imprisonment. For purposes of this subsection, the term "vehicle" includes without limitation any railcar.

(h) A person convicted of an offense described in paragraph (3) of subsection (a) of this Code section shall be punished by imprisonment for not less than five nor more than 20 years.

(i) Any person who commits the offense of aggravated assault involving the use of a firearm upon a student or teacher or other school personnel within a school safety zone as defined in paragraph (1) of subsection (a) of Code Section 16-11-127.1 shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years.

(j) If the offense of aggravated assault is committed between past or present spouses, persons who are parents of the same child, parents and children, stepparents and stepchildren, foster parents and foster children, or other persons excluding siblings living or formerly living in the same household, the defendant shall be punished by imprisonment for not less than three nor more than 20 years.

(k) Any person who commits the offense of aggravated assault with intent to rape against a child under the age of 14 years shall be punished by imprisonment for not less than 25 nor more than 50 years. Any person convicted under this subsection shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(l) A person who knowingly commits the offense of aggravated assault upon an officer of the court while such officer is engaged in, or on account of the performance of, his or her official duties shall, upon conviction thereof, be punished by imprisonment for not less than five nor more than 20 years. As used in this subsection, the term "officer of the court" means a judge, attorney, clerk of court, deputy clerk of court, court reporter, court interpreter, or probation officer.

CREDIT(S)

(Laws 1833, Cobb's 1851 Digest, pp. 787-789; Laws 1840, Cobb's 1851 Digest, p. 788; Code 1863, §§ 4250, 4258, 4259, 4260; Ga. L. 1866, p. 151, § 1; Code 1868, §§ 4285, 4293, 4294, 4295; Code 1873, §§ 4351, 4359, 4360, 4361; Code 1882, §§ 4351, 4359, 4360, 4361; Penal Code 1895, §§ 97, 98, 99, 100; Penal Code 1910, §§ 97, 98, 99, 100; Code 1933, §§ 26-1403, 26-1404, 26-1405, 26-1406; Code 1933, § 26-1302, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1976, p. 543, § 1; Ga. L. 1982, p. 1242, § 2; Ga. L. 1984, p. 900, § 1; Ga. L. 1985, p. 628, § 1; Ga. L. 1991, p. 971, §§ 3, 4; Ga. L. 1994, p. 1012, § 8; Ga. L. 1994, p. 1920, §§ 1, 2; Ga. L. 1996, p. 988, § 1; Ga. L. 1997, p. 1453, § 1; Ga. L. 1999, p. 381, § 3; Ga. L. 2000, p. 1626, § 1; Ga. L. 2003, p. 140, § 16; Ga. L. 2004, p. 1072, § 1; Ga. L. 2006, p. 379, § 4/HB 1059; Ga. L. 2010, p. 999, § 1/HB 1002; Ga. L. 2011, p. 752, § 16/HB 142.)

GA. CODE ANN. § 16-5-27 (2013). Female genital mutilation

(a) Any person:

(1) Who knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of a female under 18 years of age;

(2) Who is a parent, guardian, or has immediate custody or control of a female under 18 years of age and knowingly consents to or permits the circumcision, excision, or infibulation, in whole or in part, of the labia majora, labia minora, or clitoris of such female; or

(3) Who knowingly removes or causes or permits the removal of a female under 18 years of age from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female shall be guilty of female genital mutilation.

(b) A person convicted of female genital mutilation shall be punished by imprisonment for not less than five nor more than 20 years.

(c) This Code section shall not apply to procedures performed by or under the direction of a physician, a registered professional nurse, a certified nurse midwife, or a licensed practical nurse licensed pursuant to Chapter 34 or 26, respectively, of Title 43 when necessary to preserve the physical health of the female. This Code section shall also not apply to any autopsy or limited dissection as defined by Code Section 45-16-21 which is conducted in accordance with Article 2 of Chapter 16 of Title 45.

(d) Consent of the female under 18 years of age or the parent, guardian, or custodian of the female under 18 years of age shall not be a defense to the offense of female genital mutilation. Religion, ritual, custom, or standard practice shall not be a defense to the offense of female genital mutilation.

(e) The statutory privileges provided by Chapter 5 of Title 24 shall not apply to proceedings in which one of the parties to the privilege is charged with a crime against a female under 18 years of age, but such person shall be compellable to give evidence only on the specific act for which the accused is charged.

CREDIT(S)

(Code 1981, § 16-5-27, enacted by Ga. L. 2005, p. 820, § 1/HB 10; Ga. L. 2011, p. 99, § 25/HB 24.)

GA. CODE ANN. § 16-6-1 (2013). Rape

(a) A person commits the offense of rape when he has carnal knowledge of:

- (1) A female forcibly and against her will; or
- (2) A female who is less than ten years of age

Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ. The fact that the person allegedly raped is the wife of the defendant shall not be a defense to a charge of rape.

(b) A person convicted of the offense of rape shall be punished by death, by imprisonment for life without parole, by imprisonment for life, or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of rape is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

CREDIT(S)

(Laws 1833, Cobb's 1851 Digest, p. 787; Code 1863, §§ 4248, 4249; Ga. L. 1866, p. 151, § 1; Code 1868, §§ 4283, 4284; Code 1873, §§ 4349, 4350; Code 1882, §§ 4349, 4350; Penal Code 1895, §§ 93, 94; Penal Code 1910, §§ 93, 94; Code 1933, §§ 26-1301, 26-1302; Ga. L. 1960, p. 266, § 1; Code 1933, § 26-2001, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1978, p. 3, § 1; Ga. L. 1994, p. 1959, § 5; Ga. L. 1996, p. 1115, § 1; Ga. L. 1997, p. 6, § 2; Ga. L. 1999, p. 666, § 1; Ga. L. 2006, p. 379, § 8/HB 1059; Ga. L. 2011, p. 214, § 1/HB 503.)

GA. CODE ANN. § 16-6-2 (2013). Sodomy; aggravated sodomy; medical expenses

(a)

(1) A person commits the offense of sodomy when he or she performs or submits to any sexual act involving the sex organs of one person and the mouth or anus of another.

(2) A person commits the offense of aggravated sodomy when he or she commits sodomy with force and against the will of the other person or when he or she commits sodomy with a person who is less than ten years of age. The fact that the person allegedly sodomized is the spouse of a defendant shall not be a defense to a charge of aggravated sodomy.

(b)

(1) Except as provided in subsection (d) of this Code section, a person convicted of the offense of sodomy shall be punished by imprisonment for not less than one nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(2) A person convicted of the offense of aggravated sodomy shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life. Any person convicted under this Code section of the offense of aggravated sodomy shall, in addition, be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(c) When evidence relating to an allegation of aggravated sodomy is collected in the course of a medical examination of the person who is the victim of the alleged crime, the Georgia Crime Victims Emergency Fund, as provided for in Chapter 15 of Title 17, shall be financially responsible for the cost of the medical examination to the extent that expense is incurred for the limited purpose of collecting evidence.

(d) If the victim is at least 13 but less than 16 years of age and the person convicted of sodomy is 18 years of age or younger and is no more than four years older than the

victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

CREDIT(S)

(Laws 1833, Cobb's 1851 Digest, p. 787; Code 1863, §§ 4251, 4252; Code 1868, §§ 4286, 4287; Code 1873, §§ 4352, 4353; Code 1882, §§ 4352, 4353; Penal Code 1895, §§ 382, 383; Penal Code 1910, §§ 373, 374; Code 1933, §§ 26-5901, 26-5902; Ga. L. 1949, p. 275, § 1; Code 1933, § 26-2002, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1994, p. 1959, § 7; Ga. L. 1996, p. 1115, § 2; Ga. L. 1997, p. 6, § 3; Ga. L. 2000, p. 1346, § 1; Ga. L. 2006, p. 379, § 9/HB 1059; Ga. L. 2011, p. 214, § 2/HB 503.)

GA. CODE ANN. § 16-6-3 (2013). Statutory rape

(a) A person commits the offense of statutory rape when he or she engages in sexual intercourse with any person under the age of 16 years and not his or her spouse, provided that no conviction shall be had for this offense on the unsupported testimony of the victim.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of statutory rape shall be punished by imprisonment for not less than one nor more than 20 years; provided, however, that if the person so convicted is 21 years of age or older, such person shall be punished by imprisonment for not less than ten nor more than 20 years. Any person convicted under this subsection of the offense of statutory rape shall, in addition, be subject to the sentencing and punishment provisions of [Code Section 17-10-6.2](#).

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of statutory rape is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor.

CREDIT(S)

(Ga. L. 1918, p. 259, §§ 1, 2; Code 1933, §§ 26-1303, 26-1304; Code 1933, § 26-2018, enacted by Ga. L. 1968, p. 715, § 1; Ga. L. 1995, p. 957, § 3; Ga. L. 1996, p. 871, § 1; Ga. L. 1996, p. 1115, § 3; Ga. L. 2006, p. 379, § 10/HB 1059.)

GA. CODE ANN. § 16-6-4 (2013). Child molestation; aggravated child molestation

(a) A person commits the offense of child molestation when such person:

(1) Does any immoral or indecent act to or in the presence of or with any child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person; or

(2) By means of an electronic device, transmits images of a person engaging in, inducing, or otherwise participating in any immoral or indecent act to a child under the age of 16 years with the intent to arouse or satisfy the sexual desires of either the child or the person.

(b) (1) Except as provided in paragraph (2) of this subsection, a person convicted of a first offense of child molestation shall be punished by imprisonment for not less than five nor more than 20 years and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7. Upon a defendant being incarcerated on a conviction for a first offense, the Department of Corrections shall provide counseling to such defendant. Except as provided in paragraph (2) of this subsection, upon a second or subsequent conviction of an offense of child molestation, the defendant shall be punished by imprisonment for not less than ten years nor more than 30 years or by imprisonment for life and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.2 and 17-10-7; provided, however, that prior to trial, a defendant shall be given notice, in writing, that the state intends to seek a punishment of life imprisonment.

(2) If the victim is at least 14 but less than 16 years of age and the person convicted of child molestation is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) A person commits the offense of aggravated child molestation when such person commits an offense of child molestation which act physically injures the child or involves an act of sodomy.

(d) (1) Except as provided in paragraph (2) of this subsection, a person convicted of the offense of aggravated child molestation shall be punished by imprisonment for life or by a split sentence that is a term of imprisonment for not less than 25 years and not exceeding life imprisonment, followed by probation for life, and shall be subject to the sentencing and punishment provisions of Code Sections 17-10-6.1 and 17-10-7.

(2) A person convicted of the offense of aggravated child molestation when:

(A) The victim is at least 13 but less than 16 years of age;

(B) The person convicted of aggravated child molestation is 18 years of age or younger and is no more than four years older than the victim; and

(C) The basis of the charge of aggravated child molestation involves an act of sodomy

shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.1.

(e) A person shall be subject to prosecution in this state pursuant to Code Section 17-2-1 for any conduct made unlawful by paragraph (2) of subsection (a) of this Code section which the person engages in while:

(1) Either within or outside of this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides in this state; or

(2) Within this state if, by such conduct, the person commits a violation of paragraph (2) of subsection (a) of this Code section which involves a child who resides within or outside this state.

CREDIT(S)

(Ga. L. 1950, p. 387, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 408, § 1; Code 1933, § 26-2019, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1984, p. 685, § 1; Ga. L. 1984, p. 1495, § 1; Ga. L. 1985, p. 283, § 1; Ga. L. 1987, p. 617, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1993, p. 715, § 1; Ga. L. 1994, p. 1959, § 6; Ga. L. 1995, p. 957, § 4; Ga. L. 1997, p. 1578, § 1; Ga. L. 2006, p. 379, § 11/HB 1059; Ga. L. 2009, p. 729, § 1/HB 123.)

GA. CODE ANN. § 16-6-5 (2013). Enticing a child for indecent purposes

(a) A person commits the offense of enticing a child for indecent purposes when he or she solicits, entices, or takes any child under the age of 16 years to any place whatsoever for the purpose of child molestation or indecent acts.

(b) Except as provided in subsection (c) of this Code section, a person convicted of the offense of enticing a child for indecent purposes shall be punished by imprisonment for not less than ten nor more than 30 years. Any person convicted under this Code section of the offense of enticing a child for indecent purposes shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

(c) If the victim is at least 14 but less than 16 years of age and the person convicted of enticing a child for indecent purposes is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

CREDIT(S)

(Ga. L. 1950, p. 387, § 2; Ga. L. 1953, Nov.-Dec. Sess., p. 408, § 2; Code 1933, § 26-2020, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1984, p. 1495, § 2; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 2131, § 1; Ga. L. 1995, p. 957, § 5; Ga. L. 2006, p. 379, § 12/HB 1059.)

GA. CODE ANN. § 16-6-5.1 (2013). Sexual assault by persons with supervisory or disciplinary authority; sexual assault by practitioner of

psychotherapy against patient; consent not a defense; penalty upon conviction for sexual assault

(a) As used in this Code section, the term:

- (1) "Actor" means a person accused of sexual assault.
- (2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.
- (3) "Psychotherapy" means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.
- (4) "Sexual contact" means any contact between the actor and a person not married to the actor involving the intimate parts of either person for the purpose of sexual gratification of the actor.
- (5) "School" means any educational program or institution instructing children at any level, pre-kindergarten through twelfth grade, or the equivalent thereof if grade divisions are not used.

(b) A person who has supervisory or disciplinary authority over another individual commits sexual assault when that person:

- (1) Is a teacher, principal, assistant principal, or other administrator of any school and engages in sexual contact with such other individual who the actor knew or should have known is enrolled at the same school; provided, however, that such contact shall not be prohibited when the actor is married to such other individual;
- (2) Is an employee or agent of any probation or parole office and engages in sexual contact with such other individual who the actor knew or should have known is a probationer or parolee under the supervision of the same probation or parole office;
- (3) Is an employee or agent of a law enforcement agency and engages in sexual contact with such other individual who the actor knew or should have known is being detained by or is in the custody of any law enforcement agency;
- (4) Is an employee or agent of a hospital and engages in sexual contact with such other individual who the actor knew or should have known is a patient or is being detained in the same hospital; or
- (5) Is an employee or agent of a correctional facility, juvenile detention facility, facility providing services to a person with a disability, as such term is defined in Code Section 37-1-1, or a facility providing child welfare and youth services, as such term is defined in Code Section 49-5-3, who engages in sexual contact with such other individual who the actor knew or should have known is in the custody of such facility.

(c) A person who is an actual or purported practitioner of psychotherapy commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling or the actor uses the treatment or counseling relationship to facilitate sexual contact between the actor and such individual.

(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, 31-7-12, or 31-7-12.2 or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173 commits sexual assault when he or she engages in sexual contact with another individual who the actor knew or should have known had been admitted to or is receiving services from such facility or the actor.

(e) Consent of the victim shall not be a defense to a prosecution under this Code section.

(f) A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than 25 years or by a fine not to exceed \$100,000.00, or both; provided, however, that:

(1) Except as provided in paragraph (2) of this subsection, any person convicted of the offense of sexual assault of a child under the age of 16 years shall be punished by imprisonment for not less than 25 nor more than 50 years and shall, in addition, be subject to the sentencing and punishment provisions of Code Section 17-10-6.2; and

(2) If at the time of the offense the victim of the offense is at least 14 years of age but less than 16 years of age and the actor is 18 years of age or younger and is no more than four years older than the victim, such person shall be guilty of a misdemeanor and shall not be subject to the sentencing and punishment provisions of Code Section 17-10-6.2

CREDIT(S)

(Code 1981, § 16-6-5.1, enacted by Ga. L. 1983, p. 721, § 1; Ga. L. 1990, p. 1003, § 1; Ga. L. 1991, p. 1108, § 1; Ga. L. 1992, p. 6, § 16; Ga. L. 1992, p. 1940, § 1; Ga. L. 1999, p. 562, § 5; Ga. L. 2006, p. 379, § 13/HB 1059; Ga. L. 2010, p. 168, § 2/HB 571; Ga. L. 2011, p. 227, § 5/SB 178.)

GA. CODE ANN. § 16-6-15 (2013). Solicitation of sodomy

(a) A person commits the offense of solicitation of sodomy when he solicits another to perform or submit to an act of sodomy. Except as provided in subsection (b) of this Code section, a person convicted of solicitation of sodomy shall be punished as for a misdemeanor.

(b) A person convicted of solicitation of sodomy when such offense involves the solicitation of a person or persons under the age of 18 years to perform or submit to an act of sodomy for money shall be guilty of a felony and shall be punished by

imprisonment for a period of not less than five nor more than 20 years and shall be fined not less than \$2,500.00 nor more than \$10,000.00.

CREDIT(S)

(Code 1933, § 26-2003, enacted by Ga. L. 1968, p. 1249, § 1; Ga. L. 1988, p. 1797, § 3; Ga. L. 2001, p. 92, § 6.)

GA. CODE ANN. § 16-6-22.1 (2013). Sexual battery

(a) For the purposes of this Code section, the term "intimate parts" means the primary genital area, anus, groin, inner thighs, or buttocks of a male or female and the breasts of a female.

(b) A person commits the offense of sexual battery when he or she intentionally makes physical contact with the intimate parts of the body of another person without the consent of that person.

(c) Except as otherwise provided in this Code section, a person convicted of the offense of sexual battery shall be punished as for a misdemeanor of a high and aggravated nature.

(d) A person convicted of the offense of sexual battery against any child under the age of 16 years shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years.

(e) Upon a second or subsequent conviction under subsection (b) of this Code section, a person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years and, in addition, shall be subject to the sentencing and punishment provisions of Code Section 17-10-6.2.

CREDIT(S)

(Code 1981, § 16-6-22.1, enacted by Ga. L. 1990, p. 1003, § 2; Ga. L. 2003, p. 573, § 1.1; Ga. L. 2006, p. 379, § 15/HB 1059.)

GA. CODE ANN. § 16-12-1 (2013). Contributing to the delinquency, unruliness, or deprivation of a minor

(a) As used in this Code section, the term:

(1) "Delinquent act" means a delinquent act as defined in Code Section 15-11-2.

(2) "Felony" means any act which constitutes a felony under the laws of this state, the laws of any other state of the United States, or the laws of the United States.

(3) (For effective date, see note.) "Minor" means any individual who is under the age of 17 years who is alleged to have committed a delinquent act or any individual under the age of 18 years.

(4) "Serious injury" means an injury involving a broken bone, the loss of a member of the body, the loss of use of a member of the body, the substantial disfigurement of the body or of a member of the body, an injury which is life threatening, or any sexual abuse of a child under 16 years of age by means of an act described in subparagraph (a)(4)(A), (a)(4)(G), or (a)(4)(I) of Code Section 16-12-100.

(5) "Service provider" means an entity that is registered with the Department of Human Services pursuant to Article 7 of Chapter 5 of Title 49 or a child welfare agency as defined in Code Section 49-5-12 or agent or employee acting on behalf of such entity or child welfare agency.

(b) (For effective date, see note.) A person commits the offense of contributing to the delinquency or dependency of a minor or causing a child to be a child in need of services when such person:

(1) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing a delinquent act;

(2) (For effective date, see note.) Knowingly and willfully encourages, causes, abets, connives, or aids a minor in committing an act which would cause such minor to be a child in need of services as such term is defined in Code Section 15-11-2; provided, however, that this paragraph shall not apply to a service provider that notifies the minor's parent, guardian, or legal custodian of the minor's location and general state of well-being as soon as possible but not later than 72 hours after the minor's acceptance of services; provided, further, that such notification shall not be required if:

(A) The service provider has reasonable cause to believe that the minor has been abused or neglected and makes a child abuse report pursuant to Code Section 19-7-5;

(B) The minor will not disclose the name of the minor's parent, guardian, or legal custodian, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services; or

(C) The minor's parent, guardian, or legal custodian cannot be reached, and the Division of Family and Children Services within the Department of Human Services is notified within 72 hours of the minor's acceptance of services;

(3) (For effective date, see note.) Willfully commits an act or acts or willfully fails to act when such act or omission would cause a minor to be adjudicated to be a dependent child as such term is defined in Code Section 15-11-2;

(4) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult;

(5) Knowingly and willfully provides to a minor any weapon as defined in paragraph (2) of subsection (a) of Code Section 16-11-127.1 or any weapon as defined in Code Section 16-11-121 to commit any felony which encompasses force or violence as an element of the offense or delinquent act which would constitute a felony which encompasses force or violence as an element of the offense if committed by an adult; or

(6) Knowingly and willfully hires, solicits, engages, contracts with, conspires with, encourages, abets, or directs any minor to commit any smash and grab burglary which would constitute a felony if committed by an adult.

(c) (For effective date, see note.) It shall not be a defense to the offense provided for in this Code section that the minor has not been formally adjudged to have committed a delinquent act or has not been adjudged to be a dependent child or a child in need of services.

(d) A person convicted pursuant to paragraph (1) or (2) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of the first or second offense, the defendant shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned; and

(2) Upon the conviction of the third or subsequent offense, the defendant shall be guilty of a felony and shall be fined not less than \$1,000.00 nor more than \$5,000.00 or shall be imprisoned for not less than one year nor more than three years, or both fined and imprisoned.

(d.1) A person convicted pursuant to paragraph (3) of subsection (b) of this Code section shall be punished as follows:

(1) Upon conviction of an offense which resulted in the serious injury or death of a child, without regard to whether such offense was a first, second, third, or subsequent offense, the defendant shall be guilty of a felony and shall be punished as provided in subsection (e) of this Code section;

(2) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the first conviction, the defendant shall be guilty of a misdemeanor and shall be fined not more than \$1,000.00 or shall be imprisoned for not more than 12 months, or both fined and imprisoned;

(3) Upon conviction of an offense which does not result in the serious injury or death of a child and which is the second conviction, the defendant shall be guilty of a high and aggravated misdemeanor and shall be fined not less than \$1,000.00 nor more than \$5,000.00 or shall be imprisoned for not less than one year, or both fined and imprisoned; and

(4) Upon the conviction of an offense which does not result in the serious injury or death of a child and which is the third or subsequent conviction, the defendant shall be guilty of a felony and shall be fined not less than \$10,000.00 or shall be imprisoned for not less than one year nor more than five years, or both fined and imprisoned.

(e) A person convicted pursuant to paragraph (4), (5), or (6) of subsection (b) or paragraph (1) of subsection (d.1) of this Code section shall be guilty of a felony and punished as follows:

(1) Upon conviction of the first offense, the defendant shall be imprisoned for not less than one nor more than ten years; and

(2) Upon conviction of the second or subsequent offense, the defendant shall be imprisoned for not less than three years nor more than 20 years.

CREDIT(S)

(Ga. L. 1953, Nov.-Dec. Sess., p. 321, § 1; Ga. L. 1982, p. 968, § 1; Ga. L. 1994, p. 1158, § 1; Ga. L. 1995, p. 10, § 16; Ga. L. 1996, p. 273, § 1; Ga. L. 1999, p. 232, § 1; Ga. L. 2004, p. 57, § 5; Ga. L. 2010, p. 1147, § 7/HB 1104; Ga. L. 2011, p. 470, § 3/SB 94; Ga. L. 2013, p. 294, § 4-12/HB 242.)

GA. CODE ANN. § 16-12-100 (2013). Sexual exploitation of children; reporting violation; forfeiture; penalties

a) As used in this Code section, the term:

(1) "Minor" means any person under the age of 18 years.

(2) "Performance" means any play, dance, or exhibit to be shown to or viewed by an audience.

(3) "Producing" means producing, directing, manufacturing, issuing, or publishing.

(4) "Sexually explicit conduct" means actual or simulated:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

- (B) Bestiality;
 - (C) Masturbation;
 - (D) Lewd exhibition of the genitals or pubic area of any person;
 - (E) Flagellation or torture by or upon a person who is nude;
 - (F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;
 - (G) Physical contact in an act of apparent sexual stimulation or gratification with any person's unclothed genitals, pubic area, or buttocks or with a female's nude breasts;
 - (H) Defecation or urination for the purpose of sexual stimulation of the viewer; or
 - (I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.
- (5) "Visual medium" means any film, photograph, negative, slide, magazine, or other visual medium.

(b)

(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of any performance.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any medium which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into this state any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(c) A person who, in the course of processing or producing visual or printed matter either privately or commercially, has reasonable cause to believe that the visual or printed matter submitted for processing or producing depicts a minor engaged in sexually explicit conduct shall immediately report such incident, or cause a report to be made, to the Georgia Bureau of Investigation or the law enforcement agency for the county in which such matter is submitted. Any person participating in the making of a report or causing a report to be made pursuant to this subsection or participating in any judicial proceeding or any other proceeding resulting therefrom shall in so doing be immune from any civil or criminal liability that might otherwise be incurred or imposed, providing such participation pursuant to this subsection is made in good faith.

(d) The provisions of subsection (b) of this Code section shall not apply to:

(1) The activities of law enforcement and prosecution agencies in the investigation and prosecution of criminal offenses;

(2) Legitimate medical, scientific, or educational activities; or

(3) Any person who creates or possesses a visual medium depicting only himself or herself engaged in sexually explicit conduct.

(e)

(1) A person who is convicted of an offense under this Code section shall forfeit to the State of Georgia such interest as the person may have in:

(A) Any property constituting or directly derived from gross profits or other proceeds obtained from such offense; and.

(B) Any property used, or intended to be used, to commit such offense.

(2) In any action under this Code section, the court may enter such restraining orders or take other appropriate action, including acceptance of performance bonds, in connection with any interest that is subject to forfeiture.

(3) The court shall order forfeiture of property referred to in paragraph (1) of this subsection if the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture.

(4) The provisions of subsection (u) of Code Section 16-13-49 shall apply for the disposition of any property forfeited under this subsection. In any disposition of property under this subsection, a convicted person shall not be permitted to acquire property forfeited by such person.

(f)

(1) The following property shall be subject to forfeiture to the State of Georgia:

(A) Any material or equipment used, or intended for use, in producing, reproducing, transporting, shipping, or receiving any visual medium in violation of this Code section;

(B) Any visual medium produced, transported, shipped, or received in violation of this Code section, or any material containing such depiction; provided, however, that any such property so forfeited shall be destroyed by the appropriate law enforcement agency after it is no longer needed in any court proceedings; or

(C) Any property constituting or directly derived from gross profits or other proceeds obtained from a violation of this Code section; except that no property of any owner shall be forfeited under this paragraph, to the extent of the interest of such owner, by reason of an act or omission established by such owner to have been committed or omitted without knowledge or consent of such owner

(2) The procedure for forfeiture and disposition of forfeited property under this subsection shall be as provided for forfeitures under Code Section 16-13-49.

(g)

(1) Except as otherwise provided in paragraphs (2) and (3) of this subsection, any person who violates a provision of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than five nor more than 20 years and by a fine of not more than \$100,000.00; provided, however, that if the person so convicted is a member of the immediate family of the victim, no fine shall be imposed.

(2) Any person who violates subsection (c) of this Code section shall be guilty of a misdemeanor.

(3) Any person who violates paragraph (1), (5), (7), or (8) of subsection (b) of this Code section shall be guilty of a misdemeanor if:

(A) The minor depicted was at least 14 years of age at the time the visual medium was created;

(B) The visual medium was created with the permission of the minor depicted; and

(C) The defendant was 18 years of age or younger at the time of the offense and:

(i) The defendant's violation of such paragraphs did not involve the distribution of such visual medium to another person; or

(ii) In the court's discretion, and when the prosecuting attorney and the defendant have agreed, if the defendant's violation of such paragraphs involved the distribution of such visual medium to another person but such distribution was not for the purpose of:

(I) Harassing, intimidating, or embarrassing the minor depicted; or

(II) For any commercial purpose.

CREDIT(S)

(Ga. L. 1978, p. 2193, § 1; Ga. L. 1983, p. 1437, § 1; Ga. L. 1987, p. 1164, § 1; Ga. L. 1988, p. 11, §§ 1, 2; Ga. L. 1991, p. 886, § 3; Ga. L. 1995, p. 957, § 6; Ga. L. 1996, p. 6, § 16; Ga. L. 2003, p. 573, § 2; Ga. L. 2013, p. 663, § 1/HB 156.)

HAWAII

HAW. REV. STAT. ANN. § 707-730 (2013). Sexual assault in the first degree.

(1) A person commits the offense of sexual assault in the first degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;

(b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old;

(c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor;

(d) The person knowingly subjects to sexual penetration another person who is mentally defective; or

(e) The person knowingly subjects to sexual penetration another person who is mentally

incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453, 455 from performing any act within their respective practices.

(2) Sexual assault in the first degree is a class A felony.

CREDIT(S)

(L 1986, c 314, pt of § 57; am L 1987, c 181, § 9; L Sp 2001 2nd, c 1, §§ 1,7; am L 2002, c 36, § 3; am L 2003, c 62, § 1; am L 2004, c 10, § 15; am L 2006, c 230, § 32; am L 2009, c 11, § 72, effective April 3, 2008.)

HAW. REV. STAT. ANN. § 707-732 (2013). Sexual assault in the third degree.

(1) A person commits the offense of sexual assault in the third degree if:

(a) The person recklessly subjects another person to an act of sexual penetration by compulsion;

(b) The person knowingly subjects to sexual contact another person who is less than fourteen years old or causes such a person to have sexual contact with the person;

(c) The person knowingly engages in sexual contact with a person who is at least fourteen years old but less than sixteen years old or causes the minor to have sexual contact with the person; provided that:

(i) The person is not less than five years older than the minor; and

(ii) The person is not legally married to the minor;

(d) The person knowingly subjects to sexual contact another person who is mentally defective, mentally incapacitated, or physically helpless, or causes such a person to have sexual contact with the actor;

(e) The person, while employed:

(i) In a state correctional facility;

(ii) By a private company providing services at a correctional facility;

(iii) By a private company providing community-based residential services to persons

committed to the director of public safety and having received notice of this statute;

(iv) By a private correctional facility operating in the State of Hawaii; or

(v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor; or

(f) The person knowingly, by strong compulsion, has sexual contact with another person or causes another person to have sexual contact with the actor.

Paragraphs (b), (c), (d), and (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

(2) Sexual assault in the third degree is a class C felony.

CREDIT(S)

(L 1986, c 314, pt of § 57; am L 1987, c 181, § 11; am L Sp 2001 2nd, c 1, § 2; am L 2002, c 36, § 2; am L 2003, c 62, § 1; am L 2004, c 10, § 15; am L 2004, c 61, § 5; am L 2009, c 11, § 74, effective April 3, 2008.)

HAW. REV. STAT. ANN. § 707-733.6 (2013). Continuous sexual assault of a minor under the age of fourteen years

(1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

(a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and

(b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred

outside the period of the offense charged under this section, or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, unless more than one victim is involved, in which case a separate count may be charged for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony."

CREDIT(S)

(L 2006, c 60, § 6)

HAW. REV. STAT. ANN. § 707-750 (2013). Promoting child abuse in the first degree.

(1) A person commits the offense of promoting child abuse in the first degree if, knowing or having reason to know its character and content, the person:

(a) Produces or participates in the preparation of child pornography;

(b) Produces or participates in the preparation of pornographic material that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct; or

(c) Engages in a pornographic performance that employs, uses, or otherwise contains a minor engaging in or assisting others to engage in sexual conduct.

(2) As used in this section:

"Child pornography" means any pornographic visual representation, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexual conduct, if:

(a) The pornographic production of such visual representation involves the use of a minor engaging in sexual conduct; or

(b) The pornographic visual representation has been created, adapted, or modified to appear that an identifiable minor is engaging in sexual conduct.

"Community standards" means the standards of the State.

"Computer" shall have the same meaning as in section 708-890.

"Lascivious" means tending to incite lust, to deprave the morals in respect to sexual relations, or to produce voluptuous or lewd emotions in the average person, applying

contemporary community standards.

"Material" means any printed matter, visual representation, or sound recording and includes, but is not limited to, books, magazines, motion picture films, pamphlets, newspapers, pictures, photographs, and tape or wire recordings.

"Minor" means any person less than eighteen years old.

"Performance" means any play, motion picture film, dance, or other exhibition performed before any audience.

"Pornographic" shall have the same meaning as in section 712-1210.

"Produces" means to produce, direct, manufacture, issue, publish, or advertise.

"Sadomasochistic abuse" means flagellation or torture by or upon a person as an act of sexual stimulation or gratification.

"Sexual conduct" means acts of masturbation, homosexuality, lesbianism, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

"Visual representation" refers to, but is not limited to, undeveloped film and videotape and data stored on computer disk or by electronic means that are capable of conversion into a visual image.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character and content of the material or the performance produced, directed, or participated in. The fact that the person who was employed, used, or otherwise contained in the pornographic material or performance, was at that time, a minor, is prima facie evidence that the defendant knew the person to be a minor.

(4) Promoting child abuse in the first degree is a class A felony.

CREDIT(S)

(L 1978, c 214, § 1; am L 1982, c 218, § 1; am L 1986, c 314, § 58; am L 1988, c 91, § 1; am L 1997, c 363, § 1; am L 2002, c 200, § 2)

HAW. REV. STAT. ANN. § 712-1218 (2013). Failure to maintain age verification records of sexual performers.

(1) A person commits the offense of failure to maintain age verification records of sexual performers if the person knowingly produces any pornographic performance, book, magazine, periodical, film, videotape, computer image, or other matter that contains one

or more pornographic visual depictions made after June 30, 2002, of sexual conduct and:

(a) Knowingly fails to create and maintain age verification records for each sexual performer;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexual performers required by this section; or

(c) Knowingly fails to produce the age verification records of sexual performers required by this section, upon request by a law enforcement officer for the purpose of verifying the age of a sexual performer.

(2) Failure to maintain age verification records of sexual performers is a class C felony.

CREDIT(S)

(L 2002, c 240, § 3)

HAW. REV. STAT. ANN. § 712-1218.5 (2013). Failure to maintain age verification records of sexually exploited individuals.

(1) A person commits the offense of failure to maintain age verification records of sexually exploited individuals if, with the intent to profit therefrom, the person knowingly provides sexually exploited individuals to patrons or customers of a public establishment or provides sexually exploited individuals to a private club or event, and the person:

(a) Knowingly fails to create and maintain age verification records for each sexually exploited individual;

(b) Knowingly makes or causes to be made any false entry into the age verification records of sexually exploited individuals required by this section; or

(c) Knowingly fails to produce the age verification records of sexually exploited individuals required by this section upon request by a law enforcement officer for the purpose of verifying the age of a sexually exploited individual.

(2) Failure to maintain age verification records of sexually exploited individuals is a class C felony.

CREDIT(S)

(L 2002, c 240, § 3)

HAW. REV. STAT. ANN. § 712-1219 (2013). Failure to affix information disclosing location of age verification records of sexual performers.

(1) A person commits the offense of failure to affix information disclosing location of age verification records of sexual performers if the person knowingly produces any pornographic book, magazine, periodical, film, videotape, computer image, or other matter that contains one or more pornographic visual depictions made after June 30, 2002, of sexual conduct and fails to affix to each copy a statement describing where any records required by section 712-1218 with respect to all performers depicted in that copy of the matter may be located, including the current address and telephone number of the custodian of those records.

(2) If the person to whom any record-keeping requirement of section 712-1218 applies is an organization, the affixed information required under subsection (1) shall include the name, title, and business address of the individual employed by the organization who is responsible for maintaining the records required by section 712-1218.

(3) Failure to affix information disclosing the location of age verification records of sexual performers is a class C felony.

CREDIT(S)

(L 2002, c 240, § 3)

IDAHO

IDAHO CODE ANN. § 18-1506 (2013). Sexual abuse of a child under the age of sixteen years

(1) It is a felony for any person eighteen (18) years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child or third party, to:

(a) Solicit a minor child under the age of sixteen (16) years to participate in a sexual act;

(b) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in section 18-1508, Idaho Code;

(c) Make any photographic or electronic recording of such minor child; or

(d) Induce, cause or permit a minor child to witness an act of sexual conduct.

(2) For the purposes of this section "solicit" means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purposes of this section "sexual contact" means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such

minor child to have self contact.

(4) For the purposes of this section "sexual conduct" means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification.

(5) Any person guilty of a violation of the provisions of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

CREDIT(S)

(I.C., § 18-1506, as added by 1982, ch. 192, § 1, p. 519; am. 1984, ch. 63, § 1, p. 112; am. 1987, ch. 178, § 1, p. 354; am. 1988, ch. 329, § 1, p. 991; am. 1992, ch. 145, § 1, p. 438; am. 2006, ch. 178, § 3, p. 545; am. 2008, ch. 240, § 1, p. 721.)

IDAHO CODE ANN. § 18-1506A (2013). Ritualized abuse of a child -- Exclusions -- Penalties -- Definition

(1) A person is guilty of a felony when he commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(a) Actually or in simulation, tortures, mutilates or sacrifices any warm-blooded animal or human being;

(b) Forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(c) Forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(d) Involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(e) Places a living child into a coffin or open grave containing a human corpse or remains;

(f) Threatens death or serious harm to a child, his parents, family, pets or friends which instills a well-founded fear in the child that the threat will be carried out; or

(g) Unlawfully dissects, mutilates, or incinerates a human corpse.

(2) The provisions of this section shall not be construed to apply to:

(a) Lawful agricultural, animal husbandry, food preparation or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(b) The lawful medical practice of circumcision or any ceremony related thereto; or

(c) Any state or federally approved, licensed or funded research project.

(3) Any person convicted of a violation of this section shall be imprisoned in the state prison for a term of not more than life.

(4) For the purposes of this section, "child" means any person under eighteen (18) years of age.

CREDIT(S)

(I.C., § 18-1506A, as added by 1990, ch. 210, § 1, p. 467; am. 2006, ch. 178, § 4, p. 545.)

IDAHO CODE ANN. § 18-1507 (2013). Definitions -- Sexual exploitation of a child -- Penalties

(1) As used in this section, unless the context otherwise requires:

(a) "Bestiality" means a sexual connection in any manner between a human being and any animal.

(b) "Child" means a person who is less than eighteen (18) years of age.

(c) "Erotic fondling" means touching a person's clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved. "Erotic fondling" shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(d) "Erotic nudity" means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.

(e) "Explicit sexual conduct" means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.

(f) "Masturbation" means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(g) "Sadomasochism" means:

(i) Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or.

(ii) The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(h) "Sexual excitement" means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.

(i) "Sexual intercourse" means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.

(j) "Sexually exploitative material" means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.

(2) A person commits sexual exploitation of a child if he knowingly and willfully:

(a) Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; or

(b) Causes, induces or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; or

(c) Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or

(d) Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense.

(3) The sexual exploitation of a child pursuant to subsection (2)(a) of this section is a felony and shall be punishable by imprisonment in the state prison for a period not to

exceed ten (10) years or by a fine not to exceed ten thousand dollars (\$ 10,000), or by both such imprisonment and fine.

(4) The sexual exploitation of a child pursuant to subsections (2)(b), (c) and (d) of this section is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed thirty (30) years or by a fine not to exceed fifty thousand dollars (\$ 50,000) or by both such fine and imprisonment.

(5) If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

CREDIT(S)

(I.C., § 18-1507, as added by 1983, ch. 256, § 1, p. 678; am. 1987, ch. 177, § 1, p. 352; am. 1992, ch. 145, § 2, p. 438; am. 2006, ch. 178, § 5, p. 545; am. 2012, ch. 269, § 2, p. 751.)

IDAHO CODE ANN. § 18-1508 (2013). Lewd conduct with minor child under sixteen

Any person who shall commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of sixteen (16) years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of bestiality or sado-masochism as defined in section 18-1507, Idaho Code, when any of such acts are done with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of such person, such minor child, or third party, shall be guilty of a felony and shall be imprisoned in the state prison for a term of not more than life.

CREDIT(S)

(I.C., § 18-6607, as added by 1973, ch. 1, § 1, p. 3; am. and redesign. 1984, ch. 63, § 2, p. 112; am. 1992, ch. 145, § 3, p. 438.)

IDAHO CODE ANN. § 18-1508A (2013). Sexual battery of a minor child sixteen or seventeen years of age -- Penalty

(1) It is a felony for any person at least five (5) years of age older than a minor child who is sixteen (16) or seventeen (17) years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to:

(a) Commit any lewd or lascivious act or acts upon or with the body or any part or any

member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct as defined in section 18-1507, Idaho Code; or

(b) Solicit such minor child to participate in a sexual act; or

(c) Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in paragraph (a) of this subsection; or

(d) Make any photographic or electronic recording of such minor child.

(2) For the purpose of subsection (b) of this section, "solicit" means any written, verbal or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in sexual contact.

(3) For the purpose of this section, "sexual contact" means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact.

(4) Any person guilty of a violation of the provisions of subsection (1)(a) of this section shall be imprisoned in the state prison for a period not to exceed life.

(5) Any person guilty of a violation of the provisions of subsections (1)(b), (1)(c), or (1)(d) of this section shall be imprisoned in the state prison for a period not to exceed twenty-five (25) years.

CREDIT(S)

(I.C., § 18-1508A, as added by 1992, ch. 249, § 1, p. 733; am. 2006, ch. 178, § 7, p. 545.)

IDAHO CODE ANN. § 18-1509 (2013). Enticing of children

(1) A person shall be guilty of a misdemeanor if that person attempts to persuade, or persuades, whether by words or actions or both, a minor child under the age of sixteen (16) years to either:

(a) Leave the child's home or school; or

(b) Enter a vehicle or building; or

(c) Enter a structure or enclosed area, or alley, with the intent that the child shall be

concealed from public view;

while the person is acting without the authority of (i) the custodial parent of the child, (ii) the state of Idaho or a political subdivision thereof or (iii) one having legal custody of the minor child. Nothing contained in this section shall be construed to prevent the lawful detention of a minor child or the rendering of aid or assistance to a minor child.

(2) Every person who is convicted of a violation of the provisions of this section shall be punished by imprisonment in the county or municipal jail for not more than six (6) months or by a fine of not more than one thousand dollars (\$ 1,000) or by both such fine and imprisonment. A person convicted a second or subsequent time of violating the provisions of this section shall be guilty of a felony and shall be punished by imprisonment in the state penitentiary for a period of time of not more than five (5) years.

CREDIT(S)

(I.C., § 18-1509, as added by 1985, ch. 81, § 1, p. 156.)

ILLINOIS

720 ILL. COMP. STAT. ANN. 5/11-1.20 (2013). Criminal Sexual Assault

Sec. 11-1.20. Criminal Sexual Assault. (a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:

- (1) uses force or threat of force;
 - (2) knows that the victim is unable to understand the nature of the act or is unable to give knowing consent;
 - (3) is a family member of the victim, and the victim is under 18 years of age; or
 - (4) is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age.
- (b) Sentence.(1) Criminal sexual assault is a Class 1 felony, except that:

(A) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of criminal sexual assault or the offense of exploitation of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault or to the offense of exploitation of a child, commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 30 years and not more than 60 years. The

commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (A) to apply.

(B) A person who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted of the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of criminal sexual assault as defined in paragraph (a)(1) or (a)(2) after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (B) to apply.

(C) A second or subsequent conviction for a violation of paragraph (a)(3) or (a)(4) or under any similar statute of this State or any other state for any offense involving criminal sexual assault that is substantially equivalent to or more serious than the sexual assault prohibited under paragraph (a)(3) or (a)(4) is a Class X felony.

CREDIT(S)

(P.A. 85-1440; 90-396, § 5; 95-640, § 10; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 720 ILCS 5/11-1.30 (2013). Aggravated Criminal Sexual Assault

Sec. 11-1.30. Aggravated Criminal Sexual Assault.

(a) A person commits aggravated criminal sexual assault if that person commits criminal sexual assault and any of the following aggravating circumstances exist during the commission of the offense or, for purposes of paragraph (7), occur as part of the same course of conduct as the commission of the offense:

(1) the person displays, threatens to use, or uses a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

(2) the person causes bodily harm to the victim, except as provided in paragraph (10);

(3) the person acts in a manner that threatens or endangers the life of the victim or any other person;

(4) the person commits the criminal sexual assault during the course of committing or attempting to commit any other felony;

(5) the victim is 60 years of age or older;

(6) the victim is a physically handicapped person;

(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception for other than medical purposes;

(8) the person is armed with a firearm;

(9) the person personally discharges a firearm during the commission of the offense; or

(10) the person personally discharges a firearm during the commission of the offense, and that discharge proximately causes great bodily harm, permanent disability, permanent disfigurement, or death to another person.

(b) A person commits aggravated criminal sexual assault if that person is under 17 years of age and: (i) commits an act of sexual penetration with a victim who is under 9 years of age; or (ii) commits an act of sexual penetration with a victim who is at least 9 years of age but under 13 years of age and the person uses force or threat of force to commit the act.

(c) A person commits aggravated criminal sexual assault if that person commits an act of sexual penetration with a victim who is a severely or profoundly intellectually disabled person..

(d) Sentence.

(1) Aggravated criminal sexual assault in violation of paragraph (2), (3), (4), (5), (6), or (7) of subsection (a) or in violation of subsection (b) or (c) is a Class X felony. A violation of subsection (a)(1) is a Class X felony for which 10 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(8) is a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(9) is a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A violation of subsection (a)(10) is a Class X felony for which 25 years or up to a term of natural life imprisonment shall be added to the term of imprisonment imposed by the court.

(2) A person who is convicted of a second or subsequent offense of aggravated criminal sexual assault, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted of the offense of criminal sexual assault or the offense of predatory criminal sexual assault of a child, or who is convicted of the offense of aggravated criminal sexual assault after having previously been convicted under the laws of this or any other state of an offense that is substantially equivalent to the offense of criminal sexual assault, the offense of aggravated criminal sexual assault or the offense of predatory criminal sexual assault of a child, shall be sentenced to a term of

natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply.

CREDIT(S)

(P.A. 85-1392; 89-428, § 260; 89-462, § 260; 90-396, § 5; 90-735, § 5; 91-404, § 5; 92-434, § 5; 92-502, § 10; 92-721, § 5; 96-1551, § 5; 97-227, § 135; 97-1109, § 15-55.)

720 ILL. COMP. STAT. ANN. 5/11-1.40 (2013). Predatory criminal sexual assault of a child

Sec. 11-1.40. Predatory criminal sexual assault of a child.

(a) A person commits predatory criminal sexual assault of a child if that person commits an act of sexual penetration, is 17 years of age or older, and:

- (1) the victim is under 13 years of age; or
- (2) the victim is under 13 years of age and that person:
 - (A) is armed with a firearm;
 - (B) personally discharges a firearm during the commission of the offense;
 - (C) causes great bodily harm to the victim that:
 - (i) results in permanent disability; or
 - (ii) is life threatening; or

(D) delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim without the victim's consent or by threat or deception, for other than medical purposes.

(b) Sentence.

(1) A person convicted of a violation of subsection (a)(1) commits a Class X felony, for which the person shall be sentenced to a term of imprisonment of not less than 6 years and not more than 60 years. A person convicted of a violation of subsection (a)(2)(A) commits a Class X felony for which 15 years shall be added to the term of imprisonment imposed by the court. A person convicted of a violation of subsection (a)(2)(B) commits a Class X felony for which 20 years shall be added to the term of imprisonment imposed by the court. A person convicted of a violation of subsection (a)(2)(C) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years or up to a term of natural life imprisonment.

(1.1) A person convicted of a violation of subsection (a)(2)(D) commits a Class X felony for which the person shall be sentenced to a term of imprisonment of not less than 50 years and not more than 60 years.

(1.2) A person convicted of predatory criminal sexual assault of a child committed against 2 or more persons regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts shall be sentenced to a term of natural life imprisonment.

(2) A person who is convicted of a second or subsequent offense of predatory criminal sexual assault of a child, or who is convicted of the offense of predatory criminal sexual assault of a child after having previously been convicted of the offense of criminal sexual assault or the offense of aggravated criminal sexual assault, or who is convicted of the offense of predatory criminal sexual assault of a child after having previously been convicted under the laws of this State or any other state of an offense that is substantially equivalent to the offense of predatory criminal sexual assault of a child, the offense of

aggravated criminal sexual assault or the offense of criminal sexual assault, shall be sentenced to a term of natural life imprisonment. The commission of the second or subsequent offense is required to have been after the initial conviction for this paragraph (2) to apply.

CREDIT(S)

(P.A. 89-428, § 260; 89-462, § 260; 90-396, § 5; 90-735, § 5; 91-238, § 5; 91-404, § 5; 92-16, § 88; 95-640, § 10; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 5/11-1.50 (2013). Criminal sexual abuse

Sec. 11-1.50. Criminal sexual abuse.

- (a) A person commits criminal sexual abuse if that person:
 - (1) commits an act of sexual conduct by the use of force or threat of force; or
 - (2) commits an act of sexual conduct and knows that the victim is unable to understand the nature of the act or is unable to give knowing consent.
- (b) A person commits criminal sexual abuse if that person is under 17 years of age and commits an act of sexual penetration or sexual conduct with a victim who is at least 9 years of age but under 17 years of age.
- (c) A person commits criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is less than 5 years older than the victim.
- (d) Sentence. Criminal sexual abuse for a violation of subsection (b) or (c) of this Section is a Class A misdemeanor. Criminal sexual abuse for a violation of paragraph (1) or (2) of subsection (a) of this Section is a Class 4 felony. A second or subsequent conviction for a violation of subsection (a) of this Section is a Class 2 felony. For purposes of this Section it is a second or subsequent conviction if the accused has at any time been convicted under this Section or under any similar statute of this State or any other state for any offense involving sexual abuse or sexual assault that is substantially equivalent to or more serious than the sexual abuse prohibited under this Section.

CREDIT(S)

(P.A. 85-651; 91-389, § 5; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 5/11-1.60 (2013). Aggravated Criminal Sexual Abuse

Sec. 11-1.60. Aggravated Criminal Sexual Abuse.

- (a) A person commits aggravated criminal sexual abuse if that person commits criminal sexual abuse and any of the following aggravating circumstances exist (i) during the commission of the offense or (ii) for purposes of paragraph (7), as part of the same course of conduct as the commission of the offense:

(1) the person displays, threatens to use, or uses a dangerous weapon or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon;

(2) the person causes bodily harm to the victim;

(3) the victim is 60 years of age or older;

(4) the victim is a physically handicapped person;

(5) the person acts in a manner that threatens or endangers the life of the victim or any other person;

(6) the person commits the criminal sexual abuse during the course of committing or attempting to commit any other felony; or

(7) the person delivers (by injection, inhalation, ingestion, transfer of possession, or any other means) any controlled substance to the victim for other than medical purposes without the victim's consent or by threat or deception.

(b) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is under 18 years of age and the person is a family member.

(c) A person commits aggravated criminal sexual abuse if:

(1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person uses force or threat of force to commit the act; or

(2) that person is under 17 years of age and: (i) commits an act of sexual conduct with a victim who is under 9 years of age; or (ii) commits an act of sexual conduct with a victim who is at least 9 years of age but under 17 years of age and the person uses force or threat of force to commit the act

(d) A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim.

(e) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is a severely or profoundly intellectually disabled person.

(f) A person commits aggravated criminal sexual abuse if that person commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim.

(g) Sentence. Aggravated criminal sexual abuse is a Class 2 felony.

CREDIT(S)

(P.A. 85-1440; 88-99, § 5; 89-586, § 5; 90-735, § 5; 92-434, § 5; 96-1551, § 5; 97-227, § 135; 97-1109, § 15-55.)

720 ILL. COMP. STAT. ANN. 5/11-6.5 (2013). Indecent solicitation of a child

Sec. 11-6. Indecent solicitation of a child.

(a) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person, with the intent that the offense of aggravated criminal sexual assault, criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed, knowingly solicits a child or one whom he or she believes to be a child to perform an act of sexual penetration or sexual conduct as defined in Section 11-0.1 of this Code [720 ILCS 5/11-0.1].

(a-5) A person of the age of 17 years and upwards commits indecent solicitation of a child if the person knowingly discusses an act of sexual conduct or sexual penetration with a child or with one whom he or she believes to be a child by means of the Internet with the intent that the offense of aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse be committed.

(a-6) It is not a defense to subsection (a-5) that the person did not solicit the child to perform sexual conduct or sexual penetration with the person.

(b) Definitions. As used in this Section:

"Solicit" means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, or by advertisement of any kind.

"Child" means a person under 17 years of age.

"Internet" has the meaning set forth in Section 16-0.1 [720 ILCS 5/16-0.1] of this Code.

"Sexual penetration" or "sexual conduct" are defined in Section 11-0.1 of this Code.

(c) Sentence.

Indecent solicitation of a child under subsection (a) is:

(1) a Class 1 felony when the act, if done, would be predatory criminal sexual assault of a child or aggravated criminal sexual assault;

(2) a Class 2 felony when the act, if done, would be criminal sexual assault;

(3) a Class 3 felony when the act, if done, would be aggravated criminal sexual abuse. Indecent solicitation of a child under subsection (a-5) is a Class 4 felony.

CREDIT(S)

(P.A. 84-1280; 89-8, § 25-5; 89-203, § 10; 89-428, § 260; 89-462, § 260; 91-226, § 5; 95-143, § 5; 96-1551, § 5; 97-1150, § 605.)

720 ILL. COMP. STAT. ANN. 5/11-6.6 (2013). Solicitation to meet a child

Sec. 11-6.6. Solicitation to meet a child. (a) A person of the age of 18 or more years commits the offense of solicitation to meet a child if the person while using a computer, cellular telephone, or any other device, with the intent to meet a child or one whom he or she believes to be a child, solicits, entices, induces, or arranges with the child to meet at a location without the knowledge of the child's parent or guardian and the meeting with the child is arranged for a purpose other than a lawful purpose under Illinois law.(b)

Sentence. Solicitation to meet a child is a Class A misdemeanor. Solicitation to meet a child is a Class 4 felony when the solicitor believes he or she is 5 or more years older than the child..

(c) For purposes of this Section, "child" means any person under 17 years of age; and "computer" has the meaning ascribed to it in Section 16D-2 of this Code [720 ILCS 5/16D-2].

CREDIT(S)

P.A. 95-983, § 105.

720 ILL. COMP. STAT. ANN. 5/11-9.1 (2013). Sexual exploitation of a child

Sec. 11-9.1. Sexual exploitation of a child.

(a) A person commits sexual exploitation of a child if in the presence or virtual presence, or both, of a child and with knowledge that a child or one whom he or she believes to be a child would view his or her acts, that person:

(1) engages in a sexual act; or

(2) exposes his or her sex organs, anus or breast for the purpose of sexual arousal or gratification of such person or the child or one whom he or she believes to be a child.(a-

5) A person commits sexual exploitation of a child who knowingly entices, coerces, or persuades a child to remove the child's clothing for the purpose of sexual arousal or gratification of the person or the child, or both.

(b) Definitions. As used in this Section:

"Sexual act" means masturbation, sexual conduct or sexual penetration as defined in Section 11-0.1 of this Code [720 ILCS 5/11-0.1].

"Sex offense" means any violation of Article 11 of this Code or Section 12-5.01 of this Code [720-5/11-6 et seq. or 720 ILCS 5/12-5.01].

"Child" means a person under 17 years of age.

"Virtual presence" means an environment that is created with software and presented to the user and or receiver via the Internet, in such a way that the user appears in front of the receiver on the computer monitor or screen or hand held portable electronic device, usually through a web camming program. "Virtual presence" includes primarily experiencing through sight or sound, or both, a video image that can be explored interactively at a personal computer or hand held communication device, or both.

"Webcam" means a video capturing device connected to a computer or computer network that is designed to take digital photographs or live or recorded video which allows for the live transmission to an end user over the Internet.

(c) Sentence.

(1) Sexual exploitation of a child is a Class A misdemeanor. A second or subsequent violation of this Section or a substantially similar law of another state is a Class 4 felony.

(2) Sexual exploitation of a child is a Class 4 felony if the person has been previously convicted of a sex offense.

(3) Sexual exploitation of a child is a Class 4 felony if the victim was under 13 years of age at the time of the commission of the offense.

(4) Sexual exploitation of a child is a Class 4 felony if committed by a person 18 years of age or older who is on or within 500 feet of elementary or secondary school grounds when children are present on the grounds.

CREDIT(S)

(P.A. 87-1198, § 2; 91-223, § 5; 94-140, § 5; 96-1090, § 5; 96-1098, § 5; 96-1551, § 5; 97-333, § 550; 97-1150, § 605.)

720 ILL. COMP. STAT. ANN. 5/11-9.1A (2013). Permitting sexual abuse of a child

Sec. 11-9.1A. Permitting sexual abuse of a child.

(a) A person responsible for a child's welfare commits permitting sexual abuse of a child if the person has actual knowledge of and permits an act of sexual abuse upon the child, or permits the child to engage in prostitution as defined in Section 11-14 of this Code [720 ILCS 5/11-14].

(b) In this Section:

"Actual knowledge" includes credible allegations made by the child.

"Child" means a minor under the age of 17 years.

"Person responsible for the child's welfare" means the child's parent, step-parent, legal guardian, or other person having custody of a child, who is responsible for the child's care at the time of the alleged sexual abuse.

"Prostitution" means prostitution as defined in Section 11-14 of this Code.

"Sexual abuse" includes criminal sexual abuse or criminal sexual assault as defined in Section 11-1.20, 11-1.30, 11-1.40, 11-1.50, or 11-1.60 of this Code [720 ILCS 5/11-1.20, 720 ILCS 5/11-1.30, 720 ILCS 5/11-1.40, 720 ILCS 5/11-1.50 or 720 ILCS 5/11-1.60].

(c) This Section does not apply to a person responsible for the child's welfare who, having reason to believe that sexual abuse has occurred, makes timely and reasonable efforts to stop the sexual abuse by reporting the sexual abuse in conformance with the Abused and Neglected Child Reporting Act [325 ILCS 5/1 et seq.] or by reporting the sexual abuse, or causing a report to be made, to medical or law enforcement authorities or anyone who is a mandated reporter under Section 4 of the Abused and Neglected Child Reporting Act [325 ILCS 5/4].

(d) Whenever a law enforcement officer has reason to believe that the child or the person responsible for the child's welfare has been abused by a family or household member as defined by the Illinois Domestic Violence Act of 1986 [750 ILCS 60/101 et seq.], the officer shall immediately use all reasonable means to prevent further abuse under Section 112A-30 of the Code of Criminal Procedure of 1963 [725 ILCS 5/112A-30].

(e) An order of protection under Section 111-8 of the Code of Criminal Procedure of 1963 [725 ILCS 5/111-8] shall be sought in all cases where there is reason to believe that a child has been sexually abused by a family or household member. In considering appropriate available remedies, it shall be presumed that awarding physical care or custody to the abuser is not in the child's best interest.

(f) A person may not be charged with the offense of permitting sexual abuse of a child under this Section until the person who committed the offense is charged with criminal sexual assault, aggravated criminal sexual assault, predatory criminal sexual assault of a child, criminal sexual abuse, aggravated criminal sexual abuse, or prostitution.

(g) A person convicted of permitting the sexual abuse of a child is guilty of a Class 1 felony. As a condition of any sentence of supervision, probation, conditional discharge, or mandatory supervised release, any person convicted under this Section shall be ordered to undergo child sexual abuse, domestic violence, or other appropriate counseling for a specified duration with a qualified social or mental health worker.

(h) It is an affirmative defense to a charge of permitting sexual abuse of a child under this Section that the person responsible for the child's welfare had a reasonable apprehension that timely action to stop the abuse or prostitution would result in the

imminent infliction of death, great bodily harm, permanent disfigurement, or permanent disability to that person or another in retaliation for reporting.

CREDIT(S)

(P.A. 96-1551, § 5; 97-1150, § 605.)

720 ILL. COMP. STAT. ANN. 5/12-9.2 (2013). Custodial sexual misconduct

Sec. 11-9.2. Custodial sexual misconduct.

(a) A person commits custodial sexual misconduct when: (1) he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system or (2) he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a person who is in the custody of that treatment and detention facility.

(b) A probation or supervising officer or surveillance agent commits custodial sexual misconduct when the probation or supervising officer or surveillance agent engages in sexual conduct or sexual penetration with a probationer, parolee, or releasee or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent so engaging in the sexual conduct or sexual penetration.

(c) Custodial sexual misconduct is a Class 3 felony.

(d) Any person convicted of violating this Section immediately shall forfeit his or her employment with a penal system, treatment and detention facility, or conditional release program.

(e) For purposes of this Section, the consent of the probationer, parolee, releasee, or inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.] shall not be a defense to a prosecution under this Section. A person is deemed incapable of consent, for purposes of this Section, when he or she is a probationer, parolee, releasee, or inmate in custody of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act.

(f) This Section does not apply to:

(1) Any employee, probation or supervising officer, or surveillance agent who is lawfully married to a person in custody if the marriage occurred before the date of custody.

(2) Any employee, probation or supervising officer, or surveillance agent who has no knowledge, and would have no reason to believe, that the person with whom he or she engaged in custodial sexual misconduct was a person in custody.

(g) In this Section:

(1) "Custody" means:

- (i) pretrial incarceration or detention;
- (ii) incarceration or detention under a sentence or commitment to a State or local penal institution;
- (iii) parole or mandatory supervised release;
- (iv) electronic home detention;
- (v) probation;
- (vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act.

(2) "Penal system" means any system which includes institutions as defined in Section 2-14 of this Code [720 ILCS 5/2-14] or a county shelter care or detention home established under Section 1 of the County Shelter Care and Detention Home Act [55 ILCS 75/1].

(2.1) "Treatment and detention facility" means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act.

(2.2) "Conditional release" means a program of treatment and services, vocational services, and alcohol or other drug abuse treatment provided to any person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act;

(3) "Employee" means:

(i) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act;

(ii) a contractual employee of a penal system as defined in paragraph (g)(2) of this Section who works in a penal institution as defined in Section 2-14 of this Code;

(iii) a contractual employee of a "treatment and detention facility" as defined in paragraph (g)(2.1) of this Code or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release as defined in paragraph (g)(2.2) of this Code.

(4) "Sexual conduct" or "sexual penetration" means any act of sexual conduct or sexual penetration as defined in Section 11-0.1 of this Code [720 ILCS 5/11-0.1].

(5) "Probation officer" means any person employed in a probation or court services department as defined in Section 9b of the Probation and Probation Officers Act [730 ILCS 110/9b].

(6) "Supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release with the duties described in Section 3-14-2 of the Unified Code of Corrections [730 ILCS 5/3-14-2].

(7) "Surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act.

CREDIT(S)

P.A. 90-66, § 5; 90-655, § 160; 92-415, § 10; 96-1551, § 5.

720 ILL. COMP. STAT. ANN. 5/12-33 (2013). Ritualized abuse of a child

Sec. 12-33. Ritualized abuse of a child.

(a) A person commits ritualized abuse of a child when he or she knowingly commits any of the following acts with, upon, or in the presence of a child as part of a ceremony, rite or any similar observance:

(1) actually or in simulation, tortures, mutilates, or sacrifices any warm-blooded animal or human being;

(2) forces ingestion, injection or other application of any narcotic, drug, hallucinogen or anaesthetic for the purpose of dulling sensitivity, cognition, recollection of, or resistance to any criminal activity;

(3) forces ingestion, or external application, of human or animal urine, feces, flesh, blood, bones, body secretions, nonprescribed drugs or chemical compounds;

(4) involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child;

(5) places a living child into a coffin or open grave containing a human corpse or remains;

(6) threatens death or serious harm to a child, his or her parents, family, pets, or friends that instills a well-founded fear in the child that the threat will be carried out; or

(7) unlawfully dissects, mutilates, or incinerates a human corpse.(b) The provisions of this Section shall not be construed to apply to:

(1) lawful agricultural, animal husbandry, food preparation, or wild game hunting and fishing practices and specifically the branding or identification of livestock;

(2) the lawful medical practice of male circumcision or any ceremony related to male circumcision;

(3) any state or federally approved, licensed, or funded research project; or

(4) the ingestion of animal flesh or blood in the performance of a religious service or ceremony.

(b-5) For the purposes of this Section, "child" means any person under 18 years of age.

(c) Ritualized abuse of a child is a Class 1 felony for a first offense. A second or subsequent conviction for ritualized abuse of a child is a Class X felony for which the offender may be sentenced to a term of natural life imprisonment.

(d) (Blank)

CREDIT(S)

(P.A. 87-1167, § 1; 90-88, § 5; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 5/12-34 (2013). Female genital mutilation

Sec. 12-34. Female genital mutilation.

(a) Except as otherwise permitted in subsection (b), whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another commits female genital mutilation. Consent to the procedure by a minor on whom it is performed or by the minor's parent or guardian is not a defense to a violation of this Section.

(b) A surgical procedure is not a violation of subsection (a) if the procedure is performed by a physician licensed to practice medicine in all its branches and:

(1) is necessary to the health of the person on whom it is performed; or

(2) is performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.

(c) Sentence. Female genital mutilation is a Class X felony.

CREDIT(S)

(P.A. 90-88, § 5; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 5/12-35 (2013). Sexual conduct or sexual contact with an animal

Sec. 12-35. Sexual conduct or sexual contact with an animal.

(a) A person may not knowingly engage in any sexual conduct or sexual contact with an animal.

(b) A person may not knowingly cause, aid, or abet another person to engage in any sexual conduct or sexual contact with an animal.

(c) A person may not knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control.

(d) A person may not knowingly engage in, promote, aid, or abet any activity involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose.

(e) Sentence. A person who violates this Section is guilty of a Class 4 felony. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a Class 3 felony.

(f) In addition to the penalty imposed in subsection (e), the court may order that the defendant do any of the following:

(1) Not harbor animals or reside in any household where animals are present for a reasonable period of time or permanently, if necessary.

(2) Relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society.

(3) Undergo a psychological evaluation and counseling at defendant's expense.

(4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society.

(g) Nothing in this Section shall be construed to prohibit accepted animal husbandry practices or accepted veterinary medical practices by a licensed veterinarian or certified veterinary technician.

(h) If the court has reasonable grounds to believe that a violation of this Section has occurred, the court may order the seizure of all animals involved in the alleged violation as a condition of bond of a person charged with a violation of this Section.

(i) In this Section:

"Animal" means every creature, either alive or dead, other than a human being.

"Sexual conduct" means any knowing touching or fondling by a person, either directly or through clothing, of the sex organs or anus of an animal or any transfer or transmission of semen by the person upon any part of the animal, for the purpose of sexual gratification or arousal of the person.

"Sexual contact" means any contact, however slight, between the sex organ or anus of a person and the sex organ, mouth, or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, for the purpose of sexual gratification or arousal of the person. Evidence of emission of semen is not required to prove sexual contact.

CREDIT(S)

(P.A. 92-721, § 5; 96-1551, § 5.)

720 ILL. COMP. STAT. ANN. 150/1 (2013). [Using or employing a child for injurious, dangerous or immoral purposes prohibited]

Sec. 1. It shall be unlawful for any person having the care, custody or control of any child under the age of fourteen years, to exhibit, use or employ, or in any manner, or under any pretense, sell, apprentice, give away, let out, or otherwise dispose of any such child to any person in or for the vocation or occupation, service or purpose of singing, playing on musical instruments, rope or wire walking, dancing, begging, or peddling, or as a gymnast, contortionist, rider or acrobat in any place whatsoever, or for any obscene, indecent or immoral purpose, exhibition or practice whatsoever, or for, or in any business, exhibition or vocation injurious to the health or dangerous to the life or limb of such child, or cause, procure or encourage any such child to engage therein. Nothing in this section contained shall apply to or affect the employment or use of any such child as a singer or musician in any church, school or academy (or at any respectable entertainment), or the teaching or learning the science or practice of music.

CREDIT(S)

(Laws 1877, p. 90.)

720 ILL. COMP. STAT. ANN. 150/2 (2013). [Taking or employment of a child prohibited]

Sec. 2. It shall also be unlawful for any person to take, receive, hire, employ, use, exhibit, or have in custody any child under the age and for the purposes prohibited in the first section of this act.

CREDIT(S)

(Laws 1877, p. 90.)

INDIANA

IND. CODE ANN. § 35-42-4-3 (2013). Child molesting.

(a) A person who, with a child under fourteen (14) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits child molesting, a Class B felony. However, the offense is a Class A felony if:

(1) it is committed by a person at least twenty-one (21) years of age;

(2) it is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(3) it results in serious bodily injury; or

(4) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person who, with a child under fourteen (14) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits child molesting, a Class C felony. However, the offense is a Class A felony if:

(1) it is committed by using or threatening the use of deadly force;

(2) it is committed while armed with a deadly weapon; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) It is a defense that the accused person reasonably believed that the child was sixteen (16) years of age or older at the time of the conduct, unless:

(1) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon;

(2) the offense results in serious bodily injury; or

(3) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

CREDIT(S)

(IC 35-42-4-3, as added by Acts 1976, P.L.148, § 2; 1977, P.L.340, § 38; 1978, P.L.82, § 2; 1981, P.L.301, § 1; P.L.79-1994, § 12; P.L.33-1996, § 8; P.L.216-1996, § 18; P.L.31-1998, § 5; P.L.216-2007, § 42, emergency eff. July 1, 2007.)

IND. CODE ANN. § 35-42-4-4 (2013). Child exploitation

(a) The following definitions apply throughout this section:

(1) "Disseminate" means to transfer possession for free or for a consideration.

(2) "Matter" has the same meaning as in IC 35-49-1-3.

(3) "Performance" has the same meaning as in IC 35-49-1-7.

(4) "Sexual conduct" means:

(A) sexual intercourse;

(B) deviate sexual conduct;

(C) exhibition of the:

(i) uncovered genitals; or

(ii) female breast with less than a fully opaque covering of any part of the nipple; intended to satisfy or arouse the sexual desires of any person;

(D) sadomasochistic abuse;

(E) sexual intercourse or deviate sexual conduct with an animal; or

(F) any fondling or touching of a child by another person or of another person by a child intended to arouse or satisfy the sexual desires of either the child or the other person.

(b) A person who:

(1) knowingly or intentionally manages, produces, sponsors, presents, exhibits, photographs, films, videotapes, or creates a digitized image of any performance or incident that includes sexual conduct by a child under eighteen (18) years of age;

(2) knowingly or intentionally disseminates, exhibits to another person, offers to disseminate or exhibit to another person, or sends or brings into Indiana for dissemination or exhibition matter that depicts or describes sexual conduct by a child under eighteen (18) years of age; or

(3) knowingly or intentionally makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts or describes sexual conduct by a child less than eighteen (18) years of age; or

(4) with the intent to satisfy or arouse the sexual desires of any person:

(A) knowingly or intentionally:

(i) manages;

(ii) produces;

(iii) sponsors;

(iv) presents;

(v) exhibits;

(vi) photographs;

(vii) films;

(viii) videotapes; or

(ix) creates a digitized image of;

any performance or incident that includes the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

(B) knowingly or intentionally:

(i) disseminates to another person;

(ii) exhibits to another person;

(iii) offers to disseminate or exhibit to another person; or

(iv) sends or brings into Indiana for dissemination or exhibition; matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age; or

(C) makes available to another person a computer, knowing that the computer's fixed drive or peripheral device contains matter that depicts the uncovered genitals of a child less than eighteen (18) years of age or the exhibition of the female breast with less than a fully opaque covering of any part of the nipple by a child less than eighteen (18) years of age;

commits child exploitation, a Class C felony.

(c) A person who knowingly or intentionally possesses:

(1) a picture;

(2) a drawing;

(3) a photograph;

(4) a negative image;

(5) undeveloped film;

(6) a motion picture;

(7) a videotape;

(8) a digitized image; or

(9) any pictorial representation;

that depicts or describes sexual conduct by a child who the person knows is less than eighteen (18) years of age or who appears to be less than eighteen (18) years of age, and that lacks serious literary, artistic, political, or scientific value commits possession of child pornography, a Class D felony.

(d) Subsections (b) and (c) do not apply to a bona fide school, museum, or public library that qualifies for certain property tax exemptions under IC 6-1.1-10, or to an employee of such a school, museum, or public library acting within the scope of the employee's

employment when the possession of the listed materials is for legitimate scientific or educational purposes.

(e) It is a defense to a prosecution under this section that:

(1) the person is a school employee; and

(2) the acts constituting the elements of the offense were performed solely within the scope of the person's employment as a school employee.

(f) Except as provided in subsection (g), it is a defense to a prosecution under subsection (b) or (c) if all of the following apply:

(1) A cellular telephone, another wireless or cellular communications device, or a social networking web site was used to possess, produce, or disseminate the image.

(2) The defendant is not more than four (4) years older or younger than the person who is depicted in the image or who received the image.

(3) The relationship between the defendant and the person who received the image or who is depicted in the image was a dating relationship or an ongoing personal relationship. For purposes of this subdivision, the term "ongoing personal relationship" does not include a family relationship.

(4) The crime was committed by a person less than twenty-two (22) years of age.

(5) The person receiving the image or who is depicted in the image acquiesced in the defendant's conduct.

(g) The defense to a prosecution described in subsection (f) does not apply if:

(1) the person who receives the image disseminates it to a person other than the person:

(A) who sent the image; or

(B) who is depicted in the image;

(2) the image is of a person other than the person who sent the image or received the image; or

(3) the dissemination of the image violates:

(A) a protective order to prevent domestic or family violence issued under IC 34-26-5 (or, if the order involved a family or household member, under IC 34-26-2 or IC 34-4-5.1-5 before their repeal);

(B) an ex parte protective order issued under IC 34-26-5 (or, if the order involved a family or household member, an emergency order issued under IC 34-26-2 or IC 34-4-5.1 before their repeal);

(C) a workplace violence restraining order issued under IC 34-26-6;

(D) a no contact order in a dispositional decree issued under IC 31-34-20-1, IC 31-37-19-1, or IC 31-37-5-6 (or IC 31-6-4-15.4 or IC 31-6-4-15.9 before their repeal) or an order issued under IC 31-32-13 (or IC 31-6-7-14 before its repeal) that orders the person to refrain from direct or indirect contact with a child in need of services or a delinquent child;

(E) a no contact order issued as a condition of pretrial release, including release on bail or personal recognizance, or pretrial diversion, and including a no contact order issued under IC 35-33-8-3.6;

(F) a no contact order issued as a condition of probation;

(G) a protective order to prevent domestic or family violence issued under IC 31-15-5 (or IC 31-16-5 or IC 31-1-11.5-8.2 before their repeal);

(H) a protective order to prevent domestic or family violence issued under IC 31-14-16-1 in a paternity action;

(I) a no contact order issued under IC 31-34-25 in a child in need of services proceeding or under IC 31-37-25 in a juvenile delinquency proceeding;

(J) an order issued in another state that is substantially similar to an order described in clauses (A) through (I);

(K) an order that is substantially similar to an order described in clauses (A) through (I) and is issued by an Indian:(i) tribe;

(ii) band;

(iii) pueblo;

(iv) nation; or

(v) organized group or community, including an Alaska Native village or regional or village corporation as defined in or established under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

that is recognized as eligible for the special programs and services provided by the United States to Indians because of their special status as Indians;

(L) an order issued under IC 35-33-8-3.2; or

(M) an order issued under IC 35-38-1-30.

CREDIT(S)

(IC 35-42-4-4, as added by Acts 1978, P.L.148, § 5; P.L.325-1983, § 1; P.L.206-1986, § 1; P.L.37-1990, § 25; P.L.59-1995, § 3; P.L.216-1996, § 19; P.L.3-2002, § 2; P.L.216-2007, § 43, emergency eff. July 1, 2007; P.L.180-2011, § 3, eff. July 1, 2011; P.L.6-2012, § 226, emergency eff. February 22, 2012; 2013 Ind. ALS 181(2013 Ind. SEA 223), § 1, effective May 7, 2013; 2013 Ind. ALS 214(2013 Ind. HEA 1053), § 38, effective July 1, 2013.)

IND. CODE ANN. § 35-42-4-5 (2013). Vicarious sexual gratification.

(a) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to touch or fondle himself or another child under the age of sixteen (16) with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class D felony. However, the offense is:

(1) a Class C felony if a child involved in the offense is under the age of fourteen (14);

(2) a Class B felony if:

(A) the offense is committed by using or threatening the use of deadly force or while armed with a deadly weapon; or

(B) the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(3) a Class A felony if it results in serious bodily injury.

(b) A person eighteen (18) years of age or older who knowingly or intentionally directs, aids, induces, or causes a child under the age of sixteen (16) to:

(1) engage in sexual intercourse with another child under sixteen (16) years of age;

(2) engage in sexual conduct with an animal other than a human being; or

(3) engage in deviate sexual conduct with another person;

with intent to arouse or satisfy the sexual desires of a child or the older person commits vicarious sexual gratification, a Class C felony. However, the offense is a Class B felony

if any child involved in the offense is less than fourteen (14) years of age, and it is a Class A felony if the offense is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(c) A person eighteen (18) years of age or older who knowingly or intentionally:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct; or
- (3) touches or fondles the person's own body;

in the presence of a child less than fourteen (14) years of age with the intent to arouse or satisfy the sexual desires of the child or the older person commits performing sexual conduct in the presence of a minor, a Class D felony.

CREDIT(S)

(P.L.183-1984, § 4; P.L.79-1994, § 13; P.L.31-1998, § 6; P.L.118-2002, § 1; P.L.123-2003, § 1.)

IND. CODE ANN. § 35-42-4-6 (2013). Child solicitation.

(a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (1) in person;
- (2) by telephone;
- (3) in writing;
- (4) by using a computer network (as defined in [IC 35-43-2-3\(a\)](#));
- (5) by advertisement of any kind; or
- (6) by any other means;

to perform an act described in subsection (b) or (c).

(b) A person eighteen (18) years of age or older who knowingly or intentionally solicits a child under fourteen (14) years of age, or an individual the person believes to be a child

under fourteen (14) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)), and a Class B felony if the person commits the offense by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)).

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits a child at least fourteen (14) years of age but less than sixteen (16) years of age, or an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)), and a Class B felony if the person commits the offense by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)) and has a previous unrelated conviction for committing the offense by using a computer network (as defined in [IC 35-43-2-3\(a\)](#)).

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

CREDIT(S)

(P.L.183-1984, § 5; P.L.11-1994, § 16; P.L.79-1994, § 14; P.L.216-1996, § 20; P.L.118-2002, § 2; P.L.124-2005, § 1; P.L.216-2007, § 44, emergency eff. July 1, 2007.)

IND. CODE ANN. § 35-42-4-7 (2013). Child seduction.

(a) As used in this section, "adoptive parent" has the meaning set forth in IC 31-9-2-6.

(b) As used in this section, "adoptive grandparent" means the parent of an adoptive parent.

(c) As used in this section, "charter school" has the meaning set forth in IC 20-18-2-2.5.

(d) As used in this section, "child care worker" means a person who:

(1) provides care, supervision, or instruction to a child within the scope of the person's employment in a shelter care facility;

(2) is employed by a:

(A) school corporation;

(B) charter school;

(C) nonpublic school; or

(D) special education cooperative;

attended by a child who is the victim of a crime under this chapter; or

(3) is:

(A) affiliated with a:

(i) school corporation;

(ii) charter school;

(iii) nonpublic school; or

(iv) special education cooperative;

attended by a child who is the victim of a crime under this chapter, regardless of how or whether the person is compensated;

(B) in a position of trust in relation to a child who attends the school or cooperative; .

(C) engaged in the provision of care or supervision to a child who attends the school or cooperative; and .

(D) at least four (4) years older than the child who is the victim of a crime under this chapter.

The term does not include a student who attends the school or cooperative.

(e) As used in this section, "custodian" means any person who resides with a child and is responsible for the child's welfare.

(f) As used in this section, "mental health professional" means:

- (1) a mental health counselor licensed under IC 25-23.6-8.5;
- (2) a psychologist; or
- (3) a psychiatrist.

(g) As used in this section, "military recruiter" means a member of the armed forces of the United States (as defined in IC 20-33-10-2) or the Indiana National Guard whose primary job function, classification, or specialty is recruiting individuals to enlist with the armed forces of the United States or the Indiana National Guard.

(h) As used in this section, "nonpublic school" has the meaning set forth in IC 20-18-2-12.

(i) For purposes of this section, a person has a "professional relationship" with a child if:

(1) the person:

(A) has a license issued by the state or a political subdivision on the basis of the person's training and experience that authorizes the person to carry out a particular occupation; or

(B) is employed in a position in which counseling, supervising, instructing, or recruiting children forms a significant part of the employment; and

(2) the person has a relationship with a child that is based on the person's employment or licensed status as described in subdivision (1).

The term includes a relationship between a child and a mental health professional or military recruiter. The term does not include a coworker relationship between a child and a person described in subdivision (1)(B)

(j) As used in this section, "school corporation" has the meaning set forth in IC 20-18-2-16.

(k) As used in this section, "special education cooperative" has the meaning set forth in IC 20-35-5-1.

(l) As used in this section, "stepparent" means an individual who is married to a child's custodial or noncustodial parent and is not the child's adoptive parent. .

(m) If a person who:

(1) is at least eighteen (18) years of age; and

(2) is the:

(A) guardian, adoptive parent, adoptive grandparent, custodian, or stepparent of; or

(B) child care worker for;
a child at least sixteen (16) years of age but less than eighteen (18) years of age;

engages with the child in sexual intercourse, deviate sexual conduct (as defined in IC 35-31.5-2-94), or any fondling or touching with the intent to arouse or satisfy the sexual desires of either the child or the adult, the person commits child seduction.

(n) A person who:

(1) has or had a professional relationship with a child at least sixteen (16) years of age but less than eighteen (18) years of age whom the person knows to be at least sixteen (16) years of age but less than eighteen (18) years of age;

(2) may exert undue influence on the child because of the person's current or previous professional relationship with the child; and

(3) uses or exerts the person's professional relationship to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching with the child with the intent to arouse or satisfy the sexual desires of the child or the person;
commits child seduction.

(o) In determining whether a person used or exerted the person's professional relationship with the child to engage in sexual intercourse, deviate sexual conduct, or any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person under subsection (n), the trier of fact may consider one (1) or more of the following:

(1) The age difference between the person and the child.

(2) Whether the person was in a position of trust with respect to the child.

(3) Whether the person's conduct with the child violated any ethical obligations of the person's profession or occupation.

(4) The authority that the person had over the child.

(5) Whether the person exploited any particular vulnerability of the child.

(6) Any other evidence relevant to the person's ability to exert undue influence over the child.

(p) Child seduction under this section is:

(1) a Class D felony if the person engaged in any fondling or touching with the intent to arouse or satisfy the sexual desires of the child or the person; and

(2) a Class C felony if the person engaged in sexual intercourse or deviate sexual conduct with the child.

CREDIT(S)

(P.L.158-1987, § 4; P.L.1-1997, § 148; P.L.71-1998, § 5; P.L.228-2001, § 5; P.L.161-2003, § 10; P.L.1-2005, § 228; P.L.125-2009, § 7, eff. July 1, 2009; P.L.114-2012, § 138, eff. July 1, 2012; 2013 Ind. ALS 208(2013 Ind. SEA 53), § 8, effective July 1, 2013.)

IND. CODE ANN. § 35-42-4-9 (2013). Sexual misconduct with a minor.

(a) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to sexual intercourse or deviate sexual conduct commits sexual misconduct with a minor, a Class C felony. However, the offense is:

(1) a Class B felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class A felony if it is committed by using or threatening the use of deadly force, if it is committed while armed with a deadly weapon, if it results in serious bodily injury, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is:

(1) a Class C felony if it is committed by a person at least twenty-one (21) years of age; and

(2) a Class B felony if it is committed by using or threatening the use of deadly force, while armed with a deadly weapon, or if the commission of the offense is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's

knowledge.

(c) It is a defense that the accused person reasonably believed that the child was at least sixteen (16) years of age at the time of the conduct. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(d) It is a defense that the child is or has ever been married. However, this subsection does not apply to an offense described in subsection (a)(2) or (b)(2).

(e) It is a defense to a prosecution under this section if all the following apply:

(1) The person is not more than four (4) years older than the victim.

(2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(3) The crime:

(A) was not committed by a person who is at least twenty-one (21) years of age;

(B) was not committed by using or threatening the use of deadly force;

(C) was not committed while armed with a deadly weapon;

(D) did not result in serious bodily injury;

(E) was not facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge; and

(F) was not committed by a person having a position of authority or substantial influence over the victim.

(4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

CREDIT(S)

(P.L.79-1994, § 15; P.L.33-1996, § 9; P.L.216-1996, § 21; P.L.31-1998, § 8; P.L.266-2003, § 1; P.L.216-2007, § 45, emergency eff. July 1, 2007.)

IND. CODE ANN. § 35-42-4-13 (2013). Inappropriate communication with child -- Penalty.

(a) This section does not apply to the following:

- (1) A parent, guardian, or custodian of a child.
- (2) A person who acts with the permission of a child's parent, guardian, or custodian.
- (3) A person to whom a child makes a report of abuse or neglect.
- (4) A person to whom a child reports medical symptoms that relate to or may relate to sexual activity.

(b) As used in this section, "sexual activity" means sexual intercourse, deviate sexual conduct, or the fondling or touching of the buttocks, genitals, or female breasts.

(c) A person at least eighteen (18) years of age who knowingly or intentionally communicates with an individual whom the person believes to be a child less than fourteen (14) years of age concerning sexual activity with the intent to gratify the sexual desires of the person or the individual commits inappropriate communication with a child, a Class B misdemeanor. However, the offense is:

- (1) a Class A misdemeanor if the person commits the offense by using a computer network (as defined in IC 35-43-2-3(a)); and .
- (2) a Class D felony if the person has a prior unrelated conviction for a sex offense (as defined in IC 11-8-8-5.2).

CREDIT(S)

(P.L.119-2008, § 19, eff. July 1, 2008; 2013 Ind. ALS 247(2013 Ind. SEA 347), § 9, effective July 1, 2013.)

IND. CODE ANN. § 35-45-4-1 (2013). Public indecency -- Indecent exposure.

(a) A person who knowingly or intentionally, in a public place:

- (1) engages in sexual intercourse;
- (2) engages in deviate sexual conduct;
- (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person; or

(4) fondles the person's genitals or the genitals of another person;

commits public indecency, a Class A misdemeanor.

(b) A person at least eighteen (18) years of age who knowingly or intentionally, in a public place, appears in a state of nudity with the intent to be seen by a child less than sixteen (16) years of age commits public indecency, a Class A misdemeanor.

(c) However, the offense under subsection (a) or subsection (b) is a Class D felony if the person who commits the offense has a prior unrelated conviction:

(1) under subsection (a) or (b); or

(2) in another jurisdiction, including a military court, that is substantially equivalent to an offense described in subsection (a) or (b).

(d) As used in this section, "nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any part of the nipple, or the showing of covered male genitals in a discernibly turgid state.

(e) A person who, in a place other than a public place, with the intent to be seen by persons other than invitees and occupants of that place:

(1) engages in sexual intercourse;

(2) engages in deviate sexual conduct;

(3) fondles the person's genitals or the genitals of another person; or

(4) appears in a state of nudity;

where the person can be seen by persons other than invitees and occupants of that place commits indecent exposure, a Class C misdemeanor.

CREDIT(S)

(IC 35-45-4-1, as added by Acts 1976, P.L.148, § 5; 1977, P.L. 340, § 76; P.L.189-1984, § 1; P.L.215-1997, § 1; P.L.121-2000, § 1; P.L.123-2003, § 2.)

IND. CODE ANN. § 35-49-3-2 (2013). Activities related to obscene performance.

A person who knowingly or intentionally engages in, participates in, manages, produces, sponsors, presents, exhibits, photographs, films, or videotapes any obscene performance commits a Class A misdemeanor.

However, the offense is a Class D felony if the obscene performance depicts or describes sexual conduct involving any person who is or appears to be under eighteen (18) years of age.

CREDIT(S)

(IC 35-49-3-2, as added by P.L.311-1983, § 33; 2013 Ind. ALS 214(2013 Ind. HEA 1053), § 42, effective July 1, 2013.)

IOWA

IOWA CODE § 709.1 (2013). Sexual abuse defined.

Any sex act between persons is sexual abuse by either of the persons when the act is performed with the other person in any of the following circumstances:

1. The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats of violence toward any person or if the act is done while the other is under the influence of a drug inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
2. Such other person is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual matters.
3. Such other person is a child.

CREDIT(S)

([C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § 12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.1] 84 Acts, ch 1188, § 1; 99 Acts, ch 159, § 1 Definition of sex act, § 702.17)

IOWA CODE § 709.2 (2013). Sexual abuse in the first degree.

A person commits sexual abuse in the first degree when in the course of committing sexual abuse the person causes another serious injury.

Sexual abuse in the first degree is a class "A" felony.

CREDIT(S)

([C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § 12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1; C79, 81, § 709.2] Definition of forcible felony, § 702.11)

IOWA CODE § 709.3 (2013). Sexual abuse in the second degree.

1. A person commits sexual abuse in the second degree when the person commits sexual abuse under any of the following circumstances:

a. During the commission of sexual abuse the person displays in a threatening manner a dangerous weapon, or uses or threatens to use force creating a substantial risk of death or serious injury to any person.

b. The other person is under the age of twelve.

c. The person is aided or abetted by one or more persons and the sex act is committed by force or against the will of the other person against whom the sex act is committed.

2. Sexual abuse in the second degree is a class "B" felony.

CREDIT(S)

([C51, § 2581; R60, § 4204; C73, § 3861; C97, § 4756; C24, 27, 31, 35, 39, § 12966; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1; C79, 81, § 709.3] 84 Acts, ch 1188, § 2; 99 Acts, ch 159, § 3 Definition of forcible felony, § 702.11 Definition of sex act, § 702.17; Amended by 2013 Ia. HF 556, Enacted, May 1, 2013)

IOWA CODE § 709.4 (2013). Sexual abuse in the third degree.

Sexual abuse in the third degree.

1. A person commits sexual abuse in the third degree when the person performs a sex act under any of the following circumstances:

a. The act is done by force or against the will of the other person, whether or not the other person is the person's spouse or is cohabiting with the person.

b. The act is between persons who are not at the time cohabiting as husband and wife and if any of the following are true:

(1) The other person is suffering from a mental defect or incapacity which precludes giving consent.

(2) The other person is twelve or thirteen years of age.

(3) The other person is fourteen or fifteen years of age and any of the following are true:

(a) The person is a member of the same household as the other person..

(b) The person is related to the other person by blood or affinity to the fourth degree.

(c) The person is in a position of authority over the other person and uses that authority to coerce the other person to submit..

(d) The person is four or more years older than the other person.

c. The act is performed while the other person is under the influence of a controlled substance, which may include but is not limited to flunitrazepam, and all of the following are true:

(1) The controlled substance, which may include but is not limited to flunitrazepam, prevents the other person from consenting to the act.

(2) The person performing the act knows or reasonably should have known that the other person was under the influence of the controlled substance, which may include but is not limited to flunitrazepam.

d. The act is performed while the other person is mentally incapacitated, physically incapacitated, or physically helpless.

2. Sexual abuse in the third degree is a class "C" felony.

CREDIT(S)

([C51, § 2581, 2583; R60, § 4204, 4206; C73, § 3861, 3863; C97, § 4756, 4758; C24, 27, 31, 35, 39, § 12966, 12967; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, § 698.1, 698.3; C79, 81, § 709.4] 89 Acts, ch 138, § 3; 94 Acts, ch 1128, § 1; 97 Acts, ch 78, § 1; 99 Acts, ch 159, § 4)

IOWA CODE § 709.8 (2013). Lascivious acts with a child.

1. It is unlawful for any person sixteen years of age or older to perform any of the following acts with a child with or without the child's consent unless married to each other, for the purpose of arousing or satisfying the sexual desires of either of them:

a. Fondle or touch the pubes or genitals of a child.

b. Permit or cause a child to fondle or touch the person's genitals or pubes.

c. Cause the touching of the person's genitals to any part of the body of a child.

d. Solicit a child to engage in a sex act or solicit a person to arrange a sex act with a child.

e. Inflict pain or discomfort upon a child or permit a child to inflict pain or discomfort on the person.

2. a. Any person who violates a provision of this section involving an act included in subsection 1, paragraph “a” through “c”, shall, upon conviction, be guilty of a class “C” felony.

b. Any person who violates a provision of this section involving an act included in subsection 1, paragraph “d” or “e”, shall, upon conviction, be guilty of a class “D” felony.

CREDIT(S)

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 908, eff. Jan. 1, 1978. Amended by Acts 1985 (71 G.A.) ch. 181, § 1; Acts 1996 (76 G.A.) ch. 1062, § 1; Acts 2000 (78 G.A.) ch. 1165, § 1; Acts 2005 (81 G.A.) ch. 158, H.F. 619, § 35; Acts 2013 (85 G.A.) H.F. 417, § 202; Acts 2013 (85 G.A.) S.F. 298, §§ 2, 3.

IOWA CODE § 709.12 (2013). Indecent contact with a child.

1. A person eighteen years of age or older is upon conviction guilty of an aggravated misdemeanor if the person commits any of the following acts with a child, not the person's spouse, with or without the child's consent, for the purpose of arousing or satisfying the sexual desires of either of them:

a. Fondle or touch the inner thigh, groin, buttock, anus, or breast of the child.

b. Touch the clothing covering the immediate area of the inner thigh, groin, buttock, anus, or breast of the child.

c. Solicit or permit a child to fondle or touch the inner thigh, groin, buttock, anus, or breast of the person.

d. Solicit a child to engage in any act prohibited under section 709.8, subsection 1, paragraph “a”, “b”, or “d”.

2. The provisions of this section shall also apply to a person sixteen or seventeen years of age who commits any of the enumerated acts with a child who is at least five years the person's junior, in which case the juvenile court shall have jurisdiction under chapter 232.

CREDIT(S)

Added by Acts 1981 (69 G.A.) ch. 204, § 7. Amended by Acts 1985 (71 G.A.) ch. 181, § 2; Acts 1988 (72 G.A.) ch. 1252, § 4; Acts 2013 (85 G.A.) H.F. 417, § 203.

IOWA CODE § 709.14 (2013). Lascivious conduct with a minor.

It is unlawful for a person over eighteen years of age who is in a position of authority over a minor to force, persuade, or coerce a minor, with or without consent, to disrobe or partially disrobe for the purpose of arousing or satisfying the sexual desires of either of them.

Lascivious conduct with a minor is a serious misdemeanor.

CREDIT(S)

Added by Acts 1989 (73 G.A.) ch. 105, § 2.

IOWA CODE § 709.15 (2013). Sexual exploitation by a counselor, therapist, or school employee.

1. As used in this section:

a. “Counselor or therapist” means a physician, psychologist, nurse, professional counselor, social worker, marriage or family therapist, alcohol or drug counselor, member of the clergy, or any other person, whether or not licensed or registered by the state, who provides or purports to provide mental health services.

b. “Emotionally dependent” means that the nature of the patient's or client's or former patient's or client's emotional condition or the nature of the treatment provided by the counselor or therapist is such that the counselor or therapist knows or has reason to know that the patient or client or former patient or client is significantly impaired in the ability to withhold consent to sexual conduct, as described in subsection 2, by the counselor or therapist. For the purposes of subsection 2, a former patient or client is presumed to be emotionally dependent for one year following the termination of the provision of mental health services.

c. “Former patient or client” means a person who received mental health services from the counselor or therapist.

d. “Mental health service” means the treatment, assessment, or counseling of another person for a cognitive, behavioral, emotional, mental, or social dysfunction, including an intrapersonal or interpersonal dysfunction.

e. “Patient or client” means a person who receives mental health services from the counselor or therapist.

f. “School employee” means a practitioner as defined in section 272.1.

g. “Student” means a person who is currently enrolled in or attending a public or nonpublic elementary or secondary school, or who was a student enrolled in or who attended a public or nonpublic elementary or secondary school within thirty days of any violation of subsection 3.

2. a. Sexual exploitation by a counselor or therapist occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2) or (3).

(2) Any sexual conduct, with an emotionally dependent patient or client or emotionally dependent former patient or client for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the emotionally dependent patient or client or emotionally dependent former patient or client, which includes but is not limited to the following:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

(3) Any sexual conduct with a patient or client or former patient or client within one year of the termination of the provision of mental health services by the counselor or therapist for the purpose of arousing or satisfying the sexual desires of the counselor or therapist or the patient or client or former patient or client which includes but is not limited to the following:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

b. Sexual exploitation by a counselor or therapist does not include touching which is part of a necessary examination or treatment provided a patient or client by a counselor or therapist acting within the scope of the practice or employment in which the counselor or therapist is engaged.

3. a. Sexual exploitation by a school employee occurs when any of the following are found:

(1) A pattern or practice or scheme of conduct to engage in any of the conduct described in subparagraph (2).

(2) Any sexual conduct with a student for the purpose of arousing or satisfying the sexual desires of the school employee or the student. Sexual conduct includes but is not limited to the following:

(a) Kissing.

(b) Touching of the clothed or unclothed inner thigh, breast, groin, buttock, anus, pubes, or genitals.

(c) A sex act as defined in section 702.17.

b. Sexual exploitation by a school employee does not include touching that is necessary in the performance of the school employee's duties while acting within the scope of employment.

4. a. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "a", subparagraph (1), commits a class "D" felony.

b. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph "a", subparagraph (2), commits an aggravated misdemeanor.

c. A counselor or therapist who commits sexual exploitation in violation of subsection 2, paragraph “a”, subparagraph (3), commits a serious misdemeanor. In lieu of the sentence provided for under section 903.1, subsection 1, paragraph “b”, the offender may be required to attend a sexual abuser treatment program.

5. a. A school employee who commits sexual exploitation in violation of subsection 3, paragraph “a”, subparagraph (1), commits a class “D” felony.

b. A school employee who commits sexual exploitation in violation of subsection 3, paragraph “a”, subparagraph (2), commits an aggravated misdemeanor.

CREDIT(S)

Added by Acts 1991 (74 G.A.) ch. 130, § 2. Amended by Acts 1992 (74 G.A.) ch. 1163, § 119; Acts 1992 (74 G.A.) ch. 1199, §§ 2 to 6; Acts 2003 (80 G.A.) ch. 180, § 65; Acts 2004 (80 G.A.) ch. 1086, § 102; Acts 2013 (85 G.A.) H.F. 556, § 230.

IOWA CODE § 709.16 (2013). Sexual misconduct with offenders and juveniles.

1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.

2. a. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

b. For purposes of this subsection, a “juvenile placement facility” means any of the following:

(1) A child foster care facility licensed under section 237.4.

(2) Institutions controlled by the department of human services listed in section 218.1.

(3) Juvenile detention and juvenile shelter care homes approved under section 232.142.

(4) Psychiatric medical institutions for children licensed under chapter 135H.

(5) Facilities for the treatment of persons with substance-related disorders as defined in section 125.2.

3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

CREDIT(S)

Added by Acts 1991 (74 G.A.) ch. 130, § 2. Amended by Acts 1992 (74 G.A.) ch. 1163, § 119; Acts 1992 (74 G.A.) ch. 1199, §§ 2 to 6; Acts 2003 (80 G.A.) ch. 180, § 65; Acts 2004 (80 G.A.) ch. 1086, § 102; Acts 2013 (85 G.A.) H.F. 556, § 230.

IOWA CODE § 709A.1 (2013). Contributing to delinquency.

It shall be unlawful:

1. To encourage any child under eighteen years of age to commit any act of delinquency defined in chapter 232.

2. To knowingly send, cause to be sent, or induce to go, any child under the age of eighteen to any of the following:

a. A brothel or other premises used for the purposes of prostitution, with the intent that the child engage the services of a prostitute.

b. An unlicensed premises where alcoholic liquor, wine, or beer is unlawfully sold or kept for sale.

c. Any premises the use of which constitutes a violation of chapter 717A, or section 725.5 or 725.10.

3. To knowingly encourage, contribute, or in any manner cause such child to violate any law of this state, or any ordinance of any city.

4. To knowingly permit, encourage, or cause such child to be guilty of any vicious or immoral conduct.

5. For a parent willfully to fail to support the parent's child under eighteen years of age whom the parent has a legal obligation to support.

CREDIT(S)

Transferred from § 233.1 by the Code Editor for Code 1993. Amended by Acts 2004 (80 G.A.) ch. 1056, § 2, eff. April 9, 2004; Acts 2004 (80 G.A.) ch. 1056, § 2; Acts 2004 (80 G.A.) ch. 1175, § 389.

IOWA CODE § 726.6 (2013). Child endangerment.

1. A person who is the parent, guardian, or person having custody or control over a child or a minor under the age of eighteen with a mental or physical disability, or a person who is a member of the household in which a child or such a minor resides, commits child endangerment when the person does any of the following:

a. Knowingly acts in a manner that creates a substantial risk to a child or minor's physical, mental or emotional health or safety.

b. By an intentional act or series of intentional acts, uses unreasonable force, torture or cruelty that results in bodily injury, or that is intended to cause serious injury.

c. By an intentional act or series of intentional acts, evidences unreasonable force, torture or cruelty which causes substantial mental or emotional harm to a child or minor.

d. Willfully deprives a child or minor of necessary food, clothing, shelter, health care or supervision appropriate to the child or minor's age, when the person is reasonably able to make the necessary provisions and which deprivation substantially harms the child or minor's physical, mental or emotional health. For purposes of this paragraph, the failure to provide specific medical treatment shall not for that reason alone be considered willful deprivation of health care if the person can show that such treatment would conflict with the tenets and practice of a recognized religious denomination of which the person is an adherent or member. This exception does not in any manner restrict the right of an interested party to petition the court on behalf of the best interest of the child or minor.

e. Knowingly permits the continuing physical or sexual abuse of a child or minor. However, it is an affirmative defense to this subsection if the person had a reasonable apprehension that any action to stop the continuing abuse would result in substantial bodily harm to the person or the child or minor.

f. Abandons the child or minor to fend for the child or minor's self, knowing that the child or minor is unable to do so.

g. Knowingly permits a child or minor to be present at a location where amphetamine, its salts, isomers, or salts of isomers, or methamphetamine, its salts, isomers, or salts of isomers, is manufactured in violation of section 124.401, subsection 1, or where a product is possessed in violation of section 124.401, subsection 4.

h. Knowingly allows a person custody or control of, or unsupervised access to a child or a minor after knowing the person is required to register or is on the sex offender registry as a sex offender under chapter 692A. However, this paragraph does not apply to a person who is a parent or guardian of a child or a minor, who is required to register as a sex offender, or to a person who is married to and living with a person required to register as a sex offender.

2. A parent or person authorized by the parent shall not be prosecuted for a violation of subsection 1, paragraph “f”, relating to abandonment, if the parent or person authorized by the parent has voluntarily released custody of a newborn infant in accordance with section 233.2.

3. For the purposes of subsection 1, “person having control over a child or a minor” means any of the following:

a. A person who has accepted, undertaken, or assumed supervision of a child or such a minor from the parent or guardian of the child or minor.

b. A person who has undertaken or assumed temporary supervision of a child or such a minor without explicit consent from the parent or guardian of the child or minor.

c. A person who operates a motor vehicle with a child or such a minor present in the vehicle.

4. A person who commits child endangerment resulting in the death of a child or minor is guilty of a class “B” felony. Notwithstanding section 902.9, subsection 1, paragraph “b”, a person convicted of a violation of this subsection shall be confined for no more than fifty years.

5. A person who commits child endangerment resulting in serious injury to a child or minor is guilty of a class “C” felony.

6. A person who commits child endangerment resulting in bodily injury to a child or minor or child endangerment in violation of subsection 1, paragraph “g”, that does not result in a serious injury, is guilty of a class “D” felony.

7. A person who commits child endangerment that is not subject to penalty under subsection 4, 5, or 6 is guilty of an aggravated misdemeanor.

CREDIT(S)

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2606, eff. Jan. 1, 1978. Amended by Acts 1977 (67 G.A.) ch. 147, § 27, eff. Jan. 1, 1978; Acts 1985 (71 G.A.) ch. 180, § 3; Acts 1996 (76 G.A.) ch. 1129, § 109; Acts 2001 (79 G.A.) ch. 3, §§ 2 to 5; Acts 2001 (79 G.A.) ch. 67, § 12, eff. April 24, 2001; Acts 2002 (79 G.A.) ch. 1119, § 104; Acts 2004 (80 G.A.) ch. 1004, § 1; Acts 2004 (80 G.A.) ch. 1151, §§ 3, 4; Acts 2005 (81 G.A.) ch. 158, H.F. 619, § 31; Acts 2007 (82 G.A.) ch. 126, S.F. 333, § 109; Acts 2009 (83 G.A.) ch. 119, S.F. 340, § 65; Acts 2013 (85 G.A.) H.F. 417, § 252.

IOWA CODE § 726.6A (2013). Multiple acts of child endangerment--penalty

A person who engages in a course of conduct including three or more acts of child endangerment as defined in section 726.6 within a period of twelve months involving the same child or a minor with a mental or physical disability, where one or more of the acts results in serious injury to the child or minor or results in a skeletal injury to a child under the age of four years, is guilty of a class “B” felony. Notwithstanding section 902.9, subsection 1, paragraph “b”, a person convicted of a violation of this section shall be confined for no more than fifty years.

CREDIT(S)

Added by Acts 1994 (75 G.A.) ch. 1172, § 59. Amended by Acts 1996 (76 G.A.) ch. 1129, § 110; Acts 2013 (85 G.A.) H.F. 417, § 253.

IOWA CODE § 726.10 (2013). Sexual motivation.

A person convicted of any indictable offense under this subchapter shall be required to register as a sex offender pursuant to the provisions of chapter 692A, if the offense was

committed against a minor and the fact finder makes a determination that the offense was sexually motivated pursuant to section 692A.126.

CREDIT(S)

Added by Acts 2010 (83 G.A.) ch. 1104, S.F. 2305, § 22, eff. March 26, 2010.

IOWA CODE § 728.5 (2013).). Public indecent exposure in certain establishments.

1. An owner, manager, or person who exercises direct control over a place of business required to obtain a sales tax permit shall be guilty of a serious misdemeanor under any of the following circumstances:

a. If such person allows or permits the actual or simulated public performance of any sex act upon or in such place of business.

b. If such person allows or permits the exposure of the genitals or buttocks or female breast of any person who acts as a waiter or waitress.

c. If such person allows or permits the exposure of the genitals or female breast nipple of any person who acts as an entertainer, whether or not the owner of the place of business in which the activity is performed employs or pays any compensation to such person to perform such activity.

d. If such person allows or permits any person to remain in or upon the place of business who exposes to public view the person's genitals, pubic hair, or anus.

e. If such person advertises that any activity prohibited by this section is allowed or permitted in such place of business.

f. If such person allows or permits a minor to engage in or otherwise perform in a live act intended to arouse or satisfy the sexual desires or appeal to the prurient interests of patrons.

2. However, if such person allows or permits a minor to participate in any act included in subsection 1, paragraphs “a” through “d”, the person shall be guilty of an aggravated misdemeanor.

3. Except for subsection 1, paragraph “f”, the provisions of this section shall not apply to a theater, concert hall, art center, museum, or similar establishment which is primarily devoted to the arts or theatrical performances and in which any of the circumstances contained in this section were permitted or allowed as part of such art exhibits or performances.

CREDIT(S)

Added by Acts 1976 (66 G.A.) ch. 1245 (ch. 1), § 2505, eff. Jan. 1, 1978. Amended by Acts 1978 (67 G.A.) ch. 1068, § 6; Acts 1992 (74 G.A.) ch. 1029, § 1; Acts 1997 (77 G.A.) ch. 125, § 3, eff. May 2, 1997; Acts 2010 (83 G.A.) ch. 1078, S.F. 2197, § 2.

KANSAS

KAN. STAT. ANN. § 21-5503 (2013). Rape.

(a) Rape is:

(1) Knowingly engaging in sexual intercourse with a victim who does not consent to the sexual intercourse under any of the following circumstances:

(A) When the victim is overcome by force or fear; or

(B) when the victim is unconscious or physically powerless;

(2) Knowingly engaging in sexual intercourse with a victim when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by the offender or was reasonably apparent to the offender;

(3) sexual intercourse with a child who is under 14 years of age;

(4) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a medically or therapeutically necessary procedure; or

(5) sexual intercourse with a victim when the victim's consent was obtained through a knowing misrepresentation made by the offender that the sexual intercourse was a legally required procedure within the scope of the offender's authority.

(b)(1) Rape as defined in:

(A) Subsection (a)(1) or (a)(2) is a severity level 1, person felony;

(B) subsection (a)(3) is a severity level 1, person felony, except as provided in subsection (b)(2); and

(C) subsection (a)(4) or (a)(5) is a severity level 2, person felony.

(2) Rape as defined in subsection (a)(3) or attempt, conspiracy or criminal solicitation to commit rape as defined in subsection (a)(3) is an off-grid person felony, when the offender is 18 years of age or older.

(c) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of rape as defined in subsection (a)(3);

(2) subsection (c) of K.S.A. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of rape as defined in subsection (a)(3); and

(3) subsection (d) of K.S.A. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of rape as defined in subsection (a)(3).

(d) It shall be a defense to a prosecution of rape under subsection (a)(3) that the child was married to the accused at the time of the offense.

(e) Except as provided in subsection (a)(2), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sexual intercourse,

that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

CREDIT(S)

Laws 2010, ch. 136, § 67, eff. July 1, 2011; Laws 2011, ch. 30, § 29, eff. July 1, 2011.

KAN. STAT. ANN. § 21-5504 (2013). Criminal sodomy; aggravated criminal sodomy

(a) Criminal sodomy is:

(1) Sodomy between persons who are 16 or more years of age and members of the same sex;

(2) sodomy between a person and an animal;

(3) sodomy with a child who is 14 or more years of age but less than 16 years of age; or

(4) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal.

(b) Aggravated criminal sodomy is:

(1) Sodomy with a child who is under 14 years of age;

(2) causing a child under 14 years of age to engage in sodomy with any person or an animal; or

(3) sodomy with a victim who does not consent to the sodomy or causing a victim, without the victim's consent, to engage in sodomy with any person or an animal under any of the following circumstances:

(A) When the victim is overcome by force or fear;

(B) when the victim is unconscious or physically powerless; or

(C) when the victim is incapable of giving consent because of mental deficiency or disease, or when the victim is incapable of giving consent because of the effect of any alcoholic liquor, narcotic, drug or other substance, which condition was known by, or was reasonably apparent to, the offender.

(c)(1) Criminal sodomy as defined in:

(A) Subsection (a)(1) or (a)(2) is a class B nonperson misdemeanor; and

(B) subsection (a)(3) or (a)(4) is a severity level 3, person felony.

(2) Aggravated criminal sodomy as defined in:

(A) Subsection (b)(3) is a severity level 1, person felony; and

(B) subsection (b)(1) or (b)(2) is a severity level 1, person felony, except as provided in subsection (c)(3).

(3) Aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) or attempt, conspiracy or criminal solicitation to commit aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2) is an off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2);

(2) subsection (c) of K.S.A. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2); and

(3) subsection (d) of K.S.A. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated criminal sodomy as defined in subsection (b)(1) or (b)(2).

(e) It shall be a defense to a prosecution of criminal sodomy, as defined in subsection (a)(3), and aggravated criminal sodomy, as defined in subsection (b)(1), that the child was married to the accused at the time of the offense.

(f) Except as provided in subsection (b)(3)(C), it shall not be a defense that the offender did not know or have reason to know that the victim did not consent to the sodomy, that the victim was overcome by force or fear, or that the victim was unconscious or physically powerless.

CREDIT(S)

Laws 2010, ch. 136, § 68, eff. July 1, 2011; Laws 2011, ch. 30, § 30, eff. July 1, 2011.

**KAN. STAT. ANN. § 21-5506 (2013). Indecent liberties with a child;
aggravated indecent liberties with a child**

(a) Indecent liberties with a child is engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(1) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(2) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(b) Aggravated indecent liberties with a child is:

(1) Sexual intercourse with a child who is 14 or more years of age but less than 16 years of age;

(2) engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age and who does not consent thereto:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) causing the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another; or

(3) engaging in any of the following acts with a child who is under 14 years of age:

(A) Any lewd fondling or touching of the person of either the child or the offender, done or submitted to with the intent to arouse or to satisfy the sexual desires of either the child or the offender, or both; or

(B) soliciting the child to engage in any lewd fondling or touching of the person of another with the intent to arouse or satisfy the sexual desires of the child, the offender or another.

(c)(1) Indecent liberties with a child is a severity level 5, person felony.

(2) Aggravated indecent liberties with a child as defined in:

(A) Subsection (b)(1) is a severity level 3, person felony;

(B) subsection (b)(2) is a severity level 4, person felony; and

(C) subsection (b)(3) is a severity level 3, person felony, except as provided in subsection (c)(3).

(3) Aggravated indecent liberties with a child as defined in subsection (b)(3) or attempt, conspiracy or criminal solicitation to commit aggravated indecent liberties with a child as

defined in subsection (b)(3) is an off-grid person felony, when the offender is 18 years of age or older.

(d) If the offender is 18 years of age or older, the provisions of:

(1) Subsection (c) of K.S.A. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);

(2) subsection (c) of K.S.A. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3);

(3) subsection (d) of K.S.A. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of aggravated indecent liberties with a child as defined in subsection (b)(3).

(e) It shall be a defense to a prosecution of indecent liberties with a child, as defined in subsection (a)(1), and aggravated indecent liberties with a child, as defined in subsections (b)(1), (b)(2)(A) and (b)(3)(A) that the child was married to the accused at the time of the offense.

CREDIT(S)

Laws 2010, ch. 136, § 70, eff. July 1, 2011; Laws 2011, ch. 30, § 31, eff. July 1, 2011.

KAN. STAT. ANN. § 21-5507(2013). Unlawful voluntary sexual relations

(a) Unlawful voluntary sexual relations is:

(1) Engaging in any of the following acts with a child who is 14 or more years of age but less than 16 years of age:

(A) Voluntary sexual intercourse;

(B) voluntary sodomy; or

(C) voluntary lewd fondling or touching;

(2) when the offender is less than 19 years of age;

(3) when the offender is less than four years of age older than the child;

(4) when the child and the offender are the only parties involved; and

(5) when the child and the offender are members of the opposite sex.

(b) Unlawful voluntary sexual relations as defined in:

(1) Subsection (a)(1)(A) is a severity level 8, person felony;

(2) subsection (a)(1)(B) is a severity level 9, person felony; and

(3) subsection (a)(1)(C) is a severity level 10, person felony.

CREDIT(S)

Laws 2010, ch. 136, § 71, eff. July 1, 2011.

**KAN. STAT. ANN. § 21-5508 (2013). Indecent solicitation of a child;
aggravated indecent solicitation of a child.**

(a) Indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child 14 or more years of age but less than 16 years of age to:

(1) Commit or to submit to an unlawful sexual act; or

(2) enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the child.

(b) Aggravated indecent solicitation of a child is enticing, commanding, inviting, persuading or attempting to persuade a child under the age of 14 years to:

(1) Commit or submit to an unlawful sexual act; or

(2) enter any vehicle, building, room or secluded place with the intent to commit an unlawful sexual act upon or with the child.

(c)(1) Indecent solicitation of a child is a severity level 6, person felony.

(2) Aggravated indecent solicitation of a child is a severity level 5, person felony.

(d) It shall not be a defense that the offender did not know or have reason to know that the sexual act was unlawful.

CREDIT(S)

Laws 2010, ch. 136, § 72, eff. July 1, 2011.

KAN. STAT. ANN. § 21-5510 (2013). Sexual exploitation of a child

(a) Sexual exploitation of a child is:

(1) Employing, using, persuading, inducing, enticing or coercing a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, to engage in sexually explicit conduct with the intent to promote any performance;

(2) possessing any visual depiction of a child under 18 years of age shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender or any other person;

(3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2);
or

(4) promoting any performance that includes sexually explicit conduct by a child under 18 years of age, or a person whom the offender believes to be a child under 18 years of age, knowing the character and content of the performance.

(b)(1) Sexual exploitation of a child as defined in:

(A) Subsection (a)(2) or (a)(3) is a severity level 5, person felony; and

(B) subsection (a)(1) or (a)(4) is a severity level 5, person felony, except as provided in subsection (b)(2).

(2) Sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) or attempt, conspiracy or criminal solicitation to commit sexual exploitation of a child as defined in subsection (a)(1) or (a)(4) is an off-grid person felony, when the offender is 18 years of age or older and the child is under 14 years of age.

(c) If the offender is 18 years of age or older and the child is under 14 years of age, the provisions of:

(1) Subsection (c) of K.S.A. 21-5301, and amendments thereto, shall not apply to a violation of attempting to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4);

(2) subsection (c) of K.S.A. 21-5302, and amendments thereto, shall not apply to a violation of conspiracy to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4); and

(3) subsection (d) of K.S.A. 21-5303, and amendments thereto, shall not apply to a violation of criminal solicitation to commit the crime of sexual exploitation of a child as defined in subsection (a)(1) or (a)(4).

(d) As used in this section:

(1) “Sexually explicit conduct” means actual or simulated: Exhibition in the nude; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse with the intent of sexual stimulation; or lewd exhibition of the genitals, female breasts or pubic area of any person;

(2) “promoting” means procuring, transmitting, distributing, circulating, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender or any other person;

(3) “performance” means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation;

(4) “nude” means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered; and

(5) “visual depiction” means any photograph, film, video picture, digital or computer-generated image or picture, whether made or produced by electronic, mechanical or other means.

CREDIT(S)

Laws 2010, ch. 136, § 74, eff. July 1, 2011; Laws 2011, ch. 100, § 16, eff. July 1, 2011.

KAN. STAT. ANN. § 21-5513 (2013). Lewd and lascivious behavior

(a) Lewd and lascivious behavior is:

(1) Publicly engaging in otherwise lawful sexual intercourse or sodomy with knowledge or reasonable anticipation that the participants are being viewed by others; or

(2) publicly exposing a sex organ or exposing a sex organ in the presence of a person who is not the spouse of the offender and who has not consented thereto, with intent to arouse or gratify the sexual desires of the offender or another.

(b) Lewd and lascivious behavior is a:

(1) Class B nonperson misdemeanor, if committed in the presence of a person 16 or more years of age; and

(2) severity level 9, person felony, if committed in the presence of a person under 16 years of age.

CREDIT(S)

Laws 2010, ch. 136, § 77, eff. July 1, 2011.

KENTUCKY

KY. REV. STAT. ANN. § 510.040 (2013). Rape in the first degree.

(1) A person is guilty of rape in the first degree when:

(a) He engages in sexual intercourse with another person by forcible compulsion; or

(b) He engages in sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or

2. Is less than twelve (12) years old.

(2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

CREDIT(S)

HISTORY: 1974 c 406, § 84, eff. 1-1-75

KY. REV. STAT. ANN. § 510.050 (2013). Rape in the second degree.

(1) A person is guilty of rape in the second degree when:

(a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or

(b) He engages in sexual intercourse with another person who is mentally incapacitated.

(2) Rape in the second degree is a Class C felony.

CREDIT(S)

HISTORY: 2002 c 259, § 3, eff. 7-15-02; 1974 c 406, § 85, eff. 1-1-75

KY. REV. STAT. ANN. § 510.060 (2013). Rape in the third degree.

(1) A person is guilty of rape in the third degree when:

(a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;

(b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;

(c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or

(e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.

(2) Rape in the third degree is a Class D felony.

CREDIT(S)

HISTORY: 2012 c 146, § 127, c 148, § 2, eff. 7-12-12; 2010 c 26, § 1, eff. 7-15-10; 2006 c 182, § 31, eff. 7-12-06; 2002 c 282, § 1, c 259, § 7, eff. 7-15-02; 1988 c 283, § 12, eff. 7-15-88; 1974 c 406, § 86

KY. REV. STAT. ANN. § 510.070 (2013). Sodomy in the first degree.

(1) A person is guilty of sodomy in the first degree when:

(a) He engages in deviate sexual intercourse with another person by forcible compulsion; or

(b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:

1. Is physically helpless; or

2. Is less than twelve (12) years old.

(2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

CREDIT(S)

HISTORY: 1974 c 406, § 87, eff. 1-1-75

KY. REV. STAT. ANN. § 510.080 (2013). Sodomy in the second degree.

(1) A person is guilty of sodomy in the second degree when:

(a) Being eighteen (18) years old or more, he engages in deviate sexual intercourse with another person less than fourteen (14) years old; or

(b) He engages in deviate sexual intercourse with another person who is mentally incapacitated.

(2) Sodomy in the second degree is a Class C felony.

CREDIT(S)

HISTORY: 2002 c 259, § 4, eff. 7-15-02; 1974 c 406, § 88, eff. 1-1-75

KY. REV. STAT. ANN. § 510.090 (2013). Sodomy in the third degree.

(1) A person is guilty of sodomy in the third degree when:

(a) He or she engages in deviate sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;

(b) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than sixteen (16) years old; or

(c) Being twenty-one (21) years old or more, he or she engages in deviate sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in KRS 600.020;

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she engages in deviate sexual intercourse with a minor less than eighteen (18) years old with whom he or she comes into contact as a result of that position; or

(e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to deviate sexual intercourse.

(2) Sodomy in the third degree is a Class D felony.

CREDIT(S)

HISTORY: 2012 c 146, § 128, c 148, § 3, eff. 7-12-12; 2010 c 26, § 2, eff. 7-15-10; 2006 c 182, § 32, eff. 7-12-06; 2002 c 282, § 2, c 259, § 8, eff. 7-15-02; 1988 c 283, § 13, eff. 7-15-88; 1974 c 406, § 89

KY. REV. STAT. ANN. § 510.110 (2013). Sexual abuse in the first degree.

(1) A person is guilty of sexual abuse in the first degree when:

(a) He or she subjects another person to sexual contact by forcible compulsion; or

(b) He or she subjects another person to sexual contact who is incapable of consent because he or she:

1. Is physically helpless;

2. Is less than twelve (12) years old; or

3. Is mentally incapacitated; or

(c) Being twenty-one (21) years old or more, he or she:

1. Subjects another person who is less than sixteen (16) years old to sexual contact;

2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or

3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or

(d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

(2) Sexual abuse in the first degree is a Class D felony, unless the victim is less than twelve (12) years old, in which case the offense shall be a Class C felony.

CREDIT(S)

HISTORY: 2008 c 72, § 1, eff. 7-15-08; 2006 c 182, § 33, eff. 7-12-06; 2002 c 259, § 5, eff. 7-15-02; 1974 c 406, § 91, eff. 1-1-75

KY. REV. STAT. ANN. § 510.120 (2013). Sexual abuse in the second degree.

(1) A person is guilty of sexual abuse in the second degree when:

(a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;

(b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or

(c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for

the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen (18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

(2) In any prosecution under subsection (1)(b) of this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than five (5) years older than the other person.

(3) Sexual abuse in the second degree is a Class A misdemeanor.

CREDIT(S)

HISTORY: 2012 c 146, § 129, eff. 7-12-12; 2010 c 26, § 3, eff. 7-15-10; 2008 c 72, § 2, eff. 7-15-08; 2006 c 182, § 34, eff. 7-12-06; 2002 c 282, § 3, c 259, § 9, eff. 7-15-02; 2000 c 345, § 8, eff. 7-14-00; 1988 c 283, § 14, eff. 7-15-88; 1974 c 406, § 92

KY. REV. STAT. ANN. § 510.130 (2013). Sexual abuse in the third degree.

(1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.

(2) In any prosecution under this section, it is a defense that:

(a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and

(b) The other person was at least fourteen (14) years old; and

(c) The actor was less than eighteen (18) years old.

(3) Sexual abuse in the third degree is a Class B misdemeanor.

CREDIT(S)

HISTORY: 2008 c 72, § 3, eff. 7-15-08; 1974 c 406, § 93, eff. 1-1-75

KY. REV. STAT. ANN. § 510.148 (2013). Indecent exposure in the first degree.

(1) A person is guilty of indecent exposure in the first degree when he intentionally exposes his genitals under circumstances in which he knows or should know that his conduct is likely to cause affront or alarm to a person under the age of eighteen (18) years.

(2) Indecent exposure in the first degree is a:

(a) Class B misdemeanor for the first offense;

(b) Class A misdemeanor for the second offense, if it was committed within three (3) years of the first conviction;

(c) Class D felony for the third offense, if it was committed within three (3) years of the second conviction; and

(d) Class D felony for any subsequent offense, if it was committed within three (3) years of the prior conviction.

CREDIT(S)

HISTORY: 2004 c 190, § 1, eff. 7-13-04

KY. REV. STAT. ANN. § 530.064 (2013). Unlawful transaction with a minor in the first degree.

(1) A person is guilty of unlawful transaction with a minor in the first degree when he or she knowingly induces, assists, or causes a minor to engage in:

(a) Illegal sexual activity; or

(b) Illegal controlled substances activity other than activity involving marijuana, synthetic drugs, or salvia, as defined in KRS 218A.010;

Except those offenses involving minors in KRS Chapter 531 and in KRS 529.100 where that offense involves commercial sexual activity.

(2) Unlawful transaction with a minor in the first degree is a:

(a) Class C felony if the minor so used is less than eighteen (18) years old at the time the minor engages in the prohibited activity;

(b) Class B felony if the minor so used is less than sixteen (16) years old at the time the minor engages in the prohibited activity; and

(c) Class A felony if the minor so used incurs physical injury thereby.

CREDIT(S)

HISTORY: 2012 c 108, § 16, eff. 4-11-12; 2011 c 45, § 14, eff. 3-16-11; 2010 c 149, § 16, eff. 4-13-10; 2010 c 160, § 16, eff. 4-26-10; 2007 c 19, § 13, eff. 6-26-07; 2006 c 182, § 38, eff. 7-12-06; 1998 c 606, § 184, eff. 7-15-98; 1986 c 289, § 5, eff. 7-15-86

LOUISIANA

LA. REV. STAT. ANN. § 14:42 (2013). Aggravated rape

A. Aggravated rape is a rape committed upon a person sixty-five years of age or older or where the anal, oral, or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:

(1) When the victim resists the act to the utmost, but whose resistance is overcome by force.

(2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm, accompanied by apparent power of execution.

(3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon.

(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

(5) When two or more offenders participated in the act.

(6) When the victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing such resistance.

B. For purposes of Paragraph (5), “participate” shall mean:

(1) Commit the act of rape.

(2) Physically assist in the commission of such act.

C. For purposes of this Section, the following words have the following meanings:

(1) “Physical infirmity” means a person who is a quadriplegic or paraplegic.

(2) “Mental infirmity” means a person with an intelligence quotient of seventy or lower.

D. (1) Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.

(2) However, if the victim was under the age of thirteen years, as provided by Paragraph A(4) of this Section:

(a) And if the district attorney seeks a capital verdict, the offender shall be punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment may be capital shall apply.

(b) And if the district attorney does not seek a capital verdict, the offender shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence. The provisions of C.Cr.P. Art. 782 relative to cases in which punishment is necessarily confinement at hard labor shall apply.

CREDIT(S)

Acts 1978, No. 239, § 1. Amended by Acts 1981, No. 707, § 1; Acts 1984, No. 579, § 1; Acts 1993, No. 630, § 1; Acts 1995, No. 397, § 1; Acts 1997, No. 757, § 1; Acts 1997, No. 898, § 1; Acts 2001, No. 301, § 1; Acts 2003, No. 795, § 1; Acts 2006, No. 178, § 1.

VALIDITY

<R.S. 14:42(D)(2) was declared unconstitutional by the United States Supreme Court in Kennedy v. Louisiana, 128 S.Ct. 2641 (June 25, 2008). See Notes of Decision in LSA.>

LA. REV. STAT. ANN. § 14:43.1 (2013). Sexual battery

A. Sexual battery is the intentional touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender, or the touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim, when any of the following occur:

(1) The offender acts without the consent of the victim.

(2) The act is consensual but the other person, who is not the spouse of the offender, has not yet attained fifteen years of age and is at least three years younger than the offender.

(3) The offender is seventeen years of age or older and any of the following exist:

(a) The act is without consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:

- (i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.
 - (ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.
- (b) The act is without consent of the victim, and the victim is sixty-five years of age or older.

B. Lack of knowledge of the victim's age shall not be a defense. However, normal medical treatment or normal sanitary care shall not be construed as an offense under the provisions of this Section.

C. (1) Whoever commits the crime of sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years.

(2) Whoever commits the crime of sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3) Whoever commits the crime of sexual battery by violating the provisions of Paragraph (A)(3) of this Section shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(4) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (2) and (3) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(5) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(6) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(7) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act, [FN1] that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

CREDIT(S)

Acts 1978, No. 239, § 1. Amended by Acts 1981, No. 624, § 1, eff. July 20, 1981; Acts 1984, No. 924, § 1; Acts 1991, No. 654, § 1; Acts 1995, No. 946, § 2; Acts 2003, No. 232, § 1; Acts 2006, No. 103, § 1; Acts 2008, No. 33, § 1; Acts 2011, No. 67, § 1.

LA. REV. STAT. ANN. § 14:43.2 (2013). Second degree sexual battery

A. Second degree sexual battery is the intentional engaging in any of the following acts with another person when the offender intentionally inflicts serious bodily injury on the victim:

(1) The touching of the anus or genitals of the victim by the offender using any instrumentality or any part of the body of the offender; or

(2) The touching of the anus or genitals of the offender by the victim using any instrumentality or any part of the body of the victim.

B. For the purposes of this Section, serious bodily injury means bodily injury which involves unconsciousness, extreme physical pain or protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty, or a substantial risk of death.

C. (1) Whoever commits the crime of second degree sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than fifteen years.

(2) Whoever commits the crime of second degree sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3) Any person who is seventeen years of age or older who commits the crime of second degree sexual battery shall be punished by imprisonment at hard labor for not less than twenty-five nor more than ninety-nine years, at least twenty-five years of the sentence imposed being served without benefit of parole, probation, or suspension of sentence, when any of the following conditions exist:

(a) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.

(b) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

(c) The victim is sixty-five years of age or older.

D. (1) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (C)(2) and (3) of this Section, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(2) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(3) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(4) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

CREDIT(S)

Added by Acts 1983, No. 78, § 1. Amended by Acts 1984, No. 568, § 1; Acts 1995, No. 946, § 2; Acts 2004, No. 676, § 1; Acts 2006, No. 103, § 1; Acts 2008, No. 33, § 1; Acts 2011, No. 67, § 1.

LA. REV. STAT. ANN. § 14:43.3 (2013). Oral sexual battery

A. Oral sexual battery is the intentional touching of the anus or genitals of the victim by the offender using the mouth or tongue of the offender, or the touching of the anus or genitals of the offender by the victim using the mouth or tongue of the victim, when any of the following occur:

(1) The victim, who is not the spouse of the offender, is under the age of fifteen years and is at least three years younger than the offender.

(2) The offender is seventeen years of age or older and any of the following exist:

(a) The act is without the consent of the victim, and the victim is prevented from resisting the act because either of the following conditions exist:

(i) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.

(ii) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

(b) The act is without the consent of the victim, and the victim is sixty-five years of age or older.

B. Lack of knowledge of the victim's age shall not be a defense.

C. (1) Whoever commits the crime of oral sexual battery shall be punished by imprisonment, with or without hard labor, without benefit of parole, probation, or suspension of sentence, for not more than ten years.

(2) Whoever commits the crime of oral sexual battery on a victim under the age of thirteen years when the offender is seventeen years of age or older shall be punished by imprisonment at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3) Whoever commits the crime of oral sexual battery by violating the provisions of Paragraph (A)(2) of this Section shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without parole, probation, or suspension of sentence.

D. (1) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (C)(2) and (3) of this Section, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(2) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(3) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(4) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act, that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of

payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

CREDIT(S)

Added by Acts 1985, No. 287, § 1. Amended by Acts 1995, No. 946, § 2; Acts 2001, No. 301, § 1; Acts 2006, No. 103, § 1; Acts 2008, No. 33, § 1; Acts 2011, No. 67, § 1.

LA. REV. STAT. ANN. § 14:43.4 (2013). Female genital mutilation.

A. A person is guilty of female genital mutilation when any of the following occur:

(1) The person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora, labia minora, or clitoris of a female minor.

(2) The parent, guardian, or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision, or infibulation, in whole or in part, of such minor's labia majora, labia minora, or clitoris.

(3) The person knowingly removes or causes or permits the removal of a female minor from this state for the purpose of circumcising, excising, or infibulating, in whole or in part, the labia majora, labia minora, or clitoris of such female.

B. It shall not be a defense to prosecution for a violation of this Section that the conduct described in Subsection A of this Section is required as a matter of custom, ritual, or religious practice, or that the minor on whom it is performed, or the minor's parent or legal guardian, consented to the procedure.

C. If the action described in Subsection A of this Section is performed by a licensed physician during a surgical procedure, it shall not be a violation of this Section if either of the following is true:

(1) The procedure is necessary to the physical health of the minor on whom it is performed.

(2) The procedure is performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth.

D. Whoever commits the crime of female genital mutilation shall be punished by imprisonment, with or without hard labor, for not more than fifteen years.

CREDIT(S)

Added by Acts 2012, No. 207, § 1.

LA. REV. STAT. ANN. § 14:80 (2013). Felony carnal knowledge of a juvenile

A. Felony carnal knowledge of a juvenile is committed when:

(1) A person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender and when the difference between the age of the victim and the age of the offender is four years or greater; or

(2) A person commits a second or subsequent offense of misdemeanor carnal knowledge of a juvenile, or a person who has been convicted one or more times of violating one or more crimes for which the offender is required to register as a sex offender under R.S. 15:542 commits a first offense of misdemeanor carnal knowledge of a juvenile.

B. As used in this Section, “sexual intercourse” means anal, oral, or vaginal sexual intercourse.

C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

D. (1) Whoever commits the crime of felony carnal knowledge of a juvenile shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not more than ten years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.

(2)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

CREDIT(S)

Amended by Acts 1977, No. 539, § 1; Acts 1978, No. 757, § 1; Acts 1990, No. 590, § 1; Acts 1995, No. 241, § 1; Acts 2001, No. 796, § 1; Acts 2006, No. 80, § 1; Acts 2008, No. 331, § 1; Acts 2010, No. 763, § 1.

LA. REV. STAT. ANN. § 14:80.1 (2013). Misdemeanor carnal knowledge of a juvenile

A. Misdemeanor carnal knowledge of a juvenile is committed when a person who is seventeen years of age or older has sexual intercourse, with consent, with a person who is thirteen years of age or older but less than seventeen years of age, when the victim is not the spouse of the offender, and when the difference between the age of the victim and age of the offender is greater than two years, but less than four years.

B. As used in this Section, “sexual intercourse” means anal, oral, or vaginal sexual intercourse.

C. Lack of knowledge of the juvenile's age shall not be a defense. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

D. Whoever commits the crime of misdemeanor carnal knowledge of a juvenile shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.

E. The offender shall be eligible to have his conviction set aside and his prosecution dismissed in accordance with the appropriate provisions of the Code of Criminal Procedure.

F. The offender shall not be subject to any of the provisions of law which are applicable to sex offenders, including but not limited to the provisions which require registration of the offender and notice to the neighbors of the offender.

CREDIT(S)

Added by Acts 2001, No. 796, § 1. Amended by Acts 2008, No. 331, § 1.

LA. REV. STAT. ANN. § 14:81 (2013). Indecent behavior with juveniles

A. Indecent behavior with juveniles is the commission of any of the following acts with the intention of arousing or gratifying the sexual desires of either person:

(1) Any lewd or lascivious act upon the person or in the presence of any child under the age of seventeen, where there is an age difference of greater than two years between the two persons. Lack of knowledge of the child's age shall not be a defense; or

(2) The transmission, delivery or utterance of any textual, visual, written, or oral communication depicting lewd or lascivious conduct, text, words, or images to any person reasonably believed to be under the age of seventeen and reasonably believed to be at least two years younger than the offender. It shall not be a defense that the person who actually receives the transmission is not under the age of seventeen.

B. The trial judge shall have the authority to issue any necessary orders to protect the safety of the child during the pendency of the criminal action and beyond its conclusion.

C. For purposes of this Section, “textual, visual, written, or oral communication” means any communication of any kind, whether electronic or otherwise, made through the use of the United States mail, any private carrier, personal courier, computer online service, Internet service, local bulletin board service, Internet chat room, electronic mail, online messaging service, or personal delivery or contact.

D. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, free over-the-air television broadcast station, an Internet provider, or commercial on-line service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial on-line services.

E. An offense committed under this Section and based upon the transmission and receipt of textual, visual, written, or oral communication may be deemed to have been committed where the communication was originally sent, originally received, or originally viewed by any person.

F. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.

G. Any evidence resulting from the commission of a crime under this Section shall constitute contraband.

H. (1) Whoever commits the crime of indecent behavior with juveniles shall be fined not more than five thousand dollars, or imprisoned with or without hard labor for not more than seven years, or both, provided that the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.

(2) Whoever commits the crime of indecent behavior with juveniles on a victim under the age of thirteen when the offender is seventeen years of age or older, shall be punished by imprisonment at hard labor for not less than two nor more than twenty-five years. At least two years of the sentence imposed shall be served without benefit of parole, probation, or suspension of sentence.

(3)(a) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(b) The personal property made subject to seizure and sale pursuant to Subparagraph (a) of this Paragraph may include, but shall not be limited to, electronic communication devices, computers, computer related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

CREDIT(S)

Amended by Acts 1956, No. 450, § 1; Acts 1968, No. 647, § 1, eff. July 20, 1968, at 1:30 P.M; Acts 1977, No. 537, § 1; Acts 1984, No. 423, § 1; Acts 1986, No. 406, § 1; Acts 1990, No. 590, § 1; Acts 1997, No. 743, § 1; Acts 2006, No. 103, § 1; Acts 2006, No. 224, § 1; Acts 2009, No. 198, § 1; Acts 2010, No. 763, § 1.

LA. REV. STAT. ANN. § 14:81.2 (2013). Molestation of a juvenile

A. (1) Molestation of a juvenile is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the person or in the presence of any child under the

age of seventeen, where there is an age difference of greater than two years between the two persons, with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the juvenile. Lack of knowledge of the juvenile's age shall not be a defense.

(2) Molestation of a person with a physical or mental disability is the commission by anyone over the age of seventeen of any lewd or lascivious act upon the victim or in the presence of any victim with the intention of arousing or gratifying the sexual desires of either person, by the use of force, violence, duress, menace, psychological intimidation, threat of great bodily harm, or by the use of influence by virtue of a position of control or supervision over the victim, when any of the following conditions exist:

(a) The victim has paraplegia, quadriplegia, or is otherwise physically incapable of preventing the act due to a physical disability.

(b) The victim is incapable, through unsoundness of mind, of understanding the nature of the act, and the offender knew or should have known of the victim's incapacity.

(c) The victim is sixty-five years of age or older.

B. (1) Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, shall be fined not more than five thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than ten years, or both. The defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with the provisions of Code of Criminal Procedure Article 893.

(2) Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, and when the offender has control or supervision over the juvenile, shall be fined not more than ten thousand dollars, or imprisoned, with or without hard labor, for not less than five nor more than twenty years, or both. The defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with Code of Criminal Procedure Article 893.

(3)(a) Whoever commits the crime of molestation of a juvenile, when the victim is thirteen years of age or older but has not yet attained the age of seventeen, and when the offender is an educator of the juvenile, shall be fined not more than ten thousand dollars,

or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both. At least five years of the sentence imposed shall be without the benefit of parole, probation, or suspension of sentence, and the defendant shall not be eligible to have his conviction set aside or his prosecution dismissed in accordance with Code of Criminal Procedure Article 893.

(b) For purposes of this Subsection, “educator” means any teacher or instructor, administrator, staff person, or employee of any public or private elementary, secondary, vocational-technical training, special, or postsecondary school or institution, including any teacher aide, paraprofessional, school bus driver, food service worker, and other clerical, custodial, or maintenance personnel employed by a private, city, parish, or other local public school board.

C. (1) Whoever commits the crime of molestation of a juvenile by violating the provisions of Paragraph (A)(1) of this Section, when the incidents of molestation recur during a period of more than one year, shall, on first conviction, be fined not more than ten thousand dollars or imprisoned, with or without hard labor, for not less than five nor more than forty years, or both. At least five years of the sentence imposed shall be without benefit of parole, probation, or suspension of sentence. After five years of the sentence have been served, the offender, who is otherwise eligible, may be eligible for parole if a licensed psychologist, medical psychologist, or a licensed clinical social worker or a board-certified psychiatrist, after psychological examination, including testing, approves.

(2) Conditions of parole shall include treatment in a qualified sex offender program for a minimum of five years, or until expiration of sentence, whichever comes first. The state shall be responsible for the cost of testing, but the offender shall be responsible for the cost of the treatment program. It shall also be a condition of parole that the offender be prohibited from being alone with a child without the supervision of another adult.

(3) For purposes of this Subsection, a “qualified sex offender program” means one which includes both group and individual therapy and arousal reconditioning. Group therapy shall be conducted by two therapists, one male and one female, at least one of whom is licensed as a psychologist or medical psychologist or is board certified as a psychiatrist or clinical social worker.

D. (1) Whoever commits the crime of molestation of a juvenile when the victim is under the age of thirteen years shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

(2) Whoever commits the crime of molestation of a person with a physical or mental disability shall be imprisoned at hard labor for not less than twenty-five years nor more than ninety-nine years. At least twenty-five years of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

(3) Upon completion of the term of imprisonment imposed in accordance with Paragraphs (1) and (2) of this Subsection, the offender shall be monitored by the Department of Public Safety and Corrections through the use of electronic monitoring equipment for the remainder of his natural life.

(4) Unless it is determined by the Department of Public Safety and Corrections, pursuant to rules adopted in accordance with the provisions of this Subsection, that a sexual offender is unable to pay all or any portion of such costs, each sexual offender to be electronically monitored shall pay the cost of such monitoring.

(5) The costs attributable to the electronic monitoring of an offender who has been determined unable to pay shall be borne by the department if, and only to the degree that, sufficient funds are made available for such purpose whether by appropriation of state funds or from any other source.

(6) The Department of Public Safety and Corrections shall develop, adopt, and promulgate rules in the manner provided in the Administrative Procedure Act [FN1] that provide for the payment of such costs. Such rules shall contain specific guidelines which shall be used to determine the ability of the offender to pay the required costs and shall establish the reasonable costs to be charged. Such rules may provide for a sliding scale of payment so that an offender who is able to pay a portion, but not all, of such costs may be required to pay such portion.

E. (1) In addition, the court shall order that the personal property used in the commission of the offense shall be seized and impounded, and after conviction, sold at public sale or public auction by the district attorney in accordance with R.S. 15:539.1.

(2) The personal property made subject to seizure and sale pursuant to Paragraph (1) of this Subsection may include but shall not be limited to, electronic communication devices, computers, computer-related equipment, motor vehicles, photographic equipment used to record or create still or moving visual images of the victim that are recorded on paper, film, video tape, disc, or any other type of digital recording media.

CREDIT(S)

Added by Acts 1984, No. 220, § 1. Amended by Acts 1990, No. 590, § 1; Acts 1991, No. 925, § 1; Acts 1999, No. 1309, § 2, eff. Jan. 1, 2000; Acts 2006, No. 36, § 1; Acts 2006, No. 103, § 1; Acts 2006, No. 325, § 2; Acts 2008, No. 33, § 1; Acts 2008, No. 426, § 1; Acts 2009, No. 192, § 1, eff. June 30, 2009; Acts 2010, No. 763, § 1; Acts 2011, No. 67, § 1.

LA. REV. STAT. ANN. § 14:81.4 (2013). Prohibited sexual conduct between educator and student

A. Prohibited sexual conduct between an educator and a student is committed when any of the following occur:

(1) An educator has sexual intercourse with a person who is seventeen years of age or older, but less than twenty-one years of age, where there is an age difference of greater than four years between the two persons, when the victim is not the spouse of the offender and is a student at the school where the educator is assigned, employed, or working at the time of the offense.

(2) An educator commits any lewd or lascivious act upon a student or in the presence of a student who is seventeen years of age or older, but less than twenty-one years of age, where there is an age difference of greater than four years between the two persons, with the intention of gratifying the sexual desires of either person, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense.

(3) An educator intentionally engages in the touching of the anus or genitals of a student seventeen years of age or older, but less than twenty-one years of age, where there is an age difference of greater than four years between the two persons, using any instrumentality or any part of the body of the educator, or the touching of the anus or genitals of the educator by a person seventeen years of age or older, but less than twenty-one years of age, where there is an age difference of greater than four years between the two persons, when the victim is a student at the school in which the educator is assigned, employed, or working at the time of the offense using any instrumentality or any part of the body of the student.

B. As used in this Section:

(1) “Educator” means any administrator, coach, instructor, paraprofessional, student aide, teacher, or teacher aide at any public or private school, assigned, employed, or working at

the school or school system where the victim is enrolled as a student on a full-time, part-time, or temporary basis.

(2) “School” means a public or nonpublic elementary or secondary school or learning institution which shall not include universities and colleges.

(3) “Sexual intercourse” means anal, oral, or vaginal sexual intercourse. Emission is not necessary, and penetration, however slight, is sufficient to complete the crime.

(4) “Student” includes students enrolled in a school who are seventeen years of age or older, but less than twenty-one years of age.

C. The consent of a student, whether or not that student is seventeen years of age or older, shall not be a defense to any violation of this Section.

D. Lack of knowledge of the student's age shall not be a defense.

E. (1) Whoever violates the provisions of this Section shall be fined not more than one thousand dollars, or imprisoned for not more than six months, or both.

(2) For a second or subsequent offense, an offender may be fined not more than five thousand dollars and shall be imprisoned, with or without hard labor, for not less than one year nor more than five years.

F. Notwithstanding any claim of privileged communication, any educator having cause to believe that prohibited sexual conduct between an educator and student shall immediately report such conduct to a local or state law enforcement agency.

G. No cause of action shall exist against any person who in good faith makes a report, cooperates in any investigation arising as a result of such report, or participates in judicial proceedings arising out of such report, and such persons shall have immunity from civil or criminal liability that otherwise might be incurred or imposed. This immunity shall not be extended to any person who makes a report known to be false or with reckless disregard for the truth of the report.

H. In any action to establish damages against a defendant who has made a false report of prohibited sexual conduct between an educator and student, the plaintiff shall bear the burden of proving that the defendant who filed the false report knew the report was false or that the report was filed with reckless disregard for the truth of the report. A plaintiff who fails to meet the burden of proof set forth in this Subsection shall pay all court costs and attorney fees of the defendant.

CREDIT(S)

Added by Acts 2007, No. 363, § 1. Amended by Acts 2009, No. 210, § 1, eff. Sept. 1, 2009.

LA. REV. STAT. ANN. § 14:89 (2013). Crime against nature

A. Crime against nature is the unnatural carnal copulation by a human being with another of the same sex or opposite sex or with an animal, except that anal sexual intercourse between two human beings shall not be deemed as a crime against nature when done under any of the circumstances described in R.S. 14:41, 14:42, 14:42.1 or 14:43.

Emission is not necessary; and, when committed by a human being with another, the use of the genital organ of one of the offenders of whatever sex is sufficient to constitute the crime.

B. (1) Whoever violates the provisions of this Section shall be fined not more than two thousand dollars, imprisoned, with or without hard labor, for not more than five years, or both.

(2) Whoever violates the provisions of this Section with a person under the age of eighteen years shall be fined not more than fifty thousand dollars, imprisoned at hard labor for not less than fifteen years nor more than fifty years, or both.

(3) Whoever violates the provisions of this Section with a person under the age of fourteen years shall be fined not more than seventy-five thousand dollars, imprisoned at hard labor for not less than twenty-five years nor more than fifty years, or both.

C. It shall be an affirmative defense to prosecution for a violation of this Section that, during the time of the alleged commission of the offense, the defendant was a victim of trafficking of children for sexual purposes as provided in R.S. 14:46.3(E).

CREDIT(S)

Amended by Acts 1975, No. 612, § 1; Acts 1982, No. 703, § 1; Acts 2010, No. 882, § 1; Acts 2012, No. 446, § 1; 2013, No. 261, §1, effective August 15, 2013.

LA. REV. STAT. ANN. § 14:89.1 (2013). Aggravated crime against nature

A. Aggravated crime against nature is crime against nature committed under any one or more of the following circumstances:

(1) When the victim resists the act to the utmost, but such resistance is overcome by force;

(2) When the victim is prevented from resisting the act by threats of great and immediate bodily harm accompanied by apparent power of execution;

(3) When the victim is prevented from resisting the act because the offender is armed with a dangerous weapon; or

(4) When through idiocy, imbecility, or any unsoundness of mind, either temporary or permanent, the victim is incapable of giving consent and the offender knew or should have known of such incapacity;

(5) When the victim is incapable of resisting or of understanding the nature of the act, by reason of stupor or abnormal condition of mind produced by a narcotic or anesthetic agent, administered by or with the privity of the offender; or when he has such incapacity, by reason of a stupor or abnormal condition of mind from any cause, and the offender knew or should have known of such incapacity; or

(6) When the victim is under the age of seventeen years and the offender is at least three years older than the victim.

B. Whoever commits the crime of aggravated crime against nature shall be imprisoned at hard labor for not less than three nor more than fifteen years, such prison sentence to be without benefit of suspension of sentence, probation or parole.

CREDIT(S)

Added by Acts 1962, No. 60, § 1. Amended by Acts 1979, No. 125, § 1; Acts 1984, No. 683, § 1.

LA. REV. STAT. ANN. § 14:92 (2013). Contributing to the delinquency of juveniles

A. Contributing to the delinquency of juveniles is the intentional enticing, aiding, soliciting, or permitting, by anyone over the age of seventeen, of any child under the age of seventeen, and no exception shall be made for a child who may be emancipated by marriage or otherwise, to:

- (1) Beg, sing, sell any article or play any musical instrument in any public place for the purpose of receiving alms.
- (2) Associate with any vicious or disreputable persons, or frequent places where the same may be found.
- (3) Visit any place where beverages of either high or low alcoholic content are the principal commodity sold or given away.
- (4) Visit any place where any gambling device is found, or where gambling habitually occurs.
- (5) Habitually trespass where it is recognized he has no right to be.
- (6) Use any vile, obscene or indecent language.
- (7) Perform any sexually immoral act.
- (8) Absent himself or remain away, without authority of his parents or tutor, from his home or place of abode.
- (9) Violate any law of the state or ordinance of any parish or village, or town or city of the state.
- (10) Visit any place where sexually indecent and obscene material, of any nature, is offered for sale, displayed or exhibited.

(11)(a) Become involved in the commission of a crime of violence as defined in R.S. 14:2(B) which is a felony or a violation of the Uniform Controlled Dangerous Substances Law which is a felony.

(b) Become involved in the commission of any other felony not enumerated in Subparagraph (a) of this Paragraph.

B. Lack of knowledge of the juvenile's age shall not be a defense.

C. Whoever commits the crime of contributing to the delinquency of a juvenile shall be fined not more than five hundred dollars, or imprisoned for not more than six months, or both.

D. Whoever is charged and convicted of contributing to the delinquency of a juvenile under Paragraph (7) of Subsection A of this Section shall be fined not more than one thousand dollars, or imprisoned with or without hard labor for not more than two years, or both.

E. (1) Whoever is charged and convicted of contributing to the delinquency of a juvenile under Subparagraph (a) of Paragraph (11) of Subsection A of this Section shall be imprisoned at hard labor for not less than two years and for not more than ten years or imprisoned according to the sentence of imprisonment for the underlying felony, whichever is less.

(2) Whoever is charged and convicted of contributing to the delinquency of a juvenile under Subparagraph (b) of Paragraph (11) of Subsection A of this Section shall be fined not more than one thousand dollars or imprisoned with or without hard labor for not more than two years, or both.

(3) If a parent or legal guardian of a juvenile is charged and convicted of contributing to the delinquency of the juvenile under Paragraph (11) of Subsection A of this Section and sentenced pursuant to the provisions of Paragraph (1) of this Subsection, at least one year of the sentence imposed shall be served without benefit of probation, parole, or suspension of sentence.

(4) If a parent or legal guardian is sentenced to imprisonment pursuant to the provisions of Paragraph (2) of this Subsection, the following shall apply:

(a) If a parent or legal guardian is sentenced to imprisonment for six months or less, the sentence shall be without benefit of probation, parole, or suspension of sentence.

(b) If a parent or legal guardian is sentence to imprisonment for more than six months, at least six months shall be without probation, parole, or suspension of sentence.

CREDIT(S)

Amended by Acts 1962, No. 394, § 1; Acts 1966, No. 481, § 1; Acts 1966, No. 532, § 1; Acts 1968, No. 486, § 1; Acts 1968, No. 647, § 1, eff. July 20, 1968, at 1:30 P.M; Acts 1976, No. 121, §§ 1, 2; Acts 1993, No. 526, § 1; Acts 1994, 3rd Ex.Sess., No. 74, § 1; Acts 1995, No. 1290, § 1; Acts 2009, No. 261, § 1.

LA. REV. STAT. ANN. § 14:92.1 (2013). Encouraging or contributing to child delinquency, dependency, or neglect; penalty; suspension of sentence; definitions

A. (1) In all cases where any child shall be a delinquent, dependent, or neglected child, as defined in the statutes of this state or by this Section, irrespective of whether any former proceedings have been had to determine the status of such child, the parent or parents, legal guardian, or any person having the custody of such child, or any other person or persons who shall by any act encourage, cause, or contribute to the dependency or delinquency of such child, or who acts in conjunction with such child in the acts which cause such child to be dependent or delinquent, shall be punished by a fine not exceeding one thousand dollars, or by imprisonment for not more than six months, or by both fine and imprisonment.

(2) The court in which the case is heard may suspend the sentence for violation of the provisions of this Section, and impose conditions upon the defendant as to his future conduct, and may make such suspension dependent upon the fulfillment by the defendant of such conditions. In the case of the breach of such conditions or any part of them, the court may impose sentence as though there had been no such suspension.

(3) The court may also, as a condition of such suspension, require a bond in such sum as the court may designate, to be approved by the judge requiring it, to secure the performance by such person of the conditions placed by the courts on such suspension. The bond by its terms shall be made payable to the district judge of the parish in which the prosecution is pending, and any money received from a breach of any of the provisions of the bond shall be paid into the parish treasury. The provisions of law regulating forfeiture of appearance bonds shall govern so far as they are applicable.

(4) Exclusive jurisdiction of the offense defined in this Section is hereby conferred on juvenile courts, in accordance with the provisions of law establishing such courts.

B. By the term “delinquency”, as used in this section, is meant any act which tends to debase or injure the morals, health or welfare of a child; drinking beverages of low alcoholic content or beverages of high alcoholic content; the use of narcotics, going into or remaining in any bawdy house, assignation house, disorderly house or road house, hotel, public dance hall, or other gathering place where prostitutes, gamblers or thieves are permitted to enter and ply their trade; or associating with thieves and immoral persons, or enticing a minor to leave home or to leave the custody of its parents, guardians or persons standing in lieu thereof, without first receiving the consent of the parent, guardian, or other person; or begging, singing, selling any article; or playing any musical instrument in any public place for the purpose of receiving alms; or habitually trespassing where it is recognized he has no right to be; or using any vile, obscene, or indecent language; or performing any sexually immoral act; or violating any law of the state ordinance of any village, town, city, or parish of the state.

The term “juvenile”, as used in this section, refers to any child under the age of seventeen. Lack of knowledge of the juvenile's age shall not be a defense.

CREDIT(S)

Added by Acts 1954, No. 624, § 1. Amended by Acts 1960, No. 505, § 1; Acts 1966, No. 480, § 1; Acts 1968, No. 647, § 1, eff. July 20, 1968, at 1:30 P.M; Acts 1991, No. 667, § 1.

LA. REV. STAT. ANN. § 14:283 (2013). Video voyeurism; penalties

A. Video voyeurism is:

(1) The use of any camera, videotape, photo-optical, photo-electric, or any other image recording device for the purpose of observing, viewing, photographing, filming, or videotaping a person where that person has not consented to the observing, viewing, photographing, filming, or videotaping and it is for a lewd or lascivious purpose; or

(2) The transfer of an image obtained by activity described in Paragraph (1) of this Subsection by live or recorded telephone message, electronic mail, the Internet, or a commercial online service.

B. (1) Except as provided in Paragraphs (3) and (4) of this Subsection, whoever commits the crime of video voyeurism shall, upon a first conviction thereof, be fined not more than two thousand dollars or imprisoned, with or without hard labor, for not more than two years, or both.

(2) On a second or subsequent conviction, the offender shall be fined not more than two thousand dollars and imprisoned at hard labor for not less than six months nor more than three years without benefit of parole, probation, or suspension of sentence.

(3) Whoever commits the crime of video voyeurism when the observing, viewing, photographing, filming, or videotaping is of any vaginal or anal sexual intercourse, actual or simulated sexual intercourse, masturbation, any portion of the female breast below the top of the areola or of any portion of the pubic hair, anus, cleft of the buttocks, vulva, or genitals shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than one year or more than five years, without benefit of parole, probation, or suspension of sentence.

(4) Whoever commits the crime of video voyeurism when the observing, viewing, photographing, filming, or videotaping is of any child under the age of seventeen with the intention of arousing or gratifying the sexual desires of the offender shall be fined not more than ten thousand dollars and be imprisoned at hard labor for not less than two years or more than ten years without benefit of parole, probation, or suspension of sentence.

C. The provisions of this Section shall not apply to the transference of such images by a telephone company, cable television company, or any of its affiliates, an Internet provider, or commercial online service provider, or to the carrying, broadcasting, or performing of related activities in providing telephone, cable television, Internet, or commercial online services.

D. After the institution of prosecution, access to and the disposition of any material seized as evidence of this offense shall be in accordance with R.S. 46:1845.

E. Any evidence resulting from the commission of video voyeurism shall be contraband.

F. A violation of the provisions of this Section shall be considered a sex offense as defined in R.S. 15:541. Whoever commits the crime of video voyeurism shall be required

to register as a sex offender as provided for in Chapter 3-B of Title 15 of the Louisiana Revised Statutes of 1950.

CREDIT(S)

Added by Acts 1999, No. 1240, § 1. Amended by Acts 2003, No. 690, § 1; Acts 2003, No. 1245, § 1.

MAINE

ME. REV. STAT. ANN. tit. 17-A, §253 (2013). Gross sexual assault

1. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The other person submits as a result of compulsion, as defined in section 251, subsection 1, paragraph E. Violation of this paragraph is a Class A crime;

B. The other person, not the actor's spouse, has not in fact attained the age of 14 years. Violation of this paragraph is a Class A crime; or

C. The other person, not the actor's spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

A. The actor has substantially impaired the other person's power to appraise or control the other person's sexual acts by furnishing, as defined in section 1101, subsection 18, paragraph A, administering or employing drugs, intoxicants or other similar means. Violation of this paragraph is a Class B crime;

B. The actor compels or induces the other person to engage in the sexual act by any threat. Violation of this paragraph is a Class B crime;

C. The other person suffers from mental disability that is reasonably apparent or known to the actor, and which in fact renders the other person substantially incapable of

appraising the nature of the contact involved or of understanding that the person has the right to deny or withdraw consent. Violation of this paragraph is a Class B crime;

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual act. Violation of this paragraph is a Class B crime;

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime;

F. The other person, not the actor's spouse, has not in fact attained the age of 18 years and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class C crime;

G. The other person, not the actor's spouse, has not attained the age of 18 years and is a resident in or attending a children's home, child care facility, facility operated by a family child care provider, children's residential care facility, drug treatment center, youth camp licensed under Title 22, section 2495 or similar school, facility or institution regularly providing care or services for children, and the actor is a teacher, employee or other person having instructional, supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class C crime;

H. The other person has not in fact attained the age of 18 years and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term care and welfare of that other person. Violation of this paragraph is a Class B crime;

I. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class C crime;

J. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes

the other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

K. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class C crime; or

L. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime.

3. It is a defense to a prosecution under subsection 2, paragraph A that the other person voluntarily consumed or allowed administration of the substance with knowledge of its nature, except that it is no defense when:

A. The other person is a patient of the actor and has a reasonable belief that the actor is administering the substance for medical or dental examination or treatment; or

B. The other person is in fact 14 or 15 years of age.

4. Repealed. Laws 2001, c. 383, § 18, eff. Jan. 31, 2003.

5. Repealed. Laws 2001, c. 383, § 19, eff. Jan. 31, 2003.

6. In using a sentencing alternative involving a term of imprisonment for a person convicted of violating this section, a court shall, in determining the maximum period of incarceration as the 2nd step in the sentencing process, treat each prior Maine conviction for a violation of this section as an aggravating sentencing factor.

A. When the sentencing class for a prior conviction under this section is Class A, the court shall enhance the basic period of incarceration by a minimum of 4 years of imprisonment.

B. When the sentencing class for a prior conviction under this section is Class B, the court shall enhance the basic period of incarceration by a minimum of 2 years of imprisonment.

C. When the sentencing class for a prior conviction under this section is Class C, the court shall enhance the basic period of incarceration by a minimum of one year of imprisonment.

In arriving at the final sentence as the 3rd step in the sentencing process, the court may not suspend that portion of the maximum term of incarceration based on a prior conviction.

7. If the State pleads and proves that a violation of subsection 1 or subsection 2 was committed in a safe children zone, the court, in determining the appropriate sentence, shall treat this as an aggravating sentencing factor.

CREDIT(S)

1975, c. 499, § 1, eff. May 1, 1976; 1975, c. 740, §§ 48, 49, eff. May 1, 1976; 1979, c. 701, § 21; 1981, c. 252, § 3; 1983, c. 326, §§ 1 to 4; 1985, c. 247, § 2; 1985, c. 414, §§ 2, 3; 1985, c. 495, §§ 7, 8; 1985, c. 544, eff. Feb. 28, 1986; 1985, c. 737, § A, 41, eff. April 18, 1986; 1987, c. 255, § 2; 1989, c. 401, § A, 4; 1991, c. 569; 1993, c. 432, § 1; 1993, c. 687, §§ 1 to 3; 1995, c. 429, § 1; 1995, c. 560, § K-82; 1997, c. 768, § 2; 2001, c. 354, § 3; 2001, c. 383, §§ 14 to 20, eff. Jan. 31, 2003; 2003, c. 711, § B-2; R.R.2003, c. 2, § 25; 2007, c. 102, § 1; 2007, c. 474, §§ 1, 2; 2009, c. 211, § B-15; 2011, c. 423, §§ 1 to 3; 2011, c. 464, § 5; 2011, c. 542, § A-11, eff. March 20, 2012; 2011, c. 691, § A-13, eff. May 22, 2012; 2013 c. 511, §2, eff. October 3, 2013.

ME. REV. STAT. ANN. tit. 17-A, § 254 (2013). Sexual abuse of minors

1. A person is guilty of sexual abuse of a minor if:

A. The person engages in a sexual act with another person, not the actor's spouse, who is either 14 or 15 years of age and the actor is at least 5 years older than the other person. Violation of this paragraph is a Class D crime;

A-1. The person violates paragraph A and the actor knows that the other person is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class C crime;

A-2. The person violates paragraph A and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class C crime;

B. Deleted. Laws 1989, c. 401, § A, 3.

C. The person is at least 21 years of age and engages in a sexual act with another person, not the actor's spouse, who is either 16 or 17 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;

D. The person violates paragraph C and the actor knows that the student is related to the actor within the 2nd degree of consanguinity. Violation of this paragraph is a Class D crime; or

E. The person violates paragraph C and the actor is at least 10 years older than the student. Violation of this paragraph is a Class D crime.

F. Repealed. Laws 2011, c. 464, § 8.

2. It is a defense to a prosecution under subsection 1, paragraphs A, A-1, A-2 and F, that the actor reasonably believed the other person is at least 16 years of age.

3. Deleted. Laws 2001, c. 383, § 21.

4. As used in this section, “related to the actor within the 2nd degree of consanguinity” has the meaning set forth in section 556.

CREDIT(S)

1975, c. 499, § 1, eff. May 1, 1976; 1975, c. 740, § 50, eff. May 1, 1976; 1985, c. 495, §§ 9, 10; 1989, c. 401, § A, 5; 1993, c. 451, § 1; 1995, c. 104, §§ 1 to 3; 1997, c. 460, §§ 2, 3; 2001, c. 383, § 21, eff. Jan. 31, 2003; 2003, c. 138, §§ 2 to 4; 2011, c. 464, §§ 6 to 8.

ME. REV. STAT. ANN. tit. 17-A, § 254-A (2013). Written notification not to pursue charges for sexual abuse of a minor

A prosecutor who elects not to commence a criminal proceeding for an alleged violation of section 254 shall, at the request of a parent, surrogate parent or guardian of the alleged victim, inform that person in writing of the reason for not commencing the proceeding.

CREDIT(S)

1995, c. 308, § 1; 2005, c. 328, § 14.

ME. REV. STAT. ANN. tit. 17-A, § 255-A (2013). Unlawful sexual contact

1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and:

A. The other person has not expressly or impliedly acquiesced in the sexual contact. Violation of this paragraph is a Class D crime;

B. The other person has not expressly or impliedly acquiesced in the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

C. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact. Violation of this paragraph is a Class D crime;

D. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual contact and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

E. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class C crime;

E-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older. Violation of this paragraph is a Class B crime;

F. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

F-1. The other person, not the actor's spouse, is in fact less than 12 years of age and the actor is at least 3 years older and the sexual contact includes penetration. Violation of this paragraph is a Class A crime;

F-2. The other person, not the actor's spouse, is in fact either 14 or 15 years of age and the actor is at least 10 years older than the other person. Violation of this paragraph is a Class D crime;

G. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime;

H. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the contact involved or of understanding that the other person has the right to deny or withdraw consent and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

I. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime;

J. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

K. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school,

facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime;

L. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

M. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class C crime;

N. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

O. The other person submits as a result of compulsion. Violation of this paragraph is a Class C crime;

P. The other person submits as a result of compulsion and the sexual contact includes penetration. Violation of this paragraph is a Class B crime;

Q. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime;

R. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the

organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism and the sexual contact includes penetration. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class C crime;

R-1. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime;

R-2. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

S. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;

T. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled and the sexual contact includes penetration. Violation of this paragraph is a Class D crime;

U. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime;

V. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;

W. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class D crime; or

X. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect and the sexual contact includes penetration. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class C crime.

CREDIT(S)

2001, c. 354, § 3; 2001, c. 383, § 23, eff. Jan. 31, 2003; R.R.2001, c. 1, § 51, eff. Oct. 1, 2001; 2003, c. 711, § B-3; R.R.2003, c. 2, § 26; 2005, c. 450, §§ 1, 2; 2007, c. 102, §§ 2, 3; 2011, c. 423, §§ 4 to 6; 2011, c. 464, §§ 9 to 11; 2011, c. 542, § A-12, eff. March 20, 2012; 2011, c. 691, §§ A-14, A-15, eff. May 22, 2012.

ME. REV. STAT. ANN. tit. 17-A, § 256 (2013). Visual sexual aggression against child

1. A person is guilty of visual sexual aggression against a child if:

A. For the purpose of arousing or gratifying sexual desire or for the purpose of causing affront or alarm, the actor, having in fact attained 18 years of age, exposes the actor's genitals to another person or causes the other person to expose that person's genitals to the actor and the other person, not the actor's spouse, has not in fact attained 14 years of age. Violation of this paragraph is a Class D crime;

B. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, exposes the actor's genitals to another person or causes the other person to expose that person's genitals to the actor and the other person, not the actor's

spouse, has not in fact attained 12 years of age. Violation of this paragraph is a Class C crime;

C. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person, not the actor's spouse and not having in fact attained 14 years of age, under circumstances in which a reasonable person would expect to be safe from such visual surveillance. Violation of this paragraph is a Class D crime; or

D. For the purpose of arousing or gratifying sexual desire, the actor, having in fact attained 18 years of age, intentionally engages in visual surveillance, aided or unaided by mechanical or electronic equipment, of the uncovered breasts, buttocks, genitals, anus or pubic area of another person, not the actor's spouse and not having in fact attained 12 years of age, under circumstances in which a reasonable person would expect to be safe from such visual surveillance. Violation of this paragraph is a Class C crime.

CREDIT(S)

1995, c. 72, § 1; 2003, c. 711, § B-4; 2005, c. 655, § 1; 2007, c. 688, § 1.

ME. REV. STAT. ANN. tit. 17-A, § 258 (2013). Sexual misconduct with a child under 14 years of age

1. A person is guilty of sexual misconduct with a child under 14 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained the age of 14 years, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class D crime.

1-A. A person is guilty of sexual misconduct with a child under 12 years of age if that person, having in fact attained 18 years of age, knowingly displays any sexually explicit materials to another person, not the actor's spouse, who has not in fact attained 12 years of age, with the intent to encourage the other person to engage in a sexual act or sexual contact. Violation of this subsection is a Class C crime.

2. As used in this section, “sexually explicit materials” means any book, magazine, print, negative, slide, motion picture, videotape or other mechanically reproduced visual material that the person knows or should know depicts a person, minor or adult, engaging in sexually explicit conduct, as that term is defined in section 281.

3. Repealed. Laws 2003, c. 711, § B-8.

CREDIT(S)

1997, c. 143, § 1; 2003, c. 711, §§ B-5 to B-8.

ME. REV. STAT. ANN. tit. 17-A, § 259-A (2013). Solicitation of a child to commit a prohibited act.

1. A person is guilty of soliciting a child to commit a prohibited act if:

A. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

(1) Is at least 16 years of age;

(2) Knows or believes that the other person is less than 14 years of age; and

(3) Is at least 3 years older than the age expressed by the other person.

Violation of this paragraph is a Class D crime; or

B. The actor, with the intent to engage in a prohibited act with the other person, knowingly solicits directly or indirectly that person by any means to engage in a prohibited act and the actor:

(1) Is at least 16 years of age;

(2) Knows or believes that the other person is less than 12 years of age; and

(3) Is at least 3 years older than the age expressed by the other person.

Violation of this paragraph is a Class C crime.

2. For purposes of this section, “prohibited act” means:

A. A sexual act;

B. Sexual contact; or

C. Sexual exploitation of a minor pursuant to section 282.

CREDIT(S)

2011, c. 597, § 3, eff. April 6, 2012.

ME. REV. STAT. ANN. tit. 17-A, § 260 (2013). Unlawful sexual touching

1. **Unlawful sexual touching.** A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:

A. The other person has not expressly or impliedly acquiesced in the sexual touching. Violation of this paragraph is a Class D crime;

B. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. Violation of this paragraph is a Class D crime;

C. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. Violation of this paragraph is a Class D crime;

D. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime;

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime;

F. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student. Violation of this paragraph is a Class D crime;

G. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class D crime;

H. The other person submits as a result of compulsion. Violation of this paragraph is a Class D crime;

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime;

J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime;

K. The actor is a psychiatrist, a psychologist or licensed as a social worker or purports to be a psychiatrist, a psychologist or licensed as a social worker to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime;

L. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the

organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; or

M. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. For the purposes of this paragraph, "domestic partners" means 2 unmarried adults who are domiciled together under a long-term arrangement that evidences a commitment to remain responsible indefinitely for each other's welfare. Violation of this paragraph is a Class D crime.

CREDIT(S)

2003, c. 138, § 5; R.R.2003, c. 2, § 27; 2005, c. 450, §§ 3 to 5; 2007, c. 102, § 4; 2011, c. 423, §§ 7 to 9; 2011, c. 464, § 12; 2011, c. 542, § A-13, eff. March 20, 2012; 2011, c. 691, § A-16, eff. May 22, 2012.

ME. REV. STAT. ANN. tit. 17-A, § 282 (2013). Sexual exploitation of minor

1. A person is guilty of sexual exploitation of a minor if:

A. Knowing or intending that the conduct will be photographed, the person intentionally or knowingly employs, solicits, entices, persuades, uses or compels another person, not that person's spouse, who is in fact a minor, to engage in sexually explicit conduct. Violation of this paragraph is a Class B crime;

B. The person violates paragraph A and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime;

C. The person violates paragraph A and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime;

D. Being a parent, legal guardian or other person having care or custody of another person who is in fact a minor, that person knowingly or intentionally permits that minor to engage in sexually explicit conduct, knowing or intending that the conduct will be photographed. Violation of this paragraph is a Class B crime;

E. The person violates paragraph D and, at the time of the offense, the person has one or more prior convictions under this section or for engaging in substantially similar conduct to that contained in this section in another jurisdiction. Violation of this paragraph is a Class A crime; or

F. The person violates paragraph D and the minor has not in fact attained 12 years of age. Violation of this paragraph is a Class A crime.

2. The following mandatory minimum terms of imprisonment apply to sexual exploitation of a minor.

A. A court shall impose upon a person convicted under subsection 1, paragraph A or D a sentencing alternative involving a term of imprisonment of at least 5 years.

B. A court shall impose upon a person convicted under subsection 1, paragraph B or E a sentencing alternative involving a term of imprisonment of at least 10 years.

The court may not suspend a minimum term of imprisonment imposed under this section unless it sets forth in detail, in writing, the reasons for suspending the sentence. The court shall consider the nature and circumstances of the crime, the physical and mental well-being of the minor and the history and character of the defendant and may only suspend the minimum term if the court is of the opinion that the exceptional features of the case justify the imposition of another sentence. Section 9-A governs the use of prior convictions when determining a sentence.

CREDIT(S)

2003, c. 711, § B-12; 2007, c. 476, §§ 4, 5.

MARYLAND

MD. CODE ANN., CRIM. LAW § 3-303 (2013). Rape in the first degree

Prohibited--In general

(a) A person may not:

(1) engage in vaginal intercourse with another by force, or the threat of force, without the consent of the other; and

(2)(i) employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

(ii) suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

(iii) threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping;

(iv) commit the crime while aided and abetted by another; or

(v) commit the crime in connection with a burglary in the first, second, or third degree.

Prohibited--Child kidnapping

(b) A person may not violate subsection (a) of this section while also violating § 3-503(a)(2) of this title involving a victim who is a child under the age of 16 years.

Prohibited--Children under age 13

(c) A person 18 years of age or older may not violate subsection (a) of this section involving a victim who is a child under the age of 13 years.

Penalty

(d)(1) Except as provided in paragraphs (2), (3), and (4) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life.

(2) A person who violates subsection (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole.

(3) A person who violates subsection (a) or (b) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment not exceeding life without the possibility of parole if the defendant was previously convicted of violating this section or § 3-305 of this subtitle.

(4)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (c) of this section is guilty of the felony of rape in the first degree and on conviction is subject to imprisonment for not less than 25 years and not exceeding life without the possibility of parole.

(ii) A court may not suspend any part of the mandatory minimum sentence of 25 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (e) of this section, the mandatory minimum sentence shall not apply.

Required notice

(e) If the State intends to seek a sentence of imprisonment for life without the possibility of parole under subsection (d)(2), (3), or (4) of this section, or imprisonment for not less than 25 years under subsection (d)(4) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2002, c. 187, § 1, eff. Oct. 1, 2002; Acts 2003, c. 21, § 1, eff. April 8, 2003; Acts 2005, c. 482, § 1, eff. Oct. 1, 2005; Acts 2006, c. 44, § 6, eff. April 8, 2006; Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2008, c. 36, § 6, eff. April 8, 2008; Acts 2008, c. 345, § 1, eff. Oct. 1, 2008; Acts 2009, c. 60, § 1, eff. April 14, 2009.

MD. CODE ANN., CRIM. LAW § 3-304 (2013). Rape in the second degree

Prohibited--In general

(a) A person may not engage in vaginal intercourse with another:

(1) by force, or the threat of force, without the consent of the other;

(2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual; or

(3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.

Prohibited--Children under age 13

(b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

Penalty

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment not exceeding 20 years.

(2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.

(ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

Required notice

(d) If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2010, c. 174, § 1, eff. Oct. 1, 2010; Acts 2010, c. 175, § 1, eff. Oct. 1, 2010; Acts 2010, c. 180, § 1, eff. Oct. 1, 2010; Acts 2010, c. 181, § 1, eff. Oct. 1, 2010; Acts 2013, c. 43, § 1, eff. April 9, 2013.

MD. CODE ANN., CRIM. LAW § 3-305 (2013). Sexual offense in the first degree

Prohibited--In general

(a) A person may not engage in vaginal intercourse with another:

(1) by force, or the threat of force, without the consent of the other;

(2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual; or

(3) if the victim is under the age of 14 years, and the person performing the act is at least 4 years older than the victim.

Prohibited--Children under age 13

(b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

Penalty

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates subsection (a) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment not exceeding 20 years.

(2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of rape in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.

(ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

Required notice

(d) If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2010, c. 174, § 1, eff. Oct. 1, 2010; Acts 2010, c. 175, § 1, eff. Oct. 1, 2010; Acts 2010, c. 180, § 1, eff. Oct. 1, 2010; Acts 2010, c. 181, § 1, eff. Oct. 1, 2010; Acts 2013, c. 43, § 1, eff. April 9, 2013.

MD. CODE ANN., CRIM. LAW § 3-306 (2013). Sexual offense in the second degree

Prohibited--In general

(a) A person may not engage in a sexual act with another:

(1) by force, or the threat of force, without the consent of the other;

(2) if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the sexual act knows or reasonably should know that the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual; or

(3) if the victim is under the age of 14 years, and the person performing the sexual act is at least 4 years older than the victim.

Prohibited--Children under age 13

(b) A person 18 years of age or older may not violate subsection (a)(1) or (2) of this section involving a child under the age of 13 years.

Penalty

(c)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment not exceeding 20 years.

(2)(i) Subject to subparagraph (iv) of this paragraph, a person 18 years of age or older who violates subsection (b) of this section is guilty of the felony of sexual offense in the second degree and on conviction is subject to imprisonment for not less than 15 years and not exceeding life.

(ii) A court may not suspend any part of the mandatory minimum sentence of 15 years.

(iii) The person is not eligible for parole during the mandatory minimum sentence.

(iv) If the State fails to comply with subsection (d) of this section, the mandatory minimum sentence shall not apply.

Required notice

(d) If the State intends to seek a sentence of imprisonment for not less than 15 years under subsection (c)(2) of this section, the State shall notify the person in writing of the State's intention at least 30 days before trial.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2006, 1st Sp. Sess., c. 4, § 1, eff. June 22, 2006; Acts 2007, c. 494, § 1, eff. Oct. 1, 2007; Acts 2007, c. 495, § 1, eff. Oct. 1, 2007; Acts 2010, c. 174, § 1, eff. Oct. 1, 2010; Acts 2010, c. 175, § 1, eff. Oct. 1, 2010; Acts 2010, c. 180, § 1, eff. Oct. 1, 2010; Acts 2010, c. 181, § 1, eff. Oct. 1, 2010; Acts 2013, c. 43, § 1, eff. April 9, 2013.

MD. CODE ANN., CRIM. LAW § 3-307 (2013). Sexual offense in the third degree

Prohibited

(a) A person may not:

(1)(i) engage in sexual contact with another without the consent of the other; and

(ii) 1. employ or display a dangerous weapon, or a physical object that the victim reasonably believes is a dangerous weapon;

2. suffocate, strangle, disfigure, or inflict serious physical injury on the victim or another in the course of committing the crime;

3. threaten, or place the victim in fear, that the victim, or an individual known to the victim, imminently will be subject to death, suffocation, strangulation, disfigurement, serious physical injury, or kidnapping; or

4. commit the crime while aided and abetted by another;

(2) engage in sexual contact with another if the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual, and the person performing the act knows or reasonably should know the victim is a mentally defective individual, a mentally incapacitated individual, or a physically helpless individual;

(3) engage in sexual contact with another if the victim is under the age of 14 years, and the person performing the sexual contact is at least 4 years older than the victim;

(4) engage in a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 21 years old; or

(5) engage in vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 21 years old.

Penalty

(b) A person who violates this section is guilty of the felony of sexual offense in the third degree and on conviction is subject to imprisonment not exceeding 10 years.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2006, c. 317, § 1, eff. Oct. 1, 2006.

MD. CODE ANN., CRIM. LAW § 3-308 (2013). Sexual offense in the fourth degree

“Person in a position of authority” defined

(a) In this section, “person in a position of authority”:

(1) means a person who:

(i) is at least 21 years old;

(ii) is employed as a full-time permanent employee by a public or private preschool, elementary school, or secondary school; and

(iii) because of the person's position or occupation, exercises supervision over a minor who attends the school; and

(2) includes a principal, vice principal, teacher, or school counselor at a public or private preschool, elementary school, or secondary school.

Prohibited--In general

(b) A person may not engage in:

(1) sexual contact with another without the consent of the other;

(2) except as provided in § 3-307(a)(4) of this subtitle, a sexual act with another if the victim is 14 or 15 years old, and the person performing the sexual act is at least 4 years older than the victim; or

(3) except as provided in § 3-307(a)(5) of this subtitle, vaginal intercourse with another if the victim is 14 or 15 years old, and the person performing the act is at least 4 years older than the victim.

Prohibited--Persons in a position of authority

(c)(1) Except as provided in § 3-307(a)(4) of this subtitle or subsection (b)(2) of this section, a person in a position of authority may not engage in a sexual act or sexual contact with a minor who, at the time of the sexual act or sexual contact, is a student enrolled at a school where the person in a position of authority is employed.

(2) Except as provided in § 3-307(a)(5) of this subtitle or subsection (b)(3) of this section, a person in a position of authority may not engage in vaginal intercourse with a minor

who, at the time of the vaginal intercourse, is a student enrolled at a school where the person in a position of authority is employed.

Penalty

(d)(1) Except as provided in paragraph (2) of this subsection, a person who violates this section is guilty of the misdemeanor of sexual offense in the fourth degree and on conviction is subject to imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both.

(2)(i) On conviction of a violation of this section, a person who has been convicted on a prior occasion not arising from the same incident of a violation of §§ 3-303 through 3-312 or § 3-315 of this subtitle or § 3-602 of this title is subject to imprisonment not exceeding 3 years or a fine not exceeding \$1,000 or both.

(ii) If the State intends to proceed against a person under subparagraph (i) of this paragraph, it shall comply with the procedures set forth in the Maryland Rules for the indictment and trial of a subsequent offender.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2004, c. 217, § 1, eff. Oct. 1, 2004; Acts 2006, c. 317, § 1, eff. Oct. 1, 2006; Acts 2011, c. 192, § 1, eff. Oct. 1, 2011; Acts 2011, c. 193, § 1, eff. Oct. 1, 2011.

MD. CODE ANN., CRIM. LAW § 3-309 (2013). Attempted rape in the first degree

Prohibited

(a) A person may not attempt to commit rape in the first degree.

Penalty

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding life.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

MD. CODE ANN., CRIM. LAW § 3-310 (2013). Attempted rape in the second degree

Prohibited

(a) A person may not attempt to commit rape in the second degree.

Penalty

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

MD. CODE ANN., CRIM. LAW § 3-311 (2013). Attempted sexual offense in the first degree

Prohibited

(a) A person may not attempt to commit a sexual offense in the first degree.

Penalty

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding life.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002.

MD. CODE ANN., CRIM. LAW § 3-312 (2013). Attempted sexual offense in the second degree

Prohibited

(a) A person may not attempt to commit a sexual offense in the second degree.

Penalty

(b) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002

MD. CODE ANN., CRIM. LAW § 3-314 (2013). Sexual conduct between correctional or Department of Juvenile Services employee and inmate or confined child

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2)(i) “Correctional employee” means a:

1. correctional officer, as defined in § 8-201 of the Correctional Services Article; or
2. managing official or deputy managing official of a correctional facility.

(ii) “Correctional employee” includes a sheriff, warden, or other official who is appointed or employed to supervise a correctional facility.

(3)(i) “Inmate” has the meaning stated in § 1-101 of this article.

(ii) “Inmate” includes an individual confined in a community adult rehabilitation center.

Prohibited--Correctional employee with inmate

(b)(1) This subsection applies to:

(i) a correctional employee;

(ii) any other employee of the Department of Public Safety and Correctional Services or a correctional facility;

(iii) an employee of a contractor providing goods or services to the Department of Public Safety and Correctional Services or a correctional facility; and

(iv) any other individual working in a correctional facility, whether on a paid or volunteer basis.

(2) A person described in paragraph (1) of this subsection may not engage in sexual contact, vaginal intercourse, or a sexual act with an inmate.

Prohibited--Juvenile Services employee with confined child

(c) A person may not engage in sexual contact, vaginal intercourse, or a sexual act with an individual confined in a child care institution licensed by the Department, a detention center for juveniles, or a facility for juveniles listed in § 9-226(b) of the Human Services Article.

Penalty

(d) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

Sentencing

(e) A sentence imposed for violation of this section may be separate from and consecutive to or concurrent with a sentence for another crime under §§ 3-303 through 3-312 of this subtitle.

CREDIT(S)

Added as Criminal Law § 3-313 by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Renumbered as Criminal Law § 3-314 by Acts 2002, c. 266, § 1, eff. Oct. 1, 2002. Amended by Acts 2003, c. 53, § 4, eff. July 1, 2003; Acts 2007, c. 8, § 1, eff. Oct. 1, 2007; Acts 2007, c. 458, § 1, eff. Oct. 1, 2007.

MD. CODE ANN., CRIM. LAW § 3-315 (2013). Continuing course of conduct with child

In general

(a) A person may not engage in a continuing course of conduct which includes three or more acts that would constitute violations of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle over a period of 90 days or more, with a victim who is under the age of 14 years at any time during the course of conduct.

Penalty

(b)(1) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 30 years.

(2) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence under § 3-602 of this title.

Required number of acts

(c) In determining whether the required number of acts occurred in violation of this section, the trier of fact:

(1) must determine only that the required number of acts occurred; and

(2) need not determine which acts constitute the required number of acts.

Merger of offenses

(d)(1) A person may not be charged with a violation of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle involving the same victim in the same proceeding as a violation of this section unless the other violation charged occurred outside the time period charged under this section.

(2) A person may not be charged with a violation of § 3-303, § 3-304, § 3-305, § 3-306, or § 3-307 of this subtitle involving the same victim unless the violation charged occurred outside the time period charged under this section.

CREDIT(S)

Added by Acts 2002, c. 278, § 2, eff. Oct. 1, 2002.

MD. CODE ANN., CRIM. LAW § 3-324 (2013). Sexual solicitation of minor

Definitions

(a) In this section, “solicit” means to command, authorize, urge, entice, request, or advise a person by any means, including:

(1) in person;

(2) through an agent or agency;

(3) over the telephone;

(4) through any print medium;

(5) by mail;

(6) by computer or Internet; or

(7) by any other electronic means.

Prohibited

(b) A person may not, with the intent to commit a violation of § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article, knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under § 3-304, § 3-306, or § 3-307 of this subtitle or § 11-304, § 11-305, or § 11-306 of this article.

Jurisdiction

(c) A violation of this section is considered to be committed in the State for purposes of determining jurisdiction if the solicitation:

(1) originated in the State; or

(2) is received in the State.

Penalty

(d) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$25,000 or both.

CREDIT(S)

Added by Acts 2004, c. 285, § 1, eff. Oct. 1, 2004. Amended by Acts 2007, c. 340, § 1, eff. Oct. 1, 2007; Acts 2007, c. 341, § 1, eff. Oct. 1, 2007.

MD. CODE ANN., CRIM. LAW § 3-602 (2013). Sexual abuse of a minor

Definitions

(a)(1) In this section the following words have the meanings indicated.

(2) “Family member” has the meaning stated in § 3-601 of this subtitle.

(3) “Household member” has the meaning stated in § 3-601 of this subtitle.

(4)(i) “Sexual abuse” means an act that involves sexual molestation or exploitation of a minor, whether physical injuries are sustained or not.

(ii) “Sexual abuse” includes:

1. incest;

2. rape;

3. sexual offense in any degree;

4. sodomy; and

5. unnatural or perverted sexual practices.

Prohibited

(b)(1) A parent or other person who has permanent or temporary care or custody or responsibility for the supervision of a minor may not cause sexual abuse to the minor.

(2) A household member or family member may not cause sexual abuse to a minor.

Penalty

(c) A person who violates this section is guilty of a felony and on conviction is subject to imprisonment not exceeding 25 years.

Sentencing

(d) A sentence imposed under this section may be separate from and consecutive to or concurrent with a sentence for:

(1) any crime based on the act establishing the violation of this section; or

(2) a violation of § 3-601 of this subtitle involving an act of abuse separate from sexual abuse under this section.

CREDIT(S)

Added by Acts 2002, c. 273, § 2, eff. Oct. 1, 2002. Amended by Acts 2003, c. 167, § 1, eff. Oct. 1, 2003.

MD. CODE ANN., CRIM. LAW § 11-209 (2013). Hiring minor for prohibited purpose

Prohibited

(a) A person may not hire, employ, or use an individual, if the person knows, or possesses facts under which the person should reasonably know, that the individual is a minor, to do or assist in doing an act described in § 11-203 of this subtitle.

Penalty

(b) A person who violates this section is guilty of a misdemeanor and on conviction is subject to:

(1) for a first violation, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

(2) for each subsequent violation, imprisonment not exceeding 3 years or a fine not exceeding \$5,000 or both.

CREDIT(S)

Added by Acts 2002, c. 26, § 2, eff. Oct. 1, 2002. Amended by Acts 2002, c. 45, § 1, eff. Oct. 1, 2002.

MASSACHUSETTS

MASS. ANN. LAWS ch. 265, § 13B (2013). Indecent assault and battery on child under age of 14; penalties.

Whoever commits an indecent assault and battery on a child under the age of 14 shall be punished by imprisonment in the state prison for not more than 10 years, or by imprisonment in the house of correction for not more than 2 1/2 years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.

CREDIT(S)

Added by St.1953, c. 299; Amended by St.1958, c. 189; St.1980, c. 459, § 4; St.1986, c. 187; St.1998, c. 194, § 236; St.2008, c. 205, § 1, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 13B1/2 (2013). Commission of indecent assault and battery on a child under the age of 14 during commission of certain offenses or by mandated reporters; penalties

Whoever commits an indecent assault and battery on a child under the age of 14 and:

(a) the indecent assault and battery was committed during the commission or attempted commission of the following offenses:-- (1) armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous weapon or assault with a dangerous weapon, as set forth in sections 15A and 15B of said chapter 265; (10) home invasion as set forth in section 18C

of said chapter 265; or (11) posing or exhibiting child in state of nudity or sexual conduct as set forth in section 29A of chapter 272; or

(b) at the time of commission of said indecent assault and battery, the defendant was a mandated reporter as is defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In a prosecution under this section, a child under the age of 14 years shall be deemed incapable of consenting to any conduct of the defendant for which such defendant is being prosecuted.

CREDIT(S)

Added by St.2008, c. 205, § 1, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 13B3/4 (2013). Commission of indecent assault and battery on a child under the age of 14 by certain previously convicted offenders; penalties

Whoever commits an indecent assault and battery on a child under the age of 14 and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14 as set forth in section 13B; aggravated indecent assault and battery on a child under 14 as set forth in section 13B 1/2 ; indecent assault and battery on a person 14 or older as set forth in section 13H; assault of a child with intent to commit rape as set forth in section 24B; rape of a child with force as set forth in section 22A; aggravated rape of a child with force as set forth in section 22B; rape and abuse of a child as set forth in section 23; aggravated rape and abuse of a child as set forth in section 23A; rape as set forth in section 22 or; a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction shall be prima facie evidence that the defendant before the court had been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

CREDIT(S)

Added by St.2008, c. 205, § 1, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 13L (2013). Wanton or reckless behavior creating a risk of serious bodily injury or sexual abuse to a child; duty to act; penalty

For the purposes of this section, the following words shall have the following meanings:--

“Child”, any person under 18 years of age.

“Serious bodily injury”, bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ, or substantial risk of death.

“Sexual abuse”, an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under 14 under section 13B 1/2 of said chapter 265; a repeat offense under section 13B 3/4 of said chapter 265; indecent assault and battery on a person age 14 or over under section 13H of said chapter 265; rape under section 22 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of

said chapter 265; assault with intent to commit rape under section 24 of said chapter 265; and assault of a child with intent to commit rape under section 24B of said chapter 265.

Whoever wantonly or recklessly engages in conduct that creates a substantial risk of serious bodily injury or sexual abuse to a child or wantonly or recklessly fails to take reasonable steps to alleviate such risk where there is a duty to act shall be punished by imprisonment in the house of correction for not more than 2 1/2 years.

For the purposes of this section, such wanton or reckless behavior occurs when a person is aware of and consciously disregards a substantial and unjustifiable risk that his acts, or omissions where there is a duty to act, would result in serious bodily injury or sexual abuse to a child. The risk must be of such nature and degree that disregard of the risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

CREDIT(S)

Added by St.2002, c. 322, § 2. Amended by St.2010, c. 267, §§ 52 to 54, eff. Nov. 5, 2010.

MASS. ANN. LAWS ch. 265, § 22A (2013). Rape of child; punishment

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, shall be punished by imprisonment in the state prison for life or for any term of years. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

CREDIT(S)

Added by St.1955, c. 763, § 2. Amended by St.1973, c. 925, § 77; St.1974, c. 474, § 2; St.1998, c. 180, § 60; St.1998, c. 194, § 237; St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 22B (2013). Rape of a child during commission of certain offenses or by use of force; penalties

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury and:

(a) the sexual intercourse or unnatural sexual intercourse is committed during the commission or attempted commission of any of the following offenses: (1) armed burglary as set forth in section 14 of chapter 266; (2) unarmed burglary as set forth in section 15 of said chapter 266; (3) breaking and entering as set forth in section 16 of said chapter 266; (4) entering without breaking as set forth in section 17 of said chapter 266; (5) breaking and entering into a dwelling house as set forth in section 18 of said chapter 266; (6) kidnapping as set forth in section 26 of chapter 265; (7) armed robbery as set forth in section 17 of said chapter 265; (8) unarmed robbery as set forth in section 19 of said chapter 265; (9) assault and battery with a dangerous weapon or assault with a dangerous weapon as set forth in sections 15A and 15B of said chapter 265; (10) home invasion as set forth in section 18C of said chapter 265; or (11) posing or exhibiting child in state of nudity or sexual conduct as set forth in section 29A of chapter 272;

(b) the sexual intercourse or unnatural sexual intercourse results in, or is committed by means of an act or acts resulting in, substantial bodily injury as defined in section 13J;

(c) the sexual intercourse or unnatural sexual intercourse is committed while the victim is tied, bound or gagged;

(d) the sexual intercourse or unnatural sexual intercourse is committed after the defendant administered, or caused to be administered, alcohol or a controlled substance by injection, inhalation, ingestion, or any other means to the victim without the victim's consent;

(e) the sexual intercourse or unnatural sexual intercourse is committed by a joint enterprise; or

(f) the sexual intercourse or unnatural sexual intercourse was committed in a manner in which the victim could contract a sexually transmitted disease or infection of which the defendant knew or should have known he was a carrier, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

CREDIT(S)

Added by St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 22C (2013). Rape of a child through use of force by certain previously convicted offenders; penalties

Whoever has sexual intercourse or unnatural sexual intercourse with a child under 16, and compels such child to submit by force and against his will or compels such child to submit by threat of bodily injury, and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14 as set forth in section 13B; aggravated indecent assault and battery on a child under 14 as set forth in section 13B 1/2 ; indecent assault and battery on a person 14 or older as set forth in section 13H; assault of a child with intent to commit rape as set forth in section 24B; rape of a child with force as set forth in section 22A; aggravated rape of a child with force as set forth in section 22B; rape and abuse of a child as set forth in section 23; aggravated rape and abuse of a child as set forth in section 23A; rape as set forth in section 22; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 20 years. The sentence imposed on such person shall not be reduced to less than 20 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release or furlough or receive any deduction from his sentence for good conduct until he shall have served 20 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

CREDIT(S)

Added by St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 23 (2013). Rape and abuse of child.

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age, shall be punished by imprisonment in the state prison for life

or for any term of years or, except as otherwise provided, for any term in a jail or house of correction. A prosecution commenced under this section shall neither be continued without a finding nor placed on file.

CREDIT(S)

Amended by St.1966, c. 291; St.1974, c. 474, § 3; St.1998, c. 194, § 238; St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 23A (2013). Rape and abuse of child aggravated by age difference between defendant and victim or by when committed by mandated reporters; penalties

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age and:

(a) there exists more than a 5 year age difference between the defendant and the victim and the victim is under 12 years of age;

(b) there exists more than a 10 year age difference between the defendant and the victim where the victim is between the age of 12 and 16 years of age; or

(c) at the time of such intercourse, was a mandated reporter as defined in section 21 of chapter 119, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 10 years. The sentence imposed on such person shall not be reduced to less than 10 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 10 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

CREDIT(S)

Added by St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 23B (2013). Rape and abuse of child by certain previously convicted offenders; penalties

Whoever unlawfully has sexual intercourse or unnatural sexual intercourse, and abuses a child under 16 years of age and has been previously convicted of or adjudicated delinquent or as a youthful offender for: indecent assault and battery on a child under 14

under section 13B; aggravated indecent assault and battery on a child under 14 under section 13B 1/2 ; indecent assault and battery on a person 14 or older under section 13H; assault of a child with intent to commit rape under section 24B; rape of a child with force under section 22A; aggravated rape of a child with force under section 22B; rape and abuse of a child under section 23; aggravated rape and abuse of a child under section 23A; rape under section 22; or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority, shall be punished by imprisonment in the state prison for life or for any term of years, but not less than 15 years. The sentence imposed on such person shall not be reduced to less than 15 years, or suspended, nor shall any person convicted under this section be eligible for probation, parole, work release, or furlough or receive any deduction from his sentence for good conduct until he shall have served 15 years of such sentence. Prosecutions commenced under this section shall neither be continued without a finding nor placed on file.

In any prosecution commenced pursuant to this section, introduction into evidence of a prior adjudication or conviction or a prior finding of sufficient facts by either certified attested copies of original court papers, or certified attested copies of the defendant's biographical and informational data from records of the department of probation, any jail or house of correction or the department of correction, shall be prima facie evidence that the defendant before the court has been convicted previously by a court of the commonwealth or any other jurisdiction. Such documentation shall be self-authenticating and admissible, after the commonwealth has established the defendant's guilt on the primary offense, as evidence in any court of the commonwealth to prove the defendant's commission of any prior conviction described therein. The commonwealth shall not be required to introduce any additional corroborating evidence or live witness testimony to establish the validity of such prior conviction.

CREDIT(S)

Added by St.2008, c. 205, § 2, eff. Oct. 22, 2008.

MASS. ANN. LAWS ch. 265, § 24B (2013). Assault of child; intent to commit rape; weapons; punishment

Whoever assaults a child under sixteen with intent to commit a rape, as defined in section thirty-nine of chapter two hundred and seventy-seven, shall be punished by imprisonment in the state prison for life or for any term of years; and whoever over the age of eighteen commits a subsequent such offense shall be punished by imprisonment in the state prison for life or for any term of years but not less than five years.

Whoever commits any offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for life or for any term of years, but not less than ten years. Whoever over the age of 18 commits a second or subsequent such offense shall be punished by

imprisonment in the state prison for life or for any term of years, but not less than 15 years.

CREDIT(S)

Added by St.1955, c. 763, § 3. Amended by St.1973, c. 925, § 78; St.1974, c. 474, § 6; St.1978, c. 379, § 2; St.1998, c. 180, § 62.

MASS. ANN. LAWS ch. 265, § 26 (2013). Kidnapping; weapons; child under age 16; punishment

Whoever, without lawful authority, forcibly or secretly confines or imprisons another person within this commonwealth against his will, or forcibly carries or sends such person out of this commonwealth, or forcibly seizes and confines or inveigles or kidnaps another person, with intent either to cause him to be secretly confined or imprisoned in this commonwealth against his will, or to cause him to be sent out of this commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than ten years or by a fine of not more than one thousand dollars and imprisonment in jail for not more than two years. Whoever commits any offence described in this section with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for life or for any term of years.

Whoever commits any offense described in this section while armed with a firearm, rifle, shotgun, machine gun or assault weapon shall be punished by imprisonment in the state prison for not less than ten years or in the house of correction for not more than two and one-half years. The provisions of the preceding sentence shall not apply to the parent of a child under 18 years of age who takes custody of such child. Whoever commits such offense described in this section while being armed with a firearm, rifle, shotgun, machine gun or assault weapon with the intent to extort money or other valuable thing thereby shall be punished by imprisonment in the state prison for life or for any term of years but not less than 20 years.

Whoever commits any offense described in this section while armed with a dangerous weapon and inflicts serious bodily injury thereby upon another person or who sexually assaults such person shall be punished by imprisonment in the state prison for not less than 25 years. For purposes of this paragraph the term “serious bodily injury” shall mean bodily injury which results in a permanent disfigurement, protracted loss or impairment of a bodily function, limb or organ or substantial risk of death. For purposes of this paragraph, the term “sexual assault” shall mean the commission of any act set forth in

sections 13B, 13B 1/2 , 13B 3/4 , 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B.

Whoever, without lawful authority, forcibly or secretly confines or imprisons a child under the age of 16 within the commonwealth against his will or forcibly carries or sends such person out of the commonwealth or forcibly seizes and confines or inveigles or kidnaps a child under the age of 16 with the intent either to cause him to be secretly confined or imprisoned in the commonwealth against his will or to cause him to be sent out of the commonwealth against his will or in any way held to service against his will, shall be punished by imprisonment in the state prison for not more than 15 years. The provisions of the preceding sentence shall not apply to the parent of a child under 16 years of age who takes custody of such child.

CREDIT(S)

Amended by St.1934, c. 1; St.1971, c. 900; St.1979, c. 465, § 1; St.1998, c. 180, § 63; St.1999, c. 74, §§ 11, 12; St.2010, c. 267, § 61, eff. Nov. 5, 2010.

MASS. ANN. LAWS ch. 265, § 26C (2013). Enticement of Children.

(a) As used in this section, the term “entice” shall mean to lure, induce, persuade, tempt, incite, solicit, coax or invite.

(b) Any one who entices a child under the age of 16, or someone he believes to be a child under the age of 16, to enter, exit or remain within any vehicle, dwelling, building, or other outdoor space with the intent that he or another person will violate section 13B, 13B 1/2 , 13B 3/4 , 13F, 13H, 22, 22A, 22B, 22C, 23, 23A, 23B, 24 or 24B of chapter 265, section 4A, 16, 28, 29, 29A, 29B, 29C, 35A, 53 or 53A of chapter 272, or any offense that has as an element the use or attempted use of force, shall be punished by imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 2 1/2 years, or by both imprisonment and a fine of not more than \$5,000.

CREDIT(S)

Added by St.2002, c. 385, § 3. Amended by St.2010, c. 267, §§ 62 to 64, eff. Nov. 4, 2010.

MASS. ANN. LAWS ch. 272, § 4 (2013). Inducing person under eighteen to have sexual intercourse.

Whoever induces any person under 18 years of age of chaste life to have unlawful sexual intercourse shall be punished by imprisonment in the state prison for not more than three years or in a jail or house of correction for not more than two and one-half years or by a fine of not more than \$1,000 or by both such fine and imprisonment.

CREDIT(S)

Amended by St.1998, c. 232, § 3.

MASS. ANN. LAWS ch. 272, § 29A (2013). Child Pornography; Enticement, Solicitation, Employment, Etc. of Children.

(a) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, and with lascivious intent, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to pose or be exhibited in a state of nudity, for the purpose of representation or reproduction in any visual material, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.

(b) Whoever, either with knowledge that a person is a child under eighteen years of age or while in possession of such facts that he should have reason to know that such person is a child under eighteen years of age, hires, coerces, solicits or entices, employs, procures, uses, causes, encourages, or knowingly permits such child to participate or engage in any act that depicts, describes, or represents sexual conduct for the purpose of representation or reproduction in any visual material, or to engage in any live performance involving sexual conduct, shall be punished by imprisonment in the state prison for a term of not less than ten nor more than twenty years, or by a fine of not less than ten thousand nor more than fifty thousand dollars, or by both such fine and imprisonment.

(c) In a prosecution under this section, a minor shall be deemed incapable of consenting to any conduct of the defendant for which said defendant is being prosecuted.

(d) For the purposes of this section, the determination whether the person in any visual material prohibited hereunder is under eighteen years of age may be made by the personal testimony of such person, by the testimony of a person who produced, processed, published, printed or manufactured such visual material that the child therein was known to him to be under eighteen years of age, or by expert medical testimony as to the age of the person based upon the person's physical appearance, by inspection of the visual material, or by any other method authorized by any general or special law or by any applicable rule of evidence.

CREDIT(S)

Added by St.1982, c. 364, § 2. Amended by St.1982, c. 603, § 4; St.1984, c. 189, § 165; St.1987, c. 294, §§ 1, 2; St.1988, c. 226, § 1.

MASS. ANN. LAWS ch. 272, § 35A (2013). Unnatural and lascivious acts with child under 16.

Whoever commits any unnatural and lascivious act with a child under the age of sixteen shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the state prison for not more than five years or in jail or the house of correction for not more than two and one half years, and whoever over the age of eighteen commits a second or subsequent such offence shall be sentenced to imprisonment in the state prison for a term of not less than five years.

CREDIT(S)

Added by St.1955, c. 763, § 4. Amended by St.1973, c. 925, § 79.

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MICH. COMP. LAWS SERV. § 750.13 (2013). Enticing away female under 16.

Sec. 13. Enticing away female under 16 years for purpose of marriage, etc.--Any person who shall take or entice away any female under the age of 16 years, from her father, mother, guardian, or other person having the legal charge of her person, without their consent, either for the purpose of prostitution, concubinage, sexual intercourse or marriage, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.

CREDIT(S)

P.A.1931, No. 328, § 13, Eff. Sept. 18. C.L.1948, § 750.13. C.L.1970, § 750.13.

MICH. COMP. LAWS SERV. § 750.136b (2013). Child abuse.

Sec. 136b. (1) As used in this section:

(a) “Child” means a person who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(b) “Cruel” means brutal, inhuman, sadistic, or that which torments.

(c) “Omission” means a willful failure to provide food, clothing, or shelter necessary for a child's welfare or willful abandonment of a child.

(d) “Person” means a child's parent or guardian or any other person who cares for, has custody of, or has authority over a child regardless of the length of time that a child is cared for, in the custody of, or subject to the authority of that person.

(e) “Physical harm” means any injury to a child's physical condition.

(f) “Serious physical harm” means any physical injury to a child that seriously impairs the child's health or physical well-being, including, but not limited to, brain damage, a skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprain, internal injury, poisoning, burn or scald, or severe cut.

(g) “Serious mental harm” means an injury to a child's mental condition or welfare that is not necessarily permanent but results in visibly demonstrable manifestations of a substantial disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life.

(2) A person is guilty of child abuse in the first degree if the person knowingly or intentionally causes serious physical or serious mental harm to a child. Child abuse in the first degree is a felony punishable by imprisonment for life or any term of years.

(3) A person is guilty of child abuse in the second degree if any of the following apply:

(a) The person's omission causes serious physical harm or serious mental harm to a child or if the person's reckless act causes serious physical harm or serious mental harm to a child.

(b) The person knowingly or intentionally commits an act likely to cause serious physical or mental harm to a child regardless of whether harm results.

(c) The person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results.

(4) Child abuse in the second degree is a felony punishable by imprisonment as follows:

(a) For a first offense, not more than 10 years.

(b) For a second or subsequent offense, not more than 20 years.

(5) A person is guilty of child abuse in the third degree if any of the following apply:

(a) The person knowingly or intentionally causes physical harm to a child.

(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, and the act results in physical harm to a child.

(6) Child abuse in the third degree is a felony punishable by imprisonment for not more than 2 years.

(7) A person is guilty of child abuse in the fourth degree if any of the following apply:

(a) The person's omission or reckless act causes physical harm to a child.

(b) The person knowingly or intentionally commits an act that under the circumstances poses an unreasonable risk of harm or injury to a child, regardless of whether physical harm results.

(8) Child abuse in the fourth degree is a misdemeanor punishable by imprisonment for not more than 1 year.

(9) This section does not prohibit a parent or guardian, or other person permitted by law or authorized by the parent or guardian, from taking steps to reasonably discipline a child, including the use of reasonable force.

(10) It is an affirmative defense to a prosecution under this section that the defendant's conduct involving the child was a reasonable response to an act of domestic violence in light of all the facts and circumstances known to the defendant at that time. The defendant has the burden of establishing the affirmative defense by a preponderance of the evidence. As used in this subsection, "domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

CREDIT(S)

P.A.1931, No. 328, § 136b, added by P.A.1988, No. 251, § 1, Eff. Sept. 1, 1988.
Amended by P.A.1999, No. 273, Eff. April 3, 2000; P.A.2008, No. 577, Eff. April 1, 2009; P.A.2012, No. 194, Eff. July 1, 2012.

MICH. COMP. LAWS SERV. § 750.136d (2013). Child abuse in the presence of another child; Dominick's Law

Sec. 136d. (1) A person who violates section 136b [FN1] in the presence of a child other than the child who is the victim of the violation is guilty of a felony punishable as follows:

(a) If the person violates section 136b(2) in the presence of another child, by imprisonment for life or any term of years.

(b) Except as provided in subdivision (c), if the person violates section 136b(4) in the presence of another child, by imprisonment for not more than 10 years.

(c) If the person violates section 136b(4) in the presence of another child on a second or subsequent occasion, by imprisonment for not more than 20 years.

(d) If the person violates section 136b(6) in the presence of another child, by imprisonment for not more than 2 years.

(2) A charge and conviction under this section do not prohibit a person from being charged with, convicted of, or sentenced for any other violation of law arising out of the same transaction as the violation of this section.

CREDIT(S)

P.A.1931, No.328, § 136d, added by P.A.2012, No. 194, Eff. July 1, 2012.

MICH. COMP. LAWS SERV. § 750.140 (2013). Exhibition, use, employment, etc., of child under age 16 in particular vocations, services, or occupations

Sec. 140. Any person having the care, custody, or control of any child under 16 years of age, who shall exhibit, use, or employ, or who shall apprentice, give away, let out, or otherwise dispose of the child to any person in or for the vocation, service, or occupation of rope or wire walking, gymnast, contortionist, rider, or acrobat, dancing, or begging in any place whatsoever, or for any obscene, indecent, or immoral purpose, exhibition, or practice whatsoever, or for any exhibition injurious to the health or dangerous to the life or limb of the child, or who shall cause, procure, or encourage the child to engage therein, and any person who shall take, receive, hire, employ, use, exhibit, or have in custody any child for any of the purposes mentioned in this section, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$1,000.00.

CREDIT(S)

Amended by P.A.2002, No. 672, Eff. March 31, 2003.

MICH. COMP. LAWS SERV. § 750.145a (2013). Accosting, enticing or soliciting child for immoral purpose.

Sec. 145a. A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$4,000.00, or both.

CREDIT(S)

Amended by P.A.2002, No. 45, Eff. June 1, 2002.

MICH. COMP. LAWS SERV. § 750.145b (2013). Accosting, enticing or soliciting child for immoral purpose; second or subsequent offenses

Sec. 145b. (1) A person convicted of violating section 145a [FN1] who has 1 or more prior convictions is guilty of a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$10, 000.00, or both.

(2) If the prosecuting attorney intends to seek an enhanced sentence based upon the defendant having 1 or more prior convictions, the prosecuting attorney shall include on the complaint and information a statement listing the prior conviction or convictions. The existence of the defendant's prior conviction or convictions shall be determined by the court, without a jury, at sentencing or at a separate hearing for that purpose before sentencing. The existence of a prior conviction may be established by any evidence relevant for that purpose, including, but not limited to, 1 or more of the following:

- (a) A copy of the judgment of conviction.
- (b) A transcript of a prior trial, plea-taking, or sentencing.
- (c) Information contained in a presentence report.
- (d) The defendant's statement.

(3) As used in this section, “prior conviction” means a violation of section 145a or a violation of a law of another state substantially corresponding to section 145a.

CREDIT(S)

Amended by P.A.2002, No. 45, Eff. June 1, 2002.

MICH. COMP. LAWS SERV. § 750.145c (2013). Child sexually abusive activity or material; offenses; penalties; application of section; affirmative defense; expert testimony; reporting by commercial film or photographic print processors; availability of evidence to defendant; local ordinances

Sec. 145c. (1) As used in this section:

- (a) “Access” means to intentionally cause to be viewed by or transmitted to a person.
- (b) “Appears to include a child” means that the depiction appears to include, or conveys the impression that it includes, a person who is less than 18 years of age, and the depiction meets either of the following conditions:
- (i) It was created using a depiction of any part of an actual person under the age of 18.
 - (ii) It was not created using a depiction of any part of an actual person under the age of 18, but all of the following apply to that depiction:
 - (A) The average individual, applying contemporary community standards, would find the depiction, taken as a whole, appeals to the prurient interest.
 - (B) The reasonable person would find the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value.
 - (C) The depiction depicts or describes a listed sexual act in a patently offensive way.
- (c) “Child” means a person who is less than 18 years of age, subject to the affirmative defense created in subsection (6) regarding persons emancipated by operation of law.
- (d) “Commercial film or photographic print processor” means a person or his or her employee who, for compensation, develops exposed photographic film into movie films, negatives, slides, or prints; makes prints from negatives or slides; or duplicates movie films or videotapes.
- (e) “Computer technician” means a person who installs, maintains, troubleshoots, upgrades, or repairs computer hardware, software, personal computer networks, or peripheral equipment.
- (f) “Contemporary community standards” means the customary limits of candor and decency in this state at or near the time of the alleged violation of this section.

(g) “Erotic fondling” means touching a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved. Erotic fondling does not include physical contact, even if affectionate, that is not for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(h) “Erotic nudity” means the lascivious exhibition of the genital, pubic, or rectal area of any person. As used in this subdivision, “lascivious” means wanton, lewd, and lustful and tending to produce voluptuous or lewd emotions.

(i) “Listed sexual act” means sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity.

(j) “Make” means to bring into existence by copying, shaping, changing, or combining material, and specifically includes, but is not limited to, intentionally creating a reproduction, copy, or print of child sexually abusive material, in whole or part. Make does not include the creation of an identical reproduction or copy of child sexually abusive material within the same digital storage device or the same piece of digital storage media.

(k) “Masturbation” means the real or simulated touching, rubbing, or otherwise stimulating of a person's own clothed or unclothed genitals, pubic area, buttocks, or, if the person is female, breasts, or if the person is a child, the developing or undeveloped breast area, either by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.

(l) “Passive sexual involvement” means an act, real or simulated, that exposes another person to or draws another person's attention to an act of sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, sexual excitement, or erotic nudity because of viewing any of these acts or because of the proximity of the act to that person, for the purpose of real or simulated overt sexual gratification or stimulation of 1 or more of the persons involved.

(m) “Prurient interest” means a shameful or morbid interest in nudity, sex, or excretion.

(n) “Child sexually abusive activity” means a child engaging in a listed sexual act.

(o) “Child sexually abusive material” means any depiction, whether made or produced by electronic, mechanical, or other means, including a developed or undeveloped photograph, picture, film, slide, video, electronic visual image, computer diskette, computer or computer-generated image, or picture, or sound recording which is of a child or appears to include a child engaging in a listed sexual act; a book, magazine, computer, computer storage device, or other visual or print or printable medium containing such a photograph, picture, film, slide, video, electronic visual image, computer, or computer-generated image, or picture, or sound recording; or any reproduction, copy, or print of such a photograph, picture, film, slide, video, electronic visual image, book, magazine, computer, or computer-generated image, or picture, other visual or print or printable medium, or sound recording.

(p) “Sadomasochistic abuse” means either of the following:

(i) Flagellation or torture, real or simulated, for the purpose of real or simulated sexual stimulation or gratification, by or upon a person.

(ii) The condition, real or simulated, of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.

(q) “Sexual excitement” means the condition, real or simulated, of human male or female genitals in a state of real or simulated overt sexual stimulation or arousal.

(r) “Sexual intercourse” means intercourse, real or simulated, whether genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal, or with an artificial genital.

(2) A person who persuades, induces, entices, coerces, causes, or knowingly allows a child to engage in a child sexually abusive activity for the purpose of producing any child sexually abusive material, or a person who arranges for, produces, makes, copies, reproduces, or finances, or a person who attempts or prepares or conspires to arrange for, produce, make, copy, reproduce, or finance any child sexually abusive activity or child sexually abusive material for personal, distributional, or other purposes is guilty of a felony, punishable by imprisonment for not more than 20 years, or a fine of not more than \$100,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material

appears to include a child, or that person has not taken reasonable precautions to determine the age of the child.

(3) A person who distributes or promotes, or finances the distribution or promotion of, or receives for the purpose of distributing or promoting, or conspires, attempts, or prepares to distribute, receive, finance, or promote any child sexually abusive material or child sexually abusive activity is guilty of a felony, punishable by imprisonment for not more than 7 years, or a fine of not more than \$50,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know that the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to the persons described in section 7 of 1984 PA 343, MCL 752.367.

(4) A person who knowingly possesses or knowingly seeks and accesses any child sexually abusive material is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than \$10,000.00, or both, if that person knows, has reason to know, or should reasonably be expected to know the child is a child or that the child sexually abusive material includes a child or that the depiction constituting the child sexually abusive material appears to include a child, or that person has not taken reasonable precautions to determine the age of the child. This subsection does not apply to any of the following:

(a) A person described in section 7 of 1984 PA 343, MCL 752.367, a commercial film or photographic print processor acting under subsection (8), or a computer technician acting under subsection (9).

(b) A police officer acting within the scope of his or her duties as a police officer.

(c) An employee or contract agent of the department of social services acting within the scope of his or her duties as an employee or contract agent.

(d) A judicial officer or judicial employee acting within the scope of his or her duties as a judicial officer or judicial employee.

(e) A party or witness in a criminal or civil proceeding acting within the scope of that criminal or civil proceeding.

(f) A physician, psychologist, limited license psychologist, professional counselor, or registered nurse licensed under the public health code, 1978 PA 368, MCL 333.1101 to 333.25211, acting within the scope of practice for which he or she is licensed.

(g) A social worker registered in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838, acting within the scope of practice for which he or she is registered.

(5) Expert testimony as to the age of the child used in a child sexually abusive material or a child sexually abusive activity is admissible as evidence in court and may be a legitimate basis for determining age, if age is not otherwise proven.

(6) It is an affirmative defense to a prosecution under this section that the alleged child is a person who is emancipated by operation of law under section 4(2) of 1968 PA 293, MCL 722.4, as proven by a preponderance of the evidence.

(7) If a defendant in a prosecution under this section proposes to offer in his or her defense evidence to establish that a depiction that appears to include a child was not, in fact, created using a depiction of any part of an actual person under the age of 18, the defendant shall at the time of the arraignment on the information or within 15 days after arraignment but not less than 10 days before the trial of the case, or at such other time as the court directs, file and serve upon the prosecuting attorney of record a notice in writing of his or her intention to offer that defense. The notice shall contain, as particularly as is known to the defendant or the defendant's attorney, the names of witnesses to be called in behalf of the defendant to establish that defense. The defendant's notice shall include specific information as to the facts that establish that the depiction was not, in fact, created using a depiction of any part of an actual person under the age of 18. Failure to file a timely notice in conformance with this subsection precludes a defendant from offering this defense.

(8) If a commercial film or photographic print processor reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of a film, photograph, movie film, videotape, negative, or slide depicting a person that the processor has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of the film, photograph, movie film, videotape, negative, or slide to a law enforcement agency having jurisdiction; or keeps the film, photograph, movie film, videotape, negative, or slide according to the law enforcement agency's instructions, both of the following shall apply:

(a) The identity of the processor shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the processor acted in good faith, he or she shall be immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(9) If a computer technician reports to a law enforcement agency having jurisdiction his or her knowledge or observation, within the scope of his or her professional capacity or employment, of an electronic visual image, computer-generated image or picture or sound recording depicting a person that the computer technician has reason to know or reason to believe is a child engaged in a listed sexual act; furnishes a copy of that image, picture, or sound recording to the law enforcement agency; or keeps the image, picture, or sound recording according to the law enforcement agency's instructions, both of the following apply:

(a) The identity of the computer technician shall be confidential, subject to disclosure only with his or her consent or by judicial process.

(b) If the computer technician acted in good faith, he or she is immune from civil liability that might otherwise be incurred by his or her actions. This immunity extends only to acts described in this subsection.

(10) In any criminal proceeding regarding an alleged violation or attempted violation of this section, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any photographic or other pictorial evidence of a child engaging in a listed sexual act if the prosecuting attorney makes that evidence reasonably available to the defendant. Evidence is considered to be reasonably available to the defendant under this subsection if the prosecuting attorney provides an opportunity to the defendant and his or her attorney, and any person the defendant may seek to qualify as an expert witness at trial, to inspect, view, and examine that evidence at a facility approved by the prosecuting attorney.

(11) This section applies uniformly throughout the state and all political subdivisions and municipalities in the state.

(12) A local municipality or political subdivision shall not enact any ordinance or enforce any existing ordinance, rule, or regulation governing child sexually abusive activity or child sexually abusive material as defined by this section.

CREDIT(S)

Amended by P.A.1988, No. 110, § 1, Eff. June 1; P.A.1994, No. 444, § 1, Eff. April 1, 1995; P.A.2002, No. 629, Eff. March 31, 2003; P.A.2004, No. 478, Imd. Eff. Dec. 28, 2004; P.A.2012, No. 583, Eff. March 1, 2013.

MICH. COMP. LAWS SERV. § 750.520b (2013). Criminal sexual conduct in first degree

Sec. 520b. (1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

- (a) That other person is under 13 years of age.
- (b) That other person is at least 13 but less than 16 years of age and any of the following:
 - (i) The actor is a member of the same household as the victim.
 - (ii) The actor is related to the victim by blood or affinity to the fourth degree.
 - (iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.
 - (iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.
 - (v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident, and the sexual penetration occurs during the period of that other person's residency. As used in this subparagraph, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) Sexual penetration occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual penetration. Force or coercion includes, but is not limited to, any of the circumstances listed in subdivision (f).

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the

ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes that are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

(g) The actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(2) Criminal sexual conduct in the first degree is a felony punishable as follows:

(a) Except as provided in subdivisions (b) and (c), by imprisonment for life or for any term of years.

(b) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.

(c) For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age, by imprisonment for life without the possibility of parole if the person was previously convicted of a violation of this section or section 520c, 520d, 520e, or 520g [FN1] committed against an individual less than 13 years of age or a violation of law of the United States, another state or political subdivision substantially corresponding to a violation of this section or section 520c, 520d, 520e, or 520g committed against an individual less than 13 years of age.

(d) In addition to any other penalty imposed under subdivision (a) or (b), the court shall sentence the defendant to lifetime electronic monitoring under section 520n. [FN2]

(3) The court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

CREDIT(S)

Amended by P.A.1983, No. 158, § 1, Eff. March 29, 1984; P.A.2002, No. 714, Eff. April 1, 2003; P.A.2006, No. 165, Eff. Aug. 28, 2006; P.A.2006, No. 169, Eff. Aug. 28, 2006; P.A.2007, No. 163, Eff. July 1, 2008; P.A.2012, No. 372, Eff. April 1, 2013.

MICH. COMP. LAWS SERV. § 750.520c (2013). Criminal sexual conduct in the second degree; felony.

Sec. 520c. (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(a) That other person is under 13 years of age.

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

(iii) The actor is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

(v) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(vi) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home in which that other person is a resident and the sexual contact occurs during the period of that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(c) Sexual contact occurs under circumstances involving the commission of any other felony.

(d) The actor is aided or abetted by 1 or more other persons and either of the following circumstances exists:

(i) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(ii) The actor uses force or coercion to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f). [FN1]

(e) The actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon.

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the circumstances listed in section 520b(1)(f).

(g) The actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(h) That other person is mentally incapable, mentally disabled, mentally incapacitated, or physically helpless, and any of the following:

(i) The actor is related to the victim by blood or affinity to the fourth degree.

(ii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of the corrections code of 1953, 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable as follows:

(a) By imprisonment for not more than 15 years.

(b) In addition to the penalty specified in subdivision (a), the court shall sentence the defendant to lifetime electronic monitoring under section 520n [FN2] if the violation involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age.

CREDIT(S)

Amended by P.A.1983, No. 158, § 1, Eff. March 29, 1984; P.A.2000, No. 227, Eff. Oct. 1, 2000; P.A.2002, No. 714, Eff. April 1, 2003; P.A.2006, No. 171, Eff. Aug. 28, 2006; P.A.2007, No. 163, Eff. July 1, 2008; P.A.2012, No. 372, Eff. April 1, 2013.

MICH. COMP. LAWS SERV. § 750.520d (2013). Criminal sexual conduct in the third degree; felony.

Sec. 520d. (1) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

(b) Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in section 520b(1)(f)(i) to (v). [FN1]

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual penetration occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(f) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual penetration occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(2) Criminal sexual conduct in the third degree is a felony punishable by imprisonment for not more than 15 years.

CREDIT(S)

Amended by P.A.1983, No. 158, § 1, Eff. March 29, 1984; P.A.1996, No. 155, § 1, Eff. June 1, 1996; P.A.2002, No. 714, Eff. April 1, 2003; P.A.2007, No. 163, Eff. July 1, 2008; P.A.2012, No. 372, Eff. April 1, 2013.

MICH. COMP. LAWS SERV. § 750.520e (2013). Criminal sexual conduct in the fourth degree; misdemeanor.

Sec. 520e. (1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age but less than 16 years of age, and the actor is 5 or more years older than that other person.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute that threat. As used in this subparagraph, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.

(iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

(c) The actor knows or has reason to know that the victim is mentally incapable, mentally incapacitated, or physically helpless.

(d) That other person is related to the actor by blood or affinity to the third degree and the sexual contact occurs under circumstances not otherwise prohibited by this chapter. It is an affirmative defense to a prosecution under this subdivision that the other person was in a position of authority over the defendant and used this authority to coerce the defendant to violate this subdivision. The defendant has the burden of proving this defense by a preponderance of the evidence. This subdivision does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(e) The actor is a mental health professional and the sexual contact occurs during or within 2 years after the period in which the victim is his or her client or patient and not his or her spouse. The consent of the victim is not a defense to a prosecution under this subdivision. A prosecution under this subsection shall not be used as evidence that the victim is mentally incompetent.

(f) That other person is at least 16 years of age but less than 18 years of age and a student at a public school or nonpublic school, and either of the following applies:

(i) The actor is a teacher, substitute teacher, or administrator of that public school, nonpublic school, school district, or intermediate school district. This subparagraph does not apply if the other person is emancipated or if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is an employee or a contractual service provider of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled, or is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(g) That other person is at least 16 years old but less than 26 years of age and is receiving special education services, and either of the following applies:

(i) The actor is a teacher, substitute teacher, administrator, employee, or contractual service provider of the public school, nonpublic school, school district, or intermediate

school district from which that other person receives the special education services. This subparagraph does not apply if both persons are lawfully married to each other at the time of the alleged violation.

(ii) The actor is a volunteer who is not a student in any public school or nonpublic school, or is an employee of this state or of a local unit of government of this state or of the United States assigned to provide any service to that public school, nonpublic school, school district, or intermediate school district, and the actor uses his or her employee, contractual, or volunteer status to gain access to, or to establish a relationship with, that other person.

(h) The actor is an employee, contractual service provider, or volunteer of a child care organization, or a person licensed to operate a foster family home or a foster family group home, in which that other person is a resident, that other person is at least 16 years of age, and the sexual contact occurs during that other person's residency. As used in this subdivision, "child care organization", "foster family home", and "foster family group home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111.

(2) Criminal sexual conduct in the fourth degree is a misdemeanor punishable by imprisonment for not more than 2 years or a fine of not more than \$500.00, or both.

CREDIT(S)

Amended by P.A.1983, No. 158, § 1, Eff. March 29, 1984; P.A.1988, No. 86, § 1, Eff. June 1; P.A.1994, No. 213, § 1, Eff. Oct. 1, 1994; P.A.1996, No. 155, § 1, Eff. June 1, 1996; P.A.2000, No. 227, Eff. Oct. 1, 2000; P.A.2000, No. 505, Eff. March 28, 2001; P.A.2002, No. 714, Eff. April 1, 2003; P.A.2007, No. 163, Eff. July 1, 2008; P.A.2012, No. 372, Eff. April 1, 2013.

MICH. COMP. LAWS SERV. § 750.520g (2013). Assault with intent to commit criminal sexual conduct; felony.

Sec. 520g. (1) Assault with intent to commit criminal sexual conduct involving sexual penetration shall be a felony punishable by imprisonment for not more than 10 years.

(2) Assault with intent to commit criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 5 years.

CREDIT(S)

P.A.1931, No. 328, § 520g, added by P.A.1974, No. 266, § 1, Eff. April 1, 1975.
C.L.1970, § 750.520g.

MINNESOTA

MINN. STAT. § 609.2245 (2013). Female Genital Mutilation; Penalties

Subdivision 1. Crime. Except as otherwise permitted in subdivision 2, whoever knowingly circumcises, excises, or infibulates, in whole or in part, the labia majora, labia minora, or clitoris of another is guilty of a felony. Consent to the procedure by a minor on whom it is performed or by the minor's parent is not a defense to a violation of this subdivision.

Subd. 2. Permitted activities. A surgical procedure is not a violation of subdivision 1 if the procedure:

(1) is necessary to the health of the person on whom it is performed and is performed by:
(i) a physician licensed under chapter 147; (ii) a physician in training under the supervision of a licensed physician; or (iii) a certified nurse midwife practicing within the nurse midwife's legal scope of practice; or

(2) is performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth: (i) by a physician licensed under chapter 147; (ii) a physician in training under the supervision of a licensed physician; or (iii) a certified nurse midwife practicing within the nurse midwife's legal scope of practice.

CREDIT(S)

Laws 1994, c. 636, art. 2, § 22. Amended by Laws 1997, c. 239, art. 3, § 11.

MINN. STAT. § 609.342 (2013). Criminal Sexual Conduct in the First Degree

Subdivision 1. Crime defined. A person who engages in sexual penetration with another person, or in sexual contact with a person under 13 years of age as defined in section 609.341, subdivision 11, paragraph (c), is guilty of criminal sexual conduct in the first degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(b) the complainant is at least 13 years of age but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(e) the actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) the actor uses force or coercion to accomplish sexual penetration; or

(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) an accomplice uses force or coercion to cause the complainant to submit; or

(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. Penalty. (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 30 years or to a payment of a fine of not more than \$40,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 144 months must be imposed on an offender convicted of violating this section. Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

Laws 1975, c. 374, § 3. Amended by Laws 1981, c. 51, § 2, eff. April 24, 1981; Laws 1983, c. 204, § 1, eff. May 21, 1983; Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1985, c. 24, § 5, eff. Aug. 1, 1985; Laws 1985, c. 286, § 15; Laws 1986, c. 444; Laws 1989, c. 290, art. 4, § 12, eff. Aug. 1, 1989; Laws 1992, c. 571, art. 1, § 14; Laws 1994, c. 636, art. 2, § 34; Laws 1995, c. 186, § 99; Laws 1998, c. 367, art. 3, § 7; Laws 1998, c. 367, art. 6, § 15, eff. Aug. 1, 1998; Laws 2000, c. 311, art. 4, § 2; Laws 2000, c. 437, § 10; Laws 2005, c. 136, art. 2, §§ 12, 13; Laws 2007, c. 13, art. 3, § 37, eff. Aug. 1, 2007.

VALIDITY

<For validity of subdivision 1, paragraph (g), see In re Welfare of B.A.H., App..2013, 2013 WL 1707638. >

MINN. STAT. § 609.343 (2013). Criminal Sexual Conduct in the Second Degree

Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the second degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(c) circumstances existing at the time of the act cause the complainant to have a reasonable fear of imminent great bodily harm to the complainant or another;

(d) the actor is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the dangerous weapon to cause the complainant to submit;

(e) the actor causes personal injury to the complainant, and either of the following circumstances exist:

(i) the actor uses force or coercion to accomplish the sexual contact; or

(ii) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(f) the actor is aided or abetted by one or more accomplices within the meaning of section 609.05, and either of the following circumstances exists:

(i) an accomplice uses force or coercion to cause the complainant to submit; or

(ii) an accomplice is armed with a dangerous weapon or any article used or fashioned in a manner to lead the complainant to reasonably believe it to be a dangerous weapon and uses or threatens to use the weapon or article to cause the complainant to submit;

(g) the actor has a significant relationship to the complainant and the complainant was under 16 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense; or

(h) the actor has a significant relationship to the complainant, the complainant was under 16 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense.

Subd. 2. Penalty. (a) Except as otherwise provided in section 609.3455; or Minnesota Statutes 2004, section 609.109, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 25 years or to a payment of a fine of not more than \$35,000, or both.

(b) Unless a longer mandatory minimum sentence is otherwise required by law or the Sentencing Guidelines provide for a longer presumptive executed sentence, the court shall presume that an executed sentence of 90 months must be imposed on an offender convicted of violating subdivision 1, clause (c), (d), (e), (f), or (h). Sentencing a person in a manner other than that described in this paragraph is a departure from the Sentencing Guidelines.

(c) A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (g), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

Laws 1975, c. 374, § 4. Amended by Laws 1979, c. 258, § 12; Laws 1981, c. 51, § 3, eff. April 24, 1981; Laws 1983, c. 204, § 2, eff. May 21, 1983; Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1985, c. 24, § 6, eff. Aug. 1, 1985; Laws 1985, c. 286, § 16; Laws 1986, c. 444; Laws 1989, c. 290, art. 4, § 13, eff. Aug. 1, 1989; Laws 1992, c. 571, art. 1, § 15; Laws 1998, c. 367, art. 3, § 8; Laws 1998, c. 367, art. 6, § 15, eff. Aug. 1, 1998; Laws 2000, c. 437, § 11; Laws 2002, c. 381, § 2; Laws 2005, c. 136, art. 2, §§ 14, 15; Laws 2007, c. 13, art. 3, § 37, eff. Aug. 1, 2007.

MINN. STAT. § 609.344 (2013). Criminal Sexual Conduct in the Third Degree

Subdivision 1. Crime defined. A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant shall be a defense;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant. In any such case if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense, which must be proved by a preponderance of the evidence, that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense. If the actor in such a case is no more than 48 months but more than 24 months older than the complainant, the actor may be sentenced to imprisonment for not more than five years. Consent by the complainant is not a defense;

(c) the actor uses force or coercion to accomplish the penetration;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual penetration. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual penetration, and:

(i) the actor or an accomplice used force or coercion to accomplish the penetration;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual penetration occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists.

Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual penetration occurred by means of therapeutic deception. Consent by the complainant is not a defense;

(k) the actor accomplishes the sexual penetration by means of deception or false representation that the penetration is for a bona fide medical purpose. Consent by the complainant is not a defense;

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual penetration occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual penetration occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or

treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, and the sexual penetration occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual penetration occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

Laws 1975, c. 374, § 5. Amended by Laws 1979, c. 258, § 13; Laws 1983, c. 204, § 3, eff. May 21, 1983; Laws 1984, c. 588, § 7, eff. Aug. 1, 1984; Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1985, c. 24, § 7, eff. Aug. 1, 1985; Laws 1985, c. 286, § 17; Laws 1985, c. 297, § 6, eff. Aug. 1, 1985; Laws 1986, c. 351, § 8, eff. Aug. 1, 1985; Laws 1986, c. 444; Laws 1986, 1st Sp., c. 3, art. 1, § 80; Laws 1987, c. 94, § 1, eff. Aug. 1, 1987; Laws 1989, c. 290, art. 4, § 14, eff. Aug. 1, 1989; Laws 1992, c. 571, art. 1, §§ 16, 17; Laws 1993, c. 326, art. 4, § 20; Laws 1994, c. 636, art. 2, § 35; Laws 1998, c. 367, art. 3, § 9; Laws 1998, c. 367, art. 6, § 15; Laws 2000, c. 437, § 12; Laws 2001, c. 210, § 22; Laws 2002, c. 381, § 3; Laws 2005, c. 136, art. 2, §§ 16, 17; Laws 2007, c. 13, art. 3, § 37, eff. Aug. 1, 2007; Laws 2007, c. 54, art. 2, § 4, eff. Aug. 1, 2007; Laws 2010, c. 270, § 2, eff. Aug. 1, 2010.

MINN. STAT. § 609.345 (2013). Criminal Sexual Conduct in the Fourth Degree

Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

(a) the complainant is under 13 years of age and the actor is no more than 36 months older than the complainant. Neither mistake as to the complainant's age or consent to the act by the complainant is a defense. In a prosecution under this clause, the state is not required to prove that the sexual contact was coerced;

(b) the complainant is at least 13 but less than 16 years of age and the actor is more than 48 months older than the complainant or in a position of authority over the complainant. Consent by the complainant to the act is not a defense. In any such case, if the actor is no more than 120 months older than the complainant, it shall be an affirmative defense which must be proved by a preponderance of the evidence that the actor reasonably believes the complainant to be 16 years of age or older. In all other cases, mistake as to the complainant's age shall not be a defense;

(c) the actor uses force or coercion to accomplish the sexual contact;

(d) the actor knows or has reason to know that the complainant is mentally impaired, mentally incapacitated, or physically helpless;

(e) the complainant is at least 16 but less than 18 years of age and the actor is more than 48 months older than the complainant and in a position of authority over the complainant. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(f) the actor has a significant relationship to the complainant and the complainant was at least 16 but under 18 years of age at the time of the sexual contact. Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(g) the actor has a significant relationship to the complainant, the complainant was at least 16 but under 18 years of age at the time of the sexual contact, and:

(i) the actor or an accomplice used force or coercion to accomplish the contact;

(ii) the complainant suffered personal injury; or

(iii) the sexual abuse involved multiple acts committed over an extended period of time.

Neither mistake as to the complainant's age nor consent to the act by the complainant is a defense;

(h) the actor is a psychotherapist and the complainant is a patient of the psychotherapist and the sexual contact occurred:

(i) during the psychotherapy session; or

(ii) outside the psychotherapy session if an ongoing psychotherapist-patient relationship exists. Consent by the complainant is not a defense;

(i) the actor is a psychotherapist and the complainant is a former patient of the psychotherapist and the former patient is emotionally dependent upon the psychotherapist;

(j) the actor is a psychotherapist and the complainant is a patient or former patient and the sexual contact occurred by means of therapeutic deception. Consent by the complainant is not a defense;

(k) the actor accomplishes the sexual contact by means of deception or false representation that the contact is for a bona fide medical purpose. Consent by the complainant is not a defense;

(l) the actor is or purports to be a member of the clergy, the complainant is not married to the actor, and:

(i) the sexual contact occurred during the course of a meeting in which the complainant sought or received religious or spiritual advice, aid, or comfort from the actor in private; or

(ii) the sexual contact occurred during a period of time in which the complainant was meeting on an ongoing basis with the actor to seek or receive religious or spiritual advice, aid, or comfort in private. Consent by the complainant is not a defense;

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, or secure treatment facility, or treatment facility providing services to clients civilly committed as mentally ill and dangerous, sexually dangerous persons, or sexual psychopathic personalities, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense;

(n) the actor provides or is an agent of an entity that provides special transportation service, the complainant used the special transportation service, the complainant is not married to the actor, and the sexual contact occurred during or immediately before or after the actor transported the complainant. Consent by the complainant is not a defense; or

(o) the actor performs massage or other bodywork for hire, the complainant was a user of one of those services, and nonconsensual sexual contact occurred during or immediately before or after the actor performed or was hired to perform one of those services for the complainant.

Subd. 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

Subd. 3. Stay. Except when imprisonment is required under section 609.3455; or Minnesota Statutes 2004, section 609.109, if a person is convicted under subdivision 1, clause (f), the court may stay imposition or execution of the sentence if it finds that:

(a) a stay is in the best interest of the complainant or the family unit; and

(b) a professional assessment indicates that the offender has been accepted by and can respond to a treatment program.

If the court stays imposition or execution of sentence, it shall include the following as conditions of probation:

(1) incarceration in a local jail or workhouse;

(2) a requirement that the offender complete a treatment program; and

(3) a requirement that the offender have no unsupervised contact with the complainant until the offender has successfully completed the treatment program unless approved by the treatment program and the supervising correctional agent.

CREDIT(S)

Laws 1975, c. 374, § 6. Amended by Laws 1976, c. 124, § 9; Laws 1979, c. 258, § 14; Laws 1981, c. 51, § 4, eff. April 24, 1981; Laws 1983, c. 204, § 4, eff. May 21, 1983; Laws 1984, c. 588, § 8, eff. Aug. 1, 1984; Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1985, c. 24, § 8, eff. Aug. 1, 1985; Laws 1985, c. 286, § 18; Laws 1985, c.

297, § 7, eff. Aug. 1, 1985; Laws 1986, c. 351, § 9, eff. Aug. 1, 1985; Laws 1986, c. 444; Laws 1986, 1st Sp., c. 3, art. 1, § 81; Laws 1987, c. 94, § 2, eff. Aug. 1, 1987; Laws 1989, c. 290, art. 4, § 15, eff. Aug. 1, 1989; Laws 1992, c. 571, art. 1, §§ 18, 19; Laws 1993, c. 326, art. 4, § 21; Laws 1994, c. 636, art. 2, § 36; Laws 1998, c. 367, art. 3, § 10; Laws 1998, c. 367, art. 6, § 15, eff. Aug. 1, 1998; Laws 2000, c. 437, § 13; Laws 2001, c. 210, § 23; Laws 2002, c. 381, § 4; Laws 2005, c. 136, art. 2, §§ 18, 19; Laws 2007, c. 13, art. 3, § 37, eff. Aug. 1, 2007; Laws 2007, c. 54, art. 2, § 5, eff. Aug. 1, 2007; Laws 2010, c. 270, § 3, eff. Aug. 1, 2010.

MINN. STAT. § 609.3451 (2013). Criminal Sexual Conduct in the Fifth Degree

Subdivision 1. Crime defined. A person is guilty of criminal sexual conduct in the fifth degree:

- (1) if the person engages in nonconsensual sexual contact; or
- (2) the person engages in masturbation or lewd exhibition of the genitals in the presence of a minor under the age of 16, knowing or having reason to know the minor is present.

For purposes of this section, “sexual contact” has the meaning given in section 609.341, subdivision 11, paragraph (a), clauses (i) and (iv), but does not include the intentional touching of the clothing covering the immediate area of the buttocks. Sexual contact also includes the intentional removal or attempted removal of clothing covering the complainant's intimate parts or undergarments, and the nonconsensual touching by the complainant of the actor's intimate parts, effected by the actor, if the action is performed with sexual or aggressive intent.

Subd. 2. Penalty. A person convicted under subdivision 1 may be sentenced to imprisonment for not more than one year or to a payment of a fine of not more than \$3,000, or both.

Subd. 3. Felony. A person is guilty of a felony and may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the person violates subdivision 1, clause (2), after having been previously convicted of or adjudicated delinquent for violating subdivision 1, clause (2); section 617.23, subdivision 2, clause (1); or a statute from another state in conformity with subdivision 1, clause (2), or section 617.23, subdivision 2, clause (1).

CREDIT(S)

Laws 1988, c. 529, § 2, eff. Aug. 1, 1988. Amended by Laws 1990, c. 492, § 1; Laws 1995, c. 226, art. 2, § 19; Laws 1996, c. 408, art. 3, §§ 26, 27; Laws 1998, c. 367, art. 3, § 11.

MINN. STAT. § 609.352 (2013). Solicitation of Children to Engage in Sexual Conduct

Subdivision 1. Definitions. As used in this section:

(a) “child” means a person 15 years of age or younger;

(b) “sexual conduct” means sexual contact of the individual's primary genital area, sexual penetration as defined in section 609.341, or sexual performance as defined in section 617.246; and

(c) “solicit” means commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means.

Subd. 2. Prohibited act. A person 18 years of age or older who solicits a child or someone the person reasonably believes is a child to engage in sexual conduct with intent to engage in sexual conduct is guilty of a felony and may be sentenced as provided in subdivision 4.

Subd. 2a. Electronic solicitation of children. A person 18 years of age or older who uses the Internet, a computer, computer program, computer network, computer system, an electronic communications system, or a telecommunications, wire, or radio communications system, or other electronic device capable of electronic data storage or transmission to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony and may be sentenced as provided in subdivision 4:

(1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;

(2) engaging in communication with a child or someone the person reasonably believes is a child, relating to or describing sexual conduct; or

(3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

Subd. 2b. Jurisdiction. A person may be convicted of an offense under subdivision 2a if the transmission that constitutes the offense either originates within this state or is received within this state.

Subd. 3. Defenses. (a) Mistake as to age is not a defense to a prosecution under this section.

(b) The fact that an undercover operative or law enforcement officer was involved in the detection or investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Subd. 4. Penalty. A person convicted under subdivision 2 or 2a is guilty of a felony and may be sentenced to imprisonment for not more than three years, or to payment of a fine of not more than \$5,000, or both.

CREDIT(S)

Laws 1986, c. 445, § 3, eff. Aug. 1, 1986. Amended by Laws 2000, c. 311, art. 4, §§ 3, 4; Laws 2007, c. 54, art. 2, § 7, eff. Aug. 1, 2007; Laws 2009, c. 59, art. 1, § 6, eff. Aug. 1, 2009.

MINN. STAT. § 609.378 (2013). Neglect or Endangerment of a Child

Subdivision 1. Persons guilty of neglect or endangerment. (a)(1) A parent, legal guardian, or caretaker who willfully deprives a child of necessary food, clothing, shelter, health care, or supervision appropriate to the child's age, when the parent, guardian, or caretaker is reasonably able to make the necessary provisions and the deprivation harms or is likely to substantially harm the child's physical, mental, or emotional health is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both. If the deprivation results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both. If a parent, guardian, or caretaker responsible for the child's care in good faith selects and depends upon spiritual means or prayer for treatment or care of disease or remedial care of the child, this treatment or care is "health care," for purposes of this clause.

(2) A parent, legal guardian, or caretaker who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

(b) A parent, legal guardian, or caretaker who endangers the child's person or health by:

(1) intentionally or recklessly causing or permitting a child to be placed in a situation likely to substantially harm the child's physical, mental, or emotional health or cause the child's death; or

(2) knowingly causing or permitting the child to be present where any person is selling, manufacturing, possessing immediate precursors or chemical substances with intent to manufacture, or possessing a controlled substance, as defined in section 152.01, subdivision 4, in violation of section 152.021, 152.022, 152.023, 152.024, or 152.0262; is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical, mental, or emotional health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

This paragraph does not prevent a parent, legal guardian, or caretaker from causing or permitting a child to engage in activities that are appropriate to the child's age, stage of development, and experience, or from selecting health care as defined in subdivision 1, paragraph (a).

(c) A person who intentionally or recklessly causes a child under 14 years of age to be placed in a situation likely to substantially harm the child's physical health or cause the child's death as a result of the child's access to a loaded firearm is guilty of child endangerment and may be sentenced to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both.

If the endangerment results in substantial harm to the child's physical health, the person may be sentenced to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both.

Subd. 2. Defenses. It is a defense to a prosecution under subdivision 1, paragraph (a), clause (2), or paragraph (b), that at the time of the neglect or endangerment there was a reasonable apprehension in the mind of the defendant that acting to stop or prevent the neglect or endangerment would result in substantial bodily harm to the defendant or the child in retaliation.

CREDIT(S)

Laws 1983, c. 217, § 5, eff. Aug. 1, 1983. Amended by Laws 1984, c. 628, art. 3, § 11, eff. May 3, 1984; Laws 1989, c. 282, art. 2, § 199; Laws 1992, c. 571, art. 4, § 11; Laws 1993, c. 326, art. 4, § 22; Laws 2002, c. 314, § 6; Laws 2005, c. 136, art. 7, § 21.

MISSISSIPPI

MISS. CODE ANN. § 97-3-65 (2013). Statutory rape; drugging; spousal rape

(1) The crime of statutory rape is committed when:

(a) Any person seventeen (17) years of age or older has sexual intercourse with a child who:

(i) Is at least fourteen (14) but under sixteen (16) years of age;

(ii) Is thirty-six (36) or more months younger than the person; and

(iii) Is not the person's spouse; or

(b) A person of any age has sexual intercourse with a child who:

(i) Is under the age of fourteen (14) years;

(ii) Is twenty-four (24) or more months younger than the person; and

(iii) Is not the person's spouse.

(2) Neither the victim's consent nor the victim's lack of chastity is a defense to a charge of statutory rape.

(3) Upon conviction for statutory rape, the defendant shall be sentenced as follows:

(a) If eighteen (18) years of age or older, but under twenty-one (21) years of age, and convicted under subsection (1)(a) of this section, to imprisonment for not more than five (5) years in the State Penitentiary or a fine of not more than Five Thousand Dollars (\$5,000.00), or both;

(b) If twenty-one (21) years of age or older and convicted under subsection (1)(a) of this section, to imprisonment of not more than thirty (30) years in the State Penitentiary or a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense;

(c) If eighteen (18) years of age or older and convicted under subsection (1)(b) of this section, to imprisonment for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years;

(d) If thirteen (13) years of age or older but under eighteen (18) years of age and convicted under subsection (1)(a) or (1)(b) of this section, such imprisonment, fine or other sentence as the court, in its discretion, may determine.

(4)(a) Every person who shall have forcible sexual intercourse with any person, or who shall have sexual intercourse not constituting forcible sexual intercourse or statutory rape with any person without that person's consent by administering to such person any substance or liquid which shall produce such stupor or such imbecility of mind or weakness of body as to prevent effectual resistance, upon conviction, shall be imprisoned for life in the State Penitentiary if the jury by its verdict so prescribes; and in cases where the jury fails to fix the penalty at life imprisonment, the court shall fix the penalty at imprisonment in the State Penitentiary for any term as the court, in its discretion, may determine.

(b) This subsection (4) shall apply whether the perpetrator is married to the victim or not.

(5) In all cases where a victim is under the age of sixteen (16) years, it shall not be necessary to prove penetration where it is shown the genitals, anus or perineum of the child have been lacerated or torn in the attempt to have sexual intercourse with the child.

(6) For the purposes of this section, “sexual intercourse” shall mean a joining of the sexual organs of a male and female human being in which the penis of the male is inserted into the vagina of the female or the penetration of the sexual organs of a male or female human being in which the penis or an object is inserted into the genitals, anus or perineum of a male or female.

CREDIT(S)

Laws 1974, Ch. 576, § 8; Laws 1977, Ch. 458, § 7; Laws 1985, Ch. 389, § 3; Laws 1993, Ch. 497, § 1; Laws 1998, Ch. 549, § 2, eff. July 1, 1998. Amended by Laws 2007, Ch. 335, § 1, eff. from and after passage (approved March 14, 2007).

MISS. CODE ANN. § 97-3-95 (2013). “Sexual battery” defined

(1) A person is guilty of sexual battery if he or she engages in sexual penetration with:

(a) Another person without his or her consent;

(b) A mentally defective, mentally incapacitated or physically helpless person;

(c) A child at least fourteen (14) but under sixteen (16) years of age, if the person is thirty-six (36) or more months older than the child; or

(d) A child under the age of fourteen (14) years of age, if the person is twenty-four (24) or more months older than the child.

(2) A person is guilty of sexual battery if he or she engages in sexual penetration with a child under the age of eighteen (18) years if the person is in a position of trust or authority over the child including without limitation the child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

CREDIT(S)

Laws 1980, Ch. 450, § 1; Laws 1983, Ch. 429, § 3; Laws 1985, Ch. 389, § 6; Laws 1993, Ch. 512, § 2; Laws 1998, Ch. 549, § 3, eff. July 1, 1998.

MISS. CODE ANN. § 97-3-101 (2013). Sexual battery; penalty

(1) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(a), (b), or (2) shall be imprisoned in the State Penitentiary for a period of not more than thirty (30) years, and for a second or subsequent such offense shall be imprisoned in the penitentiary for not more than forty (40) years.

(2)(a) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is at least eighteen (18) but under twenty-one (21) years of age shall be imprisoned for not more than five (5) years in the State Penitentiary or fined not more than Five Thousand Dollars (\$5,000.00), or both;

(b) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(c) who is twenty-one (21) years of age or older shall be imprisoned not more than thirty (30) years in the State Penitentiary or fined not more than Ten Thousand Dollars (\$10,000.00), or both, for the first offense, and not more than forty (40) years in the State Penitentiary for each subsequent offense.

(3) Every person who shall be convicted of sexual battery under Section 97-3-95(1)(d) who is eighteen (18) years of age or older shall be imprisoned for life in the State Penitentiary or such lesser term of imprisonment as the court may determine, but not less than twenty (20) years.

(4) Every person who shall be convicted of sexual battery who is thirteen (13) years of age or older but under eighteen (18) years of age shall be sentenced to such imprisonment, fine or other sentence as the court, in its discretion, may determine.

CREDIT(S)

Laws 1980, Ch. 450, § 4; Laws 1993, Ch. 512, § 3; Laws 1995, Ch. 596, § 15; Laws 1998, Ch. 549, § 4, eff. July 1, 1998; Laws 1999, Ch. 560, § 2, eff. from and after passage (approved April 21, 1999).

MISS. CODE ANN. § 97-5-5 (2013). Enticing child under fourteen; punishment

Every person who shall maliciously, willfully, or fraudulently lead, take, carry away, decoy or entice away, any child under the age of fourteen (14) years, with intent to detain

or conceal such child from its parents, guardian, or other person having lawful charge of such child, or for the purpose of prostitution, concubinage, or marriage, shall, on conviction, be imprisoned in the custody of the Department of Corrections for not less than two (2) years nor more than ten (10) years, or fined not more than Ten Thousand Dollars (\$10,000.00), or both. Investigation and prosecution of a defendant under this section does not preclude prosecution of the defendant for a violation of other applicable criminal laws, including, but not limited to, the Mississippi Human Trafficking Act, Sections 97-3-54 et seq.

CREDIT(S)

Amended by Laws 2013, Ch. 543 (H.B. 673), § 14, eff. July 1, 2013.

MISS. CODE ANN. § 97-5-23 (2013). Fondling child; punishment

1) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child under the age of sixteen (16) years, with or without the child's consent, or a mentally defective, mentally incapacitated or physically helpless person as defined in Section 97-3-97, shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court.

(2) Any person above the age of eighteen (18) years, who, for the purpose of gratifying his or her lust, or indulging his or her depraved licentious sexual desires, shall handle, touch or rub with hands or any part of his or her body or any member thereof, any child younger than himself or herself and under the age of eighteen (18) years who is not such person's spouse, with or without the child's consent, when the person occupies a position of trust or authority over the child shall be guilty of a felony and, upon conviction thereof, shall be fined in a sum not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00), or be committed to the custody of the State Department of Corrections not less than two (2) years nor more than fifteen (15) years, or be punished by both such fine and imprisonment, at the discretion of the court. A person in a position of trust or authority over a child includes without limitation a child's teacher, counselor, physician, psychiatrist, psychologist, minister, priest, physical therapist, chiropractor, legal guardian, parent, stepparent, aunt, uncle, scout leader or coach.

(3) Upon a second conviction for an offense under this section, the person so convicted shall be punished by commitment to the State Department of Corrections for a term not to

exceed twenty (20) years, however, upon conviction and sentencing, the offender shall serve at least one-half (1/2) of the sentence so imposed.

CREDIT(S)

Laws 1958, Ch. 276, § 1; Laws 1980, Ch. 387, § 1; Laws 1985, Ch. 389, § 1; Laws 1993, Ch. 512, § 4; Laws 1995, Ch. 487, § 1; Laws 1998, Ch. 549, § 5, eff. July 1, 1998.

MISS. CODE ANN. § 97-5-24 (2013). Sexual involvement of school employee with student, reporting requirement

If any person eighteen (18) years or older who is employed by any public school district or private school in this state is accused of fondling or having any type of sexual involvement with any child under the age of eighteen (18) years who is enrolled in such school, the principal of such school and the superintendent of such school district shall timely notify the district attorney with jurisdiction where the school is located of such accusation, the Mississippi Department of Education and the Department of Human Services, provided that such accusation is reported to the principal and to the school superintendent and that there is a reasonable basis to believe that such accusation is true. Any superintendent, or his designee, who fails to make a report required by this section shall be subject to the penalties provided in Section 37-11-35. Any superintendent, principal, teacher or other school personnel participating in the making of a required report pursuant to this section or participating in any judicial proceeding resulting therefrom shall be presumed to be acting in good faith. Any person reporting in good faith shall be immune from any civil liability that might otherwise be incurred or imposed.

CREDIT(S)

Laws 1994, Ch. 595, § 11, eff. July 1, 1994. Amended by Laws 2011, Ch. 514, § 2, eff. from and after passage (approved April 26, 2011).

MISS. CODE ANN. § 97-5-33 (2013). Depicting child engaging in sexual conduct

(1) No person shall, by any means including computer, cause, solicit or knowingly permit any child to engage in sexually explicit conduct or in the simulation of sexually explicit conduct for the purpose of producing any visual depiction of such conduct.

(2) No person shall, by any means including computer, photograph, film, video tape or otherwise depict or record a child engaging in sexually explicit conduct or in the simulation of sexually explicit conduct.

(3) No person shall, by any means including computer, knowingly send, transport, transmit, ship, mail or receive any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(4) No person shall, by any means including computer, receive with intent to distribute, distribute for sale, sell or attempt to sell in any manner any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(5) No person shall, by any means including computer, knowingly possess or knowingly access with intent to view any photograph, drawing, sketch, film, video tape or other visual depiction of an actual child engaging in sexually explicit conduct.

(6) No person shall, by any means including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce, or order a child to meet with the defendant or any other person for the purpose of engaging in sexually explicit conduct.

(7) No person shall by any means, including computer, knowingly entice, induce, persuade, seduce, solicit, advise, coerce or order a child to produce any visual depiction of adult sexual conduct or any sexually explicit conduct.

(8) The fact that an undercover operative or law enforcement officer posed as a child or was involved in any other manner in the detection and investigation of an offense under this section shall not constitute a defense to a prosecution under this section.

(9) For purposes of determining jurisdiction, the offense is committed in this state if all or part of the conduct described in this section occurs in the State of Mississippi or if the transmission that constitutes the offense either originates in this state or is received in this state.

CREDIT(S)

Laws 1979, Ch. 479, § 2; Laws 1988, Ch. 558, § 1; Laws 1995, Ch. 484, § 2, eff. July 1, 1995; Laws 2003, Ch. 562, § 2, eff. July 1, 2003; Laws 2005, Ch. 467, § 1, eff. July 1, 2005; Laws 2005, Ch. 491, § 1, eff. July 1, 2005. Amended by Laws 2007, Ch. 376, § 1, eff. July 1, 2007; Laws 2013, Ch. 412 (S.B. 2197), § 1, eff. July 1, 2013.

MISS. CODE ANN. § 97-5-39 (2013). Child neglect, delinquency or abuse

(1)(a) Except as otherwise provided in this section, any parent, guardian or other person who intentionally, knowingly or recklessly commits any act or omits the performance of any duty, which act or omission contributes to or tends to contribute to the neglect or delinquency of any child or which act or omission results in the abuse of any child, as defined in Section 43-21-105(m) of the Youth Court Law, or who knowingly aids any child in escaping or absenting himself from the guardianship or custody of any person, agency or institution, or knowingly harbors or conceals, or aids in harboring or concealing, any child who has absented himself without permission from the guardianship or custody of any person, agency or institution to which the child shall have been committed by the youth court shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00), or by imprisonment not to exceed one (1) year in jail, or by both such fine and imprisonment.

(b) For the purpose of this section, a child is a person who has not reached his eighteenth birthday. A child who has not reached his eighteenth birthday and is on active duty for a branch of the armed services, or who is married, is not considered a child for the purposes of this statute.

(c) If a child commits one (1) of the proscribed acts in subsection (2)(a), (b) or (c) of this section upon another child, then original jurisdiction of all such offenses shall be in youth court.

(d) If the child's deprivation of necessary clothing, shelter, health care or supervision appropriate to the child's age results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment in custody of the Department of Corrections for not more than five (5) years or to payment of a fine of not more than Five Thousand Dollars (\$5,000.00), or both.

(e) A parent, legal guardian or other person who knowingly permits the continuing physical or sexual abuse of a child is guilty of neglect of a child and may be sentenced to imprisonment in the custody of the Department of Corrections for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(2) Any person shall be guilty of felonious child abuse in the following circumstances:

(a) Whether bodily harm results or not, if the person shall intentionally, knowingly or recklessly:

- (i) Burn any child;
 - (ii) Physically torture any child;
 - (iii) Strangle, choke, smother or in any way interfere with any child's breathing;
 - (iv) Poison a child;
 - (v) Starve a child of nourishments needed to sustain life or growth;
 - (vi) Use any type of deadly weapon upon any child;
- (b) If some bodily harm to any child actually occurs, and if the person shall intentionally, knowingly, or recklessly:
- (i) Throw, kick, bite, or cut any child;
 - (ii) Strike a child under the age of fourteen (14) about the face or head with a closed fist;
 - (iii) Strike a child under the age of five (5) in the face or head;
 - (iv) Kick, bite, cut or strike a child's genitals; circumcision of a male child is not a violation under this subparagraph (iv);
- (c) If serious bodily harm to any child actually occurs, and if the person shall intentionally, knowingly or recklessly:
- (i) Strike any child on the face or head;
 - (ii) Disfigure or scar any child;

(iii) Whip, strike, or otherwise abuse any child;

(d) Any person, upon conviction under paragraph (a) or (c) of this subsection, shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than five (5) years and up to life, as determined by the court. Any person, upon conviction under paragraph (b) of this subsection shall be sentenced by the court to imprisonment in the custody of the Department of Corrections for a term of not less than two (2) years nor more than ten (10) years, as determined by the court. For any second or subsequent conviction under this subsection (2), the person shall be sentenced to imprisonment for life.

(e) For the purposes of this subsection (2), “bodily harm” means any bodily injury to a child and includes, but is not limited to, bruising, bleeding, lacerations, soft tissue swelling, and external or internal swelling of any body organ.

(f) For the purposes of this subsection (2), “serious bodily harm” means any serious bodily injury to a child and includes, but is not limited to, the fracture of a bone, permanent disfigurement, permanent scarring, or any internal bleeding or internal trauma to any organ, any brain damage, any injury to the eye or ear of a child or other vital organ, and impairment of any bodily function.

(g) Nothing contained in paragraph (c) of this subsection shall preclude a parent or guardian from disciplining a child of that parent or guardian, or shall preclude a person in loco parentis to a child from disciplining that child, if done in a reasonable manner, and reasonable corporal punishment or reasonable discipline as to that parent or guardian's child or child to whom a person stands in loco parentis shall be a defense to any violation charged under paragraph (c) of this subsection.

(h) Reasonable discipline and reasonable corporal punishment shall not be a defense to acts described in paragraphs (a) and (b) of this subsection or if a child suffers serious bodily harm as a result of any act prohibited under paragraph (c) of this subsection.

(3) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(4)(a) A parent, legal guardian or caretaker who endangers a child's person or health by knowingly causing or permitting the child to be present where any person is selling, manufacturing or possessing immediate precursors or chemical substances with intent to manufacture, sell or possess a controlled substance as prohibited under Section 41-29-139 or 41-29-313, is guilty of child endangerment and may be sentenced to imprisonment for not more than ten (10) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both.

(b) If the endangerment results in substantial harm to the child's physical, mental or emotional health, the person may be sentenced to imprisonment for not more than twenty (20) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both.

(5) Nothing contained in this section shall prevent proceedings against the parent, guardian or other person under any statute of this state or any municipal ordinance defining any act as a crime or misdemeanor. Nothing in the provisions of this section shall preclude any person from having a right to trial by jury when charged with having violated the provisions of this section.

(6) After consultation with the Department of Human Services, a regional mental health center or an appropriate professional person, a judge may suspend imposition or execution of a sentence provided in subsections (1) and (2) of this section and in lieu thereof require treatment over a specified period of time at any approved public or private treatment facility. A person may be eligible for treatment in lieu of criminal penalties no more than one (1) time.

(7) In any proceeding resulting from a report made pursuant to Section 43-21-353 of the Youth Court Law, the testimony of the physician making the report regarding the child's injuries or condition or cause thereof shall not be excluded on the ground that the physician's testimony violates the physician-patient privilege or similar privilege or rule against disclosure. The physician's report shall not be considered as evidence unless introduced as an exhibit to his testimony.

(8) Any criminal prosecution arising from a violation of this section shall be tried in the circuit, county, justice or municipal court having jurisdiction; provided, however, that nothing herein shall abridge or dilute the contempt powers of the youth court.

CREDIT(S)

Laws 1979, Ch. 506, § 75; Laws 1980, Ch. 550, § 28; Laws 1986, Ch. 383, § 1; Laws 1989, Ch. 566, § 3, eff. from and after passage (approved April 21, 1989); Laws 2005, Ch. 467, § 3, eff. July 1, 2005; Laws 2005, Ch. 491, § 3, eff. July 1, 2005. Amended by Laws 2013, Ch. 483 (H.B. 1259), § 1, eff. July 1, 2013.

MISS. CODE ANN. § 97-5-40 (2013). Condoning child abuse

(1) Any parent, guardian, custodian, stepparent or any other person who lives in the household with a child, who knowingly condones an incident of felonious child abuse of that child, which consists of one or more violations of (a) subsection (2) of Section 97-5-39 or (b) felonious sexual battery of that child, which consists of one or more violations of Section 97-3-95 shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment for not more than one (1) year or by a fine of not more than One Thousand Dollars (\$1,000.00), or both.

(2) A person shall not be considered to have condoned child abuse merely because such person does not report an act of child abuse.

(3) The provisions of this section shall be in addition to any other criminal law.

CREDIT(S)

Laws 1989, Ch. 566, § 1; Laws 1992, Ch. 557, § 1, eff. July 1, 1992.

MISS. CODE ANN. § 97-5-41 (2013). Carnal knowledge of certain children

(1) Any person who shall have carnal knowledge of his or her unmarried stepchild or adopted child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.

(2) Any person who shall have carnal knowledge of an unmarried child younger than himself or herself and over fourteen (14) and under eighteen (18) years of age, with whose parent he or she is cohabiting or living together as husband and wife, upon conviction, shall be punished by imprisonment in the penitentiary for a term not exceeding ten (10) years.

CREDIT(S)

Laws 1984, Ch. 390, § 1; Laws 1985, Ch. 389, § 5, eff. July 1, 1985.

MISS. CODE ANN. § 97-29-61 (2013). Voyeurism

(1) Any person who enters upon real property whether the original entry is legal or not, and thereafter pries or peeps through a window or other opening in a dwelling or other building structure for the lewd, licentious and indecent purpose of spying upon the occupants thereof, shall be guilty of a felonious trespass, and upon conviction shall be imprisoned in the custody of the Department of Corrections not more than five (5) years.

(2) When one or more occupants spied upon is a child under sixteen (16) years of age, a person who violates subsection (1) of this section shall be guilty of felonious trespass, and upon conviction shall be imprisoned in the custody of the Department of Corrections not more than ten (10) years.

CREDIT(S)

Laws 1958, Ch. 281, § 1; Laws 1980, Ch. 391, § 1, eff. from and after passage (approved April 28, 1980). Amended by Laws 2012, Ch. 557, § 1, eff. July 1, 2012.

MISS. CODE ANN. § 97-29-63 (2013). Photographing, taping, or filming person in violation of expectation of privacy

(1) Any person who with lewd, licentious or indecent intent secretly photographs, films, videotapes, records or otherwise reproduces the image of another person without the permission of such person when such a person is located in a place where a person would intend to be in a state of undress and have a reasonable expectation of privacy, including, but not limited to, private dwellings or any facility, public or private, used as a restroom, bathroom, shower room, tanning booth, locker room, fitting room, dressing room or bedroom shall be guilty of a felony and upon conviction shall be punished by a fine of Five Thousand Dollars (\$5,000.00) or by imprisonment of not more than five (5) years in the custody of the Department of Corrections, or both.

(2) Where the person who is secretly photographed, filmed, videotaped or otherwise reproduced is a child under sixteen (16) years of age, a person who violates subsection (1) of this section shall be guilty of a felony and upon conviction shall be punished by a fine of Five Thousand Dollars (\$5,000. 00) or by imprisonment of not more than ten (10) years in the custody of the Department of Corrections, or both.

CREDIT(S)

Added by Laws 1999, Ch. 514, § 2, eff. July 1, 1999. Amended by Laws 2012, Ch. 557, § 2, eff. July 1, 2012.

MISSOURI

MO. REV. STAT. § 566.030 (2013). Forcible rape and attempted forcible rape, penalties -- suspended sentences not granted, when

1. A person commits the offense of rape in the first degree if he or she has sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse..
2. The offense of rape in the first degree or an attempt to commit rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless:(1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than fifteen years;.
(2) The victim is a child less than twelve years of age, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such rape in the first degree is described under subdivision (3) of this subsection; or
(3) The victim is a child less than twelve years of age and such rape in the first degree or attempt to commit rape in the first degree was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.
3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of rape in the first degree or attempt to commit rape in the first degree when the victim is less than twelve years of age , and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section..
4. No person found guilty of rape in the first degree or an attempt to commit rape in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

CREDIT(S)

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1980, H.B. No. 1138, § 1; L.1990, H.B. Nos. 1370, 1037 & 1084, § A; L.1993, S.B. No. 180, § A; L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995; L.1998, H.B. No. 1779, § A; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006; L.2009, S.B. Nos. 36 & 112, § A; H.B. 215, § A.)

MO. REV. STAT. § 566.032 (2013). Statutory rape and attempt to commit, first degree, penalties

1. A person commits the crime of statutory rape in the first degree if he has sexual intercourse with another person who is less than fourteen years old.
2. Statutory rape in the first degree or an attempt to commit statutory rape in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve years of age in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995. Amended by L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006.)

MO. REV. STAT. § 566.034 (2013). Statutory rape, second degree, penalty

1. A person commits the crime of statutory rape in the second degree if being twenty-one years of age or older, he has sexual intercourse with another person who is less than seventeen years of age.
2. Statutory rape in the second degree is a class C felony.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995.)

MO. REV. STAT. § 566.060 (2013). Forcible sodomy, penalties -- suspended sentence not granted, when

A person commits the offense of sodomy in the first degree if he or she has deviate sexual intercourse with another person who is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion. Forcible compulsion includes the use of a substance administered without a victim's knowledge or consent which renders the victim physically or mentally impaired so as to be incapable of making an informed consent to sexual intercourse.

2. The offense of sodomy in the first degree or an attempt to commit sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless: (1) In the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years; or. (2) The victim is a child less than twelve years old, in which case the required term of imprisonment is life imprisonment without eligibility for probation or parole until the offender has served not less than thirty years of such sentence or unless the offender has reached the age of seventy-five years and has served at least fifteen years of such sentence, unless such sodomy in the first degree is described under subdivision (3) of this subsection; or. (3) The victim is a child less than twelve years of age and such sodomy in the first degree or attempt to commit sodomy in the first degree was outrageously or wantonly vile, horrible or inhumane, in that it involved torture or depravity of mind, in which case the required term of imprisonment is life imprisonment without eligibility for probation, parole or conditional release.
3. Subsection 4 of section 558.019 shall not apply to the sentence of a person who has been found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree when the victim is less than twelve years of age, and "life imprisonment" shall mean imprisonment for the duration of a person's natural life for the purposes of this section.
4. No person found guilty of sodomy in the first degree or an attempt to commit sodomy in the first degree shall be granted a suspended imposition of sentence or suspended execution of sentence.

CREDIT(S)

L. 1977 S.B. 60, A.L. 1980 H.B. 1138, et al., A.L. 1990 H.B. 1370, et al., A.L. 1994 S.B. 693, A.L. 1998 H.B. 1779, A.L. 2006 H.B. 1698, et al., A.L. 2009 S.B. 36 &, A.L. 2013 H.B. 215.

MO. REV. STAT. § 566.062 (2013). Statutory sodomy and attempt to commit, first degree, penalties

1. A person commits the crime of statutory sodomy in the first degree if he has deviate sexual intercourse with another person who is less than fourteen years old.
2. Statutory sodomy in the first degree or an attempt to commit statutory sodomy in the first degree is a felony for which the authorized term of imprisonment is life imprisonment or a term of years not less than five years, unless in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, subjects the victim to sexual intercourse or deviate sexual intercourse with more than one person, or the victim is less than twelve

years of age, in which case the authorized term of imprisonment is life imprisonment or a term of years not less than ten years.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995. Amended by L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006.)

MO. REV. STAT. § 566.064 (2013). Statutory sodomy, second degree, penalty

1. A person commits the crime of statutory sodomy in the second degree if being twenty-one years of age or older, he has deviate sexual intercourse with another person who is less than seventeen years of age.

2. Statutory sodomy in the second degree is a class C felony.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995.)

MO. REV. STAT. § 566.067 (2013). Child molestation, first degree, penalties

1. A person commits the crime of child molestation in the first degree if he or she subjects another person who is less than fourteen years of age to sexual contact.

2. Child molestation in the first degree is a class B felony unless:

(1) The actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class A felony; or

(2) The victim is a child less than twelve years of age and:

(a) The actor has previously been convicted of an offense under this chapter; or

(b) In the course thereof the actor inflicts serious physical injury, displays a deadly weapon or deadly instrument in a threatening manner, or if the offense is committed as part of a ritual or ceremony, in which case, the crime is a class A felony and such person shall serve his or her term of imprisonment without eligibility for probation or parole.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995. Amended by L.2000, S.B. Nos. 757 & 602, § A; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006.)

MO. REV. STAT. § 566.068 (2013). Child molestation, second degree, penalties

1. A person commits the crime of child molestation in the second degree if he or she subjects another person who is less than seventeen years of age to sexual contact.

2. Child molestation in the second degree is a class A misdemeanor unless the actor has previously been convicted of an offense under this chapter or in the course thereof the actor inflicts serious physical injury on any person, displays a deadly weapon or dangerous instrument in a threatening manner, or the offense is committed as part of a ritual or ceremony, in which case the crime is a class D felony.

CREDIT(S)

(L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995. Amended by L.2000, S.B. Nos. 757 & 602, § A.)

MO. REV. STAT. § 566.083 (2013). Sexual misconduct involving a child, penalty -- applicability of section -- affirmative defense not allowed, when

1. A person commits the crime of sexual misconduct involving a child if such person:

(1) Knowingly exposes his or her genitals to a child less than fifteen years of age under circumstances in which he or she knows that his or her conduct is likely to cause affront or alarm to the child;

(2) Knowingly exposes his or her genitals to a child less than fifteen years of age for the purpose of arousing or gratifying the sexual desire of any person, including the child;

(3) Knowingly coerces or induces a child less than fifteen years of age to expose the child's genitals for the purpose of arousing or gratifying the sexual desire of any person, including the child; or

(4) Knowingly coerces or induces a child who is known by such person to be less than fifteen years of age to expose the breasts of a female child through the Internet or other electronic means for the purpose of arousing or gratifying the sexual desire of any person, including the child.

2. The provisions of this section shall apply regardless of whether the person violates this section in person or via the Internet or other electronic means.

3. It is not an affirmative defense to prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.

4. Sexual misconduct involving a child or attempted sexual misconduct involving a child is a class D felony unless the actor has previously pleaded guilty to or been found guilty of an offense pursuant to this chapter or the actor has previously pleaded guilty to or has been convicted of an offense against the laws of another state or jurisdiction which would constitute an offense under this chapter, in which case it is a class C felony.

CREDIT(S)

(L.1997, S.B. No. 56, § A. Amended by L.2004, H.B. No. 1055, § A; L.2005, H.B. No. 972, § A, eff. July 13, 2005; L.2005, H.B. No. 353, § A, eff. July 13, 2005; L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006; L.2008, S.B. Nos. 714, 933, 899 & 758, § A; L.2012, S.B. No. 628, § A.)

MO. REV. STAT. § 566.086 (2013). Sexual contact with a student while on public school property

1. A person commits the crime of sexual contact with a student if he or she has sexual contact with a student of the public school and is:

(1) A teacher, as that term is defined in subdivisions (4), (5), and (7) of section 168.104;

(2) A student teacher;

- (3) An employee of the school;
- (4) A volunteer of the school or of an organization working with the school on a project or program who is not a student at the public school;
- (5) An elected or appointed official of the public school district; or
- (6) A person employed by an entity that contracts with the public school district to provide services.

2. Sexual contact with a student is a class D felony.

CREDIT(S)

(L.2005, H.B. No. 353, § A. Amended by L.2006, H.B. Nos. 1698, 1236, 995, 1362 & 1290, § A, eff. June 5, 2006; L.2011, H.B. No. 111, § A.)

MO. REV. STAT. § 566.100 (2013). Sexual abuse, penalties

- 1. A person commits the offense of sexual abuse in the first degree if he or she subjects another person to sexual contact when that person is incapacitated, incapable of consent, or lacks the capacity to consent, or by the use of forcible compulsion..
- 2. The offense of sexual abuse in the first degree is a class C felony unless in the course thereof the actor inflicts serious physical injury or displays a deadly weapon or dangerous instrument in a threatening manner or subjects the victim to sexual contact with more than one person or the victim is less than fourteen years of age, in which case it is a class B felony.

MO. REV. STAT. § 566.151 (2013). Enticement of a child, penalties

- 1. A person at least twenty-one years of age or older commits the crime of enticement of a child if that person persuades, solicits, coaxes, entices, or lures whether by words, actions or through communication via the Internet or any electronic communication, any person who is less than fifteen years of age for the purpose of engaging in sexual conduct.
- 2. It is not an affirmative defense to a prosecution for a violation of this section that the other person was a peace officer masquerading as a minor.
- 3. Enticement of a child or an attempt to commit enticement of a child is a felony for which the authorized term of imprisonment shall be not less than five years and not more

than thirty years. No person convicted under this section shall be eligible for parole, probation, conditional release, or suspended imposition or execution of sentence for a period of five calendar years.

CREDIT(S)

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1990, H.B. Nos. 1370, 1037 & 1084, § A; L.1991, H.B. No. 566, § A; L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995; L.2013, H.B. No. 215, § A.)

MO. REV. STAT. § 568.045 (2013). Endangering the welfare of a child in the first degree, penalties

1. A person commits the crime of endangering the welfare of a child in the first degree if:

(1) The person knowingly acts in a manner that creates a substantial risk to the life, body, or health of a child less than seventeen years old; or

(2) The person knowingly engages in sexual conduct with a person under the age of seventeen years over whom the person is a parent, guardian, or otherwise charged with the care and custody;

(3) The person knowingly encourages, aids or causes a child less than seventeen years of age to engage in any conduct which violates the provisions of chapter 195;

(4) Such person enlists the aid, either through payment or coercion, of a person less than seventeen years of age to unlawfully manufacture, compound, produce, prepare, sell, transport, test or analyze amphetamine or methamphetamine or any of their analogues, or to obtain any material used to manufacture, compound, produce, prepare, test or analyze amphetamine or methamphetamine or any of their analogues; or

(5) Such person, in the presence of a person less than seventeen years of age or in a residence where a person less than seventeen years of age resides, unlawfully manufactures, or attempts to manufacture compounds, possesses, produces, prepares, sells, transports, tests or analyzes amphetamine or methamphetamine or any of their analogues.

2. Endangering the welfare of a child in the first degree is a class C felony unless the offense is committed as part of a ritual or ceremony, or except on a second or subsequent offense, in which case the crime is a class B felony.

3. This section shall be known as “Hope's Law”.

CREDIT(S)

(L.1990, H.B.Nos. 1370, 1037 & 1084, § A; L.1994, S.B. No. 693, § A, eff. Jan. 1, 1995. Amended by L.1998, H.B. No. 1147, § A; L.2003, S.B. No. 5, § A, eff. June 27, 2003; L.2005, H.B. No. 353, § A; L.2009, H.B. No. 62, § A.)

MO. REV. STAT. § 568.060 (2013). Abuse of a child, penalty

1. As used in this section, the following terms shall mean:

- (1) "Abuse", the infliction of physical, sexual, or mental injury against a child by any person eighteen years of age or older. For purposes of this section, abuse shall not include injury inflicted on a child by accidental means by a person with care, custody, or control of the child, or discipline of a child by a person with care, custody, or control of the child, including spanking, in a reasonable manner;
- (2) "Abusive head trauma", a serious physical injury to the head or brain caused by any means, including but not limited to shaking, jerking, pushing, pulling, slamming, hitting, or kicking;
- (3) "Mental injury", an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his or her normal range of performance or behavior;
- (4) "Neglect", the failure to provide, by those responsible for the care, custody, and control of a child under the age of eighteen years, the care reasonable and necessary to maintain the physical and mental health of the child, when such failure presents a substantial probability that death or physical injury or sexual injury would result;.
- (5) "Physical injury", physical pain, illness, or any impairment of physical condition, including but not limited to bruising, lacerations, hematomas, welts, or permanent or temporary disfigurement and impairment of any bodily function or organ;.
- (6) "Serious emotional injury", an injury that creates a substantial risk of temporary or permanent medical or psychological damage, manifested by impairment of a behavioral, cognitive, or physical condition. Serious emotional injury shall be established by testimony of qualified experts upon the reasonable expectation of probable harm to a reasonable degree of medical or psychological certainty;
- (7) "Serious physical injury", a physical injury that creates a substantial risk of death or that causes serious disfigurement or protracted loss or impairment of the function of any part of the body.

2. A person commits the offense of abuse or neglect of a child if such person knowingly causes a child who is less than eighteen years of age:

- (1) To suffer physical or mental injury as a result of abuse or neglect; or
- (2) To be placed in a situation in which the child may suffer physical or mental injury as the result of abuse or neglect.

3. A person commits the offense of abuse or neglect of a child if such person recklessly causes a child who is less than eighteen years of age to suffer from abusive head trauma..
4. A person does not commit the offense of abuse or neglect of a child by virtue of the sole fact that the person delivers or allows the delivery of child to a provider of emergency services.
5. The offense of abuse or neglect of a child is:
 - (1) A class C felony, without eligibility for probation or parole until the defendant has served no less than one year of such sentence, unless the person has previously been found guilty of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct or the injury inflicted on the child is a serious emotional injury or a serious physical injury, in which case abuse or neglect of a child is a class B felony, without eligibility for probation or parole until the defendant has served not less than five years of such sentence ; or
 - (2) A class A felony if the child dies as a result of injuries sustained from conduct chargeable under the provisions of this section.
6. Notwithstanding subsection 5 of this section to the contrary, the offense of abuse or neglect of a child is a class A felony, without eligibility for probation or parole until the defendant has served not less than fifteen years of such sentence, if:
 - (1) The injury is a serious emotional injury or a serious physical injury;
 - (2) The child is less than fourteen years of age; and
 - (3) The injury is the result of sexual abuse as defined under section 566.100 or sexual exploitation of a minor as defined under section 573.023.
7. The circuit or prosecuting attorney may refer a person who is suspected of abuse or neglect of a child to an appropriate public or private agency for treatment or counseling so long as the agency has consented to taking such referrals. Nothing in this subsection shall limit the discretion of the circuit or prosecuting attorney to prosecute a person who has been referred for treatment or counseling pursuant to this subsection.
8. Nothing in this section shall be construed to alter the requirement that every element of any crime referred to herein must be proven beyond a reasonable doubt.
9. Discipline, including spanking administered in a reasonable manner, shall not be construed to be abuse under this section.

CREDIT(S)

(L.1977, S.B. No. 60, p. 662, § 1, eff. Jan. 1, 1979. Amended by L.1984, p. 753, H.B. No. 1255, § 1; L.1990, H.B. Nos. 1370, 1037 & 1084, § A; L.1997, S.B. No. 56, § A; L.2012, S.B. No. 628, § A; L.2013, H.B. No. 505, § A.)

MO. REV. STAT. § 568.065 (2013). Genital mutilation of a female child, penalty--affirmative defenses

1. A person commits the crime of genital mutilation if such person:

(1) Excises or infibulates, in whole or in part, the labia majora, labia minora, vulva or clitoris of a female child less than seventeen years of age; or

(2) Is a parent, guardian or other person legally responsible for a female child less than seventeen years of age and permits the excision or infibulation, in whole or in part, of the labia majora, labia minora, vulva or clitoris of such female child.

2. Genital mutilation is a class B felony.

3. Belief that the conduct described in subsection 1 of this section is required as a matter of custom, ritual or standard practice, or consent to the conduct by the child on whom it is performed or by the child's parent or legal guardian, shall not be an affirmative defense to a charge pursuant to this section.

4. It is an affirmative defense that the defendant engaged in the conduct charged which constitutes genital mutilation if the conduct was:

(1) Necessary to preserve the health of the child on whom it is performed and is performed by a person licensed to practice medicine in this state; or

(2) Performed on a child who is in labor or who has just given birth and is performed for medical purposes connected with such labor or birth by a person licensed to practice medicine in this state.

CREDIT(S)

(L.2000, S.B. Nos. 757 & 602, § A.)

MO. REV. STAT. § 568.080 (2013). Child used in sexual performance, penalties

1. A person commits the crime of use of a child in a sexual performance if, knowing the character and content thereof, the person employs, authorizes, or induces a child less than seventeen years of age to engage in a sexual performance or, being a parent, legal guardian, or custodian of such child, consents to the participation by such child in such sexual performance.

2. Use of a child in a sexual performance is a class C felony, unless in the course thereof the person inflicts serious emotional injury on the child, in which case the crime is a class B felony.

CREDIT(S)

(L.1984, p. 753, H.B. No. 1255, § 1.)

MO. REV. STAT. § 568.090 (2013). Promoting sexual performance by a child, penalties

1. A person commits the crime of promoting a sexual performance if, knowing the character and content thereof, the person promotes a sexual performance by a child less than seventeen years of age or produces, directs, or promotes any performance which includes sexual conduct by a child less than seventeen years of age.

2. Promoting a sexual performance is a class C felony.

CREDIT(S)

(L.1984, p. 753, H.B. No. 1255, § 1.)

MO. REV. STAT. § 573.023 (2013). Sexual exploitation of a minor, penalties

1. A person commits the crime of sexual exploitation of a minor if such person knowingly or recklessly photographs, films, videotapes, produces or otherwise creates obscene material with a minor or child pornography.

2. Sexual exploitation of a minor is a class B felony unless the minor is a child, in which case it is a class A felony.

CREDIT(S)

(L.2000, S.B. Nos. 757 & 602, § A. Amended by L.2009, H.B. No. 62, § A.)

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MONT. CODE ANN. § 45-5-223 (2013). Surreptitious visual observation or recordation -- place of residence -- public establishment -- exceptions.

(1) A person commits the offense of surreptitious visual observation or recordation in a place of residence if a person purposely or knowingly hides, waits, or otherwise loiters in

the vicinity of a private dwelling house, apartment, or other place of residence for the purpose of:

(a) watching, gazing at, or looking upon any occupant in the residence in a surreptitious manner; or

(b) by means of an electronic or mechanical recording device, surreptitiously recording the visual image of any occupant in the residence.

(2) An owner, manager, or employee of a business or a landlord who knowingly surreptitiously records a visual image of a person in a restroom, washroom, shower, bedroom, fitting room, or other room used by a customer, guest, tenant, or member of the public to, with a reasonable expectation of privacy, change or try on clothes, bathe, perform intimate bodily functions, or appear nude or partially nude or in underclothes commits the offense of surreptitious visual recordation in a public establishment.

(3) Subsections (1) and (2) do not apply to a law enforcement officer, an agent or employee of an insurer, or a private investigator licensed pursuant to 37-60-301 or to any person engaged in fraud detection, prevention, or prosecution pursuant to 2-15-2015 or 39-71-211 while the officer, agent, employee, or private investigator is acting in the course and scope of employment for legitimate investigative purposes.

(4)(a) A person convicted of the offense of surreptitious visual observation or recordation in a place of residence shall be fined an amount not to exceed \$500 or be incarcerated in the county jail for a term not to exceed 6 months, or both. Upon a second conviction, a person shall be fined an amount not to exceed \$1,000 or be incarcerated for a term not to exceed 1 year, or both. Upon a third or subsequent conviction, a person shall be fined an amount not to exceed \$10,000 or be incarcerated for a term not to exceed 5 years, or both.

(b) A person convicted of the offense of surreptitious visual recordation in a public establishment shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 6 months, or both, if the victim was an adult and shall be fined an amount not to exceed \$5,000 or incarcerated for a term not to exceed 2 years, or both, if the victim was a minor.

CREDIT(S)

Enacted by Laws 1997, ch. 62, § 1. Amended by Laws 1997, ch. 303, § 3.

MONT. CODE ANN. § 45-5-502 (2013). Sexual assault.

(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2)(a) On a first conviction for sexual assault, the offender shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(b) On a second conviction for sexual assault, the offender shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both.

(c) On a third and subsequent conviction for sexual assault, the offender shall be fined an amount not to exceed \$10,000 or be imprisoned for a term not to exceed 5 years, or both.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual assault, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years, unless the judge makes a written finding that there is good cause to impose a term of less than 4 years and imposes a term of less than 4 years, or more than 100 years and may be fined not more than \$50,000.

(4) An act “in the course of committing sexual assault” includes an attempt to commit the offense or flight after the attempt or commission.

(5)(a) Subject to subsections (5)(b) and (5)(c), consent is ineffective under this section if the victim is:

(i) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(ii) less than 14 years old and the offender is 3 or more years older than the victim;

(iii) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the youth care facility; or

(iv) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(A) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(B) is an employee, contractor, or volunteer of the facility or community-based service.

(b) Subsection (5)(a)(i) does not apply if one of the parties is on probation or parole and the other party is a probation or parole officer of the supervising authority and the parties are married to each other.

(c) Subsections (5)(a)(iii) and (5)(a)(iv) do not apply if the individuals are married to each other and one of the individuals involved is a patient in or resident of a facility, is a recipient of community-based services, or is receiving services from a youth care facility and the other individual is an employee, contractor, or volunteer of the facility or community-based service.

CREDIT(S)

Enacted 94-5-502 by Laws 1973, ch. 513, § 1; Revised Code of Montana 1947, 94-5-502. Amended by Laws 1979, ch. 687, § 1; amended by Laws 1981, ch. 198, § 7; amended by Laws 1985, ch. 172, § 1; amended by Laws 1991, ch. 564, § 1; amended by Laws 1991, ch. 687, § 2; amended by Laws 1995, ch. 550, § 1; amended by Laws 1999, ch. 84, § 2; amended by Laws 2003, ch. 450, § 1; amended by Laws 2007, ch. 321, § 2; amended by Laws 2007, ch. 335, § 2; amended by Laws 2011, ch. 46, § 1, eff. Oct. 1, 2011.

MONT. CODE ANN. § 45-5-503 (2013). Sexual intercourse without consent.

(1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D).

(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219, 46-18-222, and subsections (3) and (4) of this section.

(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219 and 46-18-222.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$ 50,000, except as provided in 46-18-219 and 46-18-222.

(c) If the offender was previously convicted of an offense under this section or of an offense under the laws of another state or of the United States that if committed in this state would be an offense under this section and if the offender inflicted serious bodily injury upon a person in the course of committing each offense, the offender shall be:

(i) punished by death as provided in 46-18-301 through 46-18-310, unless the offender is less than 18 years of age at the time of the commission of the offense; or

(ii) punished as provided in 46-18-219.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$ 50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(6) As used in subsections (3) and (4), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

(7) If as a result of sexual intercourse without consent a child is born, the offender who has been convicted of an offense under this section, and who is the biological parent of the child resulting from the sexual intercourse without consent, forfeits all parental and custodial rights to the child if the provisions of 46-1-401 have been followed."

CREDIT(S)

Enacted 94-5-503 by Laws 1973, ch. 513, § 1. Amended by Laws 1975, ch. 2, § 1; amended by Laws 1975, ch. 129, § 1; amended by Laws 1977, ch. 94, § 1; amended by Laws 1977, ch. 359, § 16; amended by Laws 1977, ch. 584, § 10; Revised Code of Montana 1947, 94-5-503; amended by Laws 1981, ch. 198, § 7; amended by Laws 1985, ch. 172, § 2; amended by Laws 1985, ch. 356, § 1; amended by Laws 1985, ch. 644, § 1; amended by Laws 1991, ch. 175, § 1; amended by Laws 1991, ch. 218, § 2; amended by Laws 1991, ch. 687, § 3; amended by Laws 1993, ch. 85, § 1; amended by Laws 1995, ch. 482, § 8; amended by Laws 1995, ch. 550, § 2; amended by Laws 1997, ch. 312, § 1; amended by Laws 1999, ch. 84, § 3; amended by Laws 1999, ch. 523, § 4; amended by Laws 2003, ch. 114, § 85; amended by Laws 2007, ch. 335, § 3; amended by Laws 2007, ch. 483, § 5; amended by Laws 2013, ch. 149, § 1.

MONT. CODE ANN. § 45-5-622 (2013). Endangering welfare of children.

(1) A parent, guardian, or other person supervising the welfare of a child less than 18 years old commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) Except as provided in 16-6-305, a parent or guardian or any person who is 18 years of age or older, whether or not the parent, guardian, or other person is supervising the welfare of the child, commits the offense of endangering the welfare of children if the parent, guardian, or other person knowingly contributes to the delinquency of a child less than:

(a) 18 years old by:

(i) supplying or encouraging the use of an intoxicating substance by the child; or

(ii) assisting, promoting, or encouraging the child to enter a place of prostitution; or

(b) 16 years old by assisting, promoting, or encouraging the child to:

(i) abandon the child's place of residence without the consent of the child's parents or guardian; or

(ii) engage in sexual conduct.

(3) A person, whether or not the person is supervising the welfare of a child less than 18 years of age, commits the offense of endangering the welfare of children if the person, in the residence of a child, in a building, structure, conveyance, or outdoor location where a child might reasonably be expected to be present, in a room offered to the public for overnight accommodation, or in any multiple-unit residential building, knowingly:

(a) produces or manufactures methamphetamine or attempts to produce or manufacture methamphetamine;

(b) possesses any material, compound, mixture, or preparation that contains any combination of the items listed in 45-9-107 with intent to manufacture methamphetamine; or

(c) causes or permits a child to inhale, be exposed to, have contact with, or ingest methamphetamine or be exposed to or have contact with methamphetamine paraphernalia.

(4) A parent, guardian, or other person supervising the welfare of a child less than 16 years of age may verbally or in writing request a person who is 18 years of age or older and who has no legal right of supervision or control over the child to stop contacting the child if the requester believes that the contact is not in the child's best interests. If the person continues to contact the child, the parent, guardian, or other person supervising the welfare of the child may petition or the county attorney may upon the person's request petition for an order of protection under Title 40, chapter 15. To the extent that they are consistent with this subsection, the provisions of Title 40, chapter 15, apply. A person who purposely or knowingly violates an order of protection commits the offense of endangering the welfare of children and upon conviction shall be sentenced as provided in subsection (5)(a).

(5) (a) Except as provided in subsection (5)(b), a person convicted of endangering the welfare of children shall be fined an amount not to exceed \$ 500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering the welfare of children shall be fined an amount not to exceed \$ 1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(b) A person convicted under subsection (3) is guilty of a felony and shall be imprisoned in the state prison for a term not to exceed 5 years and may be fined an amount not to exceed \$ 10,000, or both. If a child suffers serious bodily injury, the offender shall be fined an amount not to exceed \$ 25,000 or be imprisoned for a term not to exceed 10

years, or both. Prosecution or conviction of a violation of subsection (3) does not bar prosecution or conviction for any other crime committed by the offender as part of the same conduct.

(6) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, is admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; and evidence of past bodily injury.

(7) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering the welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered.

CREDIT(S)

Enacted 94-5-607 by Laws 1973, ch. 513, § 1. Amended by Laws 1975, ch. 85, § 1; amended by Laws 1977, ch. 218, § 1; amended by Laws 1977, ch. 359, § 18; Revised Code of Montana 1947, 94-5-607; amended by Laws 1987, ch. 405, § 1; amended by Laws 1989, ch. 448, § 3; amended by Laws 1997, ch. 333, § 1; amended by Laws 2007, ch. 75, § 1.

MONT. CODE ANN. § 45-5-625 (2013). Sexual abuse of children.

(1) A person commits the offense of sexual abuse of children if the person:

(a) knowingly employs, uses, or permits the employment or use of a child in an exhibition of sexual conduct, actual or simulated;

(b) knowingly photographs, films, videotapes, develops or duplicates the photographs, films, or videotapes, or records a child engaging in sexual conduct, actual or simulated;

(c) knowingly, by any means of communication, including electronic communication, persuades, entices, counsels, or procures a child under 16 years of age or a person the offender believes to be a child under 16 years of age to engage in sexual conduct, actual or simulated;

(d) knowingly processes, develops, prints, publishes, transports, distributes, sells, exhibits, or advertises any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(e) knowingly possesses any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(f) finances any of the activities described in subsections (1)(a) through (1)(d) and (1)(g), knowing that the activity is of the nature described in those subsections;

(g) possesses with intent to sell any visual or print medium, including a medium by use of electronic communication in which a child is engaged in sexual conduct, actual or simulated;

(h) knowingly travels within, from, or to this state with the intention of meeting a child under 16 years of age or a person the offender believes to be a child under 16 years of age in order to engage in sexual conduct, actual or simulated; or

(i) knowingly coerces, entices, persuades, arranges for, or facilitates a child under 16 years of age or a person the offender believes to be a child under 16 years of age to travel within, from, or to this state with the intention of engaging in sexual conduct, actual or simulated.

(2) (a) Except as provided in subsection (2)(b), (2)(c), or (4), a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term not to exceed 100 years and may be fined not more than \$ 10,000.

(b) Except as provided in 46-18-219, if the victim is under 16 years of age, a person convicted of the offense of sexual abuse of children shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$ 10,000.

(c) Except as provided in 46-18-219, a person convicted of the offense of sexual abuse of children for the possession of material, as provided in subsection (1)(e), shall be fined not to exceed \$ 10,000 or be imprisoned in the state prison for a term not to exceed 10 years, or both.

(3) An offense is not committed under subsections (1)(d) through (1)(g) if the visual or print medium is processed, developed, printed, published, transported, distributed, sold, possessed, or possessed with intent to sell, or if the activity is financed, as part of a sexual offender information or treatment course or program conducted or approved by the department of corrections.

(4) (a) If the victim was 12 years of age or younger and the offender was 18 years of age or older at the time of the offense, the offender:

(i) shall be punished by imprisonment in a state prison for a term of 100 years. The court may not suspend execution or defer imposition of the first 25 years of a sentence of imprisonment imposed under this subsection (4)(a)(i) except as provided in 46-18-222, and during the first 25 years of imprisonment, the offender is not eligible for parole.

(ii) may be fined an amount not to exceed \$ 50,000; and

(iii) shall be ordered to enroll in and successfully complete the educational phase and the cognitive and behavioral phase of a sexual offender treatment program provided or approved by the department of corrections.

(b) If the offender is released after the mandatory minimum period of imprisonment, the offender is subject to supervision by the department of corrections for the remainder of the offender's life and shall participate in the program for continuous, satellite-based monitoring provided for in 46-23-1010.

(5) As used in this section, the following definitions apply:

(a) "Electronic communication" means a sign, signal, writing, image, sound, data, or intelligence of any nature transmitted or created in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system.

(b) "Sexual conduct" means:

(i) actual or simulated:

(A) sexual intercourse, whether between persons of the same or opposite sex;

(B) penetration of the vagina or rectum by any object, except when done as part of a recognized medical procedure;

(C) bestiality;

(D) masturbation;

(E) sadomasochistic abuse;

(F) lewd exhibition of the genitals, breasts, pubic or rectal area, or other intimate parts of any person; or

(G) defecation or urination for the purpose of the sexual stimulation of the viewer; or

(ii) depiction of a child in the nude or in a state of partial undress with the purpose to abuse, humiliate, harass, or degrade the child or to arouse or gratify the person's own sexual response or desire or the sexual response or desire of any person.

(c) "Simulated" means any depicting of the genitals or pubic or rectal area that gives the appearance of sexual conduct or incipient sexual conduct.

(d) "Visual medium" means:

- (i) any film, photograph, videotape, negative, slide, or photographic reproduction that contains or incorporates in any manner any film, photograph, videotape, negative, or slide; or
- (ii) any disk, diskette, or other physical media that allows an image to be displayed on a computer or other video screen and any image transmitted to a computer or other video screen by telephone line, cable, satellite transmission, or other method.

CREDIT(S)

Enacted by Laws 1979, ch. 505, § 1. Amended by Laws 1993, ch. 638, § 1; amended by Laws 1995, ch. 187, § 2; amended by Laws 1995, ch. 482, § 9; amended by Laws 1995, ch. 546, § 200; amended by Laws 1995, ch. 550, § 5; amended by Laws 2003, ch. 344, § 2; amended by Laws 2005, ch. 364, § 2; amended by Laws 2007, ch. 29, § 1; amended by Laws 2007, ch. 483, § 11; amended by Laws 2009, ch. 198, § 1, eff. Oct. 1, 2009.

MONT. CODE ANN. § 45-5-627 (2013). Ritual abuse of minor -- exceptions -- penalty.

- (1) A person commits the offense of ritual abuse of a minor if the person purposely or knowingly and as part of any ceremony, rite, or ritual or of any training or practice for any ceremony, rite, or ritual:
 - (a) has sexual intercourse without consent with a person less than 16 years of age; commits assault, aggravated assault, assault on a minor, or assault with a weapon against a victim less than 16 years of age; or kills a person less than 16 years of age;
 - (b) actually or by simulation tortures, mutilates, or sacrifices an animal or person in the presence of the minor;
 - (c) dissects, mutilates, or incinerates a human corpse or remains in the presence of the minor;
 - (d) forces upon the minor or upon another person in the presence of a minor the ingestion or the external bodily application of human or animal urine, feces, flesh, blood, bone, or bodily secretions or drugs or chemical compounds;
 - (e) places a living minor or another living person in the presence of a minor in a coffin or open grave that is empty or that contains a human corpse or remains; or
 - (f) threatens the minor or, in the presence of the minor, threatens any person or animal with death or serious bodily harm and the minor reasonably believes that the threat will or may be carried out.

(2) This section does not apply to activities, practices, and procedures otherwise allowed by law.

(3) Except as provided in 46-18-219, a person convicted of ritual abuse of a minor shall:

(a) for the first offense, be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$ 50,000, or both; and

(b) for a second or subsequent offense, be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than \$ 50,000, or both.

(4) In addition to any sentence imposed under subsection (3), after determining pursuant to 46-18-242 the financial resources and future ability of the offender to pay restitution, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

CREDIT(S)

Enacted by Laws 1993, ch. 560, § 1. Amended by Laws 1995, ch. 482, § 10; amended by Laws 1999, ch. 432, § 9.

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NEB. REV. STAT. ANN. § 28-311 (2013). Criminal child enticement; penalties

(1)(a) No person, by any means and without privilege to do so, shall knowingly solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any vehicle, whether or not the person knows the age of the child.

(b) No person, by any means and without privilege to do so, shall solicit, coax, entice, or lure or attempt to solicit, coax, entice, or lure any child under the age of fourteen years to enter into any place with the intent to seclude the child from his or her parent, guardian, or other legal custodian or the general public, whether or not the person knows the age of the child. For purposes of this subdivision, seclude means to take, remove, hide, secrete, conceal, isolate, or otherwise unlawfully separate.

(2) It is an affirmative defense to a charge under this section that:

(a) The person had the express or implied permission of the parent, guardian, or other legal custodian of the child in undertaking the activity;

(b)(i) The person is a law enforcement officer, emergency services provider as defined in section 71-507, firefighter, or other person who regularly provides emergency services, is the operator of a bookmobile or other such vehicle operated by the state or a political subdivision and used for informing, educating, organizing, or transporting children, is a paid employee of, or a volunteer for, a nonprofit or religious organization which provides activities for children, or is an employee or agent of or a volunteer acting under the direction of any board of education and (ii) the person listed in subdivision (2)(b)(i) of this section was, at the time the person undertook the activity, acting within the scope of his or her lawful duties in that capacity; or

(c) The person undertook the activity in response to a bona fide emergency situation or the person undertook the activity in response to a reasonable belief that it was necessary to preserve the health, safety, or welfare of the child.

(3) Any person who violates this section commits criminal child enticement and is guilty of a Class IIIA felony. If such person has previously been convicted of (a) criminal child enticement under this section, (b) sexual assault of a child in the first degree under section 28-319.01, (c) sexual assault of a child in the second or third degree under section 28-320.01, (d) child enticement by means of an electronic communication device under section 28-320.02, or (e) assault under section 28-308, 28-309, or 28-310, kidnapping under section 28-313, or false imprisonment under section 28-314 or 28-315 when the victim was under eighteen years of age when such person violates this section, such person is guilty of a Class III felony.

CREDIT(S)

Laws 1999, LB 49, § 2; Laws 2006, LB 1199, § 3; Laws 2009, LB 97, § 10, eff. May 21, 2009; Laws 2011, LB 665, § 1, eff. May 12, 2011.

NEB. REV. STAT. ANN. § 28-319 (2013). Sexual assault; first degree; penalty

(1) Any person who subjects another person to sexual penetration (a) without the consent of the victim, (b) who knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of his or her conduct, or (c) when the actor is nineteen years of age or older and the victim is at least twelve but less than sixteen years of age is guilty of sexual assault in the first degree.

(2) Sexual assault in the first degree is a Class II felony. The sentencing judge shall consider whether the actor caused serious personal injury to the victim in reaching a decision on the sentence.

(3) Any person who is found guilty of sexual assault in the first degree for a second time when the first conviction was pursuant to this section or any other state or federal law with essentially the same elements as this section shall be sentenced to a mandatory minimum term of twenty-five years in prison.

CREDIT(S)

Laws 1977, LB 38, § 34; Laws 1978, LB 748, § 5; Laws 1993, LB 430, § 1; Laws 1995, LB 371, § 4; Laws 2006, LB 1199, § 5.

NEB. REV. STAT. ANN. § 28-319.01 (2013). Sexual assault of a child; first degree; penalty

(1) A person commits sexual assault of a child in the first degree:

(a) When he or she subjects another person under twelve years of age to sexual penetration and the actor is at least nineteen years of age or older; or

(b) When he or she subjects another person who is at least twelve years of age but less than sixteen years of age to sexual penetration and the actor is twenty-five years of age or older.

(2) Sexual assault of a child in the first degree is a Class IB felony with a mandatory minimum sentence of fifteen years in prison for the first offense.

(3) Any person who is found guilty of sexual assault of a child in the first degree under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-320.01 before July 14, 2006, of sexual assault of a child or attempted sexual assault of a child, (d) under section 28-320.01 on or after July 14, 2006, of sexual assault of a child in the second or third degree or attempted sexual assault of a child in the second or third degree, or (e) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-320.01 as it existed before, on, or after July 14, 2006, shall be guilty of a Class IB felony with a mandatory minimum sentence of twenty-five years in prison.

(4) In any prosecution under this section, the age of the actor shall be an essential element of the offense that must be proved beyond a reasonable doubt.

CREDIT(S)

Laws 2006, LB 1199, § 6; Laws 2009, LB 97, § 12, eff. May 21, 2009.

NEB. REV. STAT. ANN. § 28-320.01 (2013). Sexual assault of a child; second or third degree; penalties

(1) A person commits sexual assault of a child in the second or third degree if he or she subjects another person fourteen years of age or younger to sexual contact and the actor is at least nineteen years of age or older.

(2) Sexual assault of a child is in the second degree if the actor causes serious personal injury to the victim. Sexual assault of a child in the second degree is a Class II felony for the first offense.

(3) Sexual assault of a child is in the third degree if the actor does not cause serious personal injury to the victim. Sexual assault of a child in the third degree is a Class IIIA felony for the first offense.

(4) Any person who is found guilty of second degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or section 28-319.01 shall be guilty of a Class IC felony and shall be sentenced to a mandatory minimum term of twenty-five years in prison.

(5) Any person who is found guilty of third degree sexual assault of a child under this section and who has previously been convicted (a) under this section, (b) under section 28-319 of first degree or attempted first degree sexual assault, (c) under section 28-319.01 for first degree or attempted first degree sexual assault of a child, or (d) in any other state or federal court under laws with essentially the same elements as this section, section 28-319, or 28-319.01 shall be guilty of a Class IC felony.

CREDIT(S)

Laws 1984, LB 79, § 1; Laws 1991, LB 23, § 1; Laws 1996, LB 645, § 14; Laws 1997, LB 364, § 6; Laws 2006, LB 1199, § 7.

NEB. REV. STAT. ANN. § 28-707 (2013). Child abuse; privileges not available; penalties

(1) A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:

(a) Placed in a situation that endangers his or her life or physical or mental health;

(b) Cruelly confined or cruelly punished;

(c) Deprived of necessary food, clothing, shelter, or care;

(d) Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions; or

(e) Placed in a situation to be sexually abused as defined in section 28–319, 28–319.01, or 28–320.01; or

(f) Placed in a situation to be a trafficking victim as defined in section 28–830.

(2) The statutory privilege between patient and physician, between client and professional counselor, and between husband and wife shall not be available for excluding or refusing testimony in any prosecution for a violation of this section.

(3) Child abuse is a Class I misdemeanor if the offense is committed negligently and does not result in serious bodily injury as defined in section 28–109 or death.

(4) Child abuse is a Class IIIA felony if the offense is committed knowingly and intentionally and does not result in serious bodily injury as defined in section 28–109 or death.

(5) Child abuse is a Class IIIA felony if the offense is committed negligently and results in serious bodily injury as defined in section 28–109.

(6) Child abuse is a Class III felony if the offense is committed negligently and results in the death of such child.

(7) Child abuse is a Class II felony if the offense is committed knowingly and intentionally and results in serious bodily injury as defined in such section.

(8) Child abuse is a Class IB felony if the offense is committed knowingly and intentionally and results in the death of such child.

(9) For purposes of this section, negligently refers to criminal negligence and means that a person knew or should have known of the danger involved and acted recklessly, as defined in section 28–109, with respect to the safety or health of the minor child.

CREDIT(S)

Laws 1977, LB 38, § 146; Laws 1982, LB 347, § 10; Laws 1993, LB 130, § 3; Laws 1993, LB 430, § 3; Laws 1994, LB 908, § 1; Laws 1996, LB 645, § 15; Laws 1997, LB 364, § 9; Laws 2006, LB 1199, § 9; Laws 2010, LB 507, § 3, eff. July 15, 2010; Laws 2012, LB 799, § 2, eff. July 19, 2012; Laws 2013, LB 255, § 1, eff. Oct. 1, 2013.

NEB. REV. STAT. ANN. § 28-805 (2013). Debauching a minor; penalty

(1) Any person not a minor commits the offense of debauching a minor if he or she shall debauch or deprave the morals of any boy or girl under the age of seventeen years by:

(a) Lewdly inducing such boy or girl carnally to know any other person; or

(b) Soliciting any such boy or girl to visit a house of prostitution or other place where prostitution, debauchery, or other immoral practices are permitted or encouraged, for the purpose of prostitution or sexual penetration; or

(c) Arranging or assisting in arranging any meeting for such purpose between any such boy or girl and any female or male of dissolute character or any inmate of any place where prostitution, debauchery, or other immoral practices are permitted or encouraged; or

(d) Arranging or aiding or assisting in arranging any meeting between any such boy or girl and any other person for the purpose of sexual penetration.

(2) Debauching a minor is a Class I misdemeanor.

CREDIT(S)

Laws 1977, LB 38, § 161; Laws 1979, LB 378, § 12.

NEB. REV. STAT. ANN. § 28-1463.03 (2013). Visual depiction of sexually explicit conduct; prohibited acts

(1) It shall be unlawful for a person to knowingly make, publish, direct, create, provide, or in any manner generate any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(2) It shall be unlawful for a person knowingly to purchase, rent, sell, deliver, distribute, display for sale, advertise, trade, or provide to any person any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(3) It shall be unlawful for a person to knowingly employ, force, authorize, induce, or otherwise cause a child to engage in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(4) It shall be unlawful for a parent, stepparent, legal guardian, or any person with custody and control of a child, knowing the content thereof, to consent to such child engaging in any visual depiction of sexually explicit conduct which has a child as one of its participants or portrayed observers.

(5) It shall be an affirmative defense to a charge brought pursuant to subsection (1) of this section if the defendant was less than eighteen years of age at the time the visual depiction was created and the visual depiction of sexually explicit conduct includes no person other than the defendant.

(6) It shall be an affirmative defense to a charge brought pursuant to subsection (2) of this section if (a) the defendant was less than eighteen years of age, (b) the visual depiction of sexually explicit conduct includes no person other than the defendant, (c) the defendant had a reasonable belief at the time the visual depiction was sent to another that it was being sent to a willing recipient, and (d) the recipient was at least fifteen years of age at the time the visual depiction was sent.

CREDIT(S)

Laws 1978, LB 829, § 1; Laws 1985, LB 668, § 3; Laws 2009, LB 97, § 18, eff. May 21, 2009.

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NEV. REV. STAT. ANN. § 200.366 (2013). Sexual assault: Definition; penalties.

1. A person who subjects another person to sexual penetration, or who forces another person to make a sexual penetration on himself or another, or on a beast, against the will of the victim or under conditions in which the perpetrator knows or should know that the victim is mentally or physically incapable of resisting or understanding the nature of his conduct, is guilty of sexual assault.

2. Except as otherwise provided in subsections 3 and 4, a person who commits a sexual assault is guilty of a category A felony and shall be punished:

(a) If substantial bodily harm to the victim results from the actions of the defendant committed in connection with or as a part of the sexual assault, by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served.

(b) If no substantial bodily harm to the victim results, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

3. Except as otherwise provided in subsection 4, a person who commits a sexual assault against a child under the age of 16 years is guilty of a category A felony and shall be punished:

(a) If the crime results in substantial bodily harm to the child, by imprisonment in the state prison for life without the possibility of parole.

(b) Except as otherwise provided in paragraph (c), if the crime does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 25 years has been served.

(c) If the crime is committed against a child under the age of 14 years and does not result in substantial bodily harm to the child, by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 35 years has been served.

4. A person who commits a sexual assault against a child under the age of 16 years and who has been previously convicted of:

(a) A sexual assault pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute a sexual assault pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

5. For the purpose of this section, "other sexual offense against a child" means any act committed by an adult upon a child constituting:

(a) Incest pursuant to NRS 201.180;

(b) Lewdness with a child pursuant to NRS 201.230;

(c) Sado-masochistic abuse pursuant to NRS 201.262; or

(d) Luring a child using a computer, system or network pursuant to NRS 201.560, if punished as a felony.

CREDIT(S)

Added by Laws 1977, p. 1626. Amended by Laws 1991, p. 612; Laws 1995, p. 1186; Laws 1997, pp. 1179, 1719; Laws 1999, p. 431; Laws 2003, c. 461, § 1, eff. Oct. 1, 2003; Laws 2005, c. 507, § 27, eff. July 1, 2005; Laws 2007, c. 528, § 7.

NEV. REV. STAT. ANN. § 200.368 (2013). Statutory sexual seduction: Penalties.

Except under circumstances where a greater penalty is provided in NRS 201.540, a person who commits statutory sexual seduction shall be punished:

1. If he is 21 years of age or older, for a category C felony as provided in NRS 193.130.
2. If he is under the age of 21 years, for a gross misdemeanor.

CREDIT(S)

Added by Laws 1977, p. 1627. Amended by Laws 1979, p. 1426; Laws 1995, p. 1187; Laws 2001, c. 137, § 1, eff. July 1, 2001.

NEV. REV. STAT. ANN. § 200.400 (2013). Definition; penalties

1. As used in this section:

(a) “Battery” means any willful and unlawful use of force or violence upon the person of another.

(b) “Strangulation” has the meaning ascribed to it in NRS 200.481.

2. A person who is convicted of battery with the intent to commit mayhem, robbery or grand larceny is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

3. A person who is convicted of battery with the intent to kill is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years.

4. A person who is convicted of battery with the intent to commit sexual assault shall be punished:

(a) If the crime results in substantial bodily harm to the victim or is committed by strangulation, for a category A felony by imprisonment in the state prison:

(1) For life without the possibility of parole; or

(2) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served,

as determined by the verdict of the jury, or the judgment of the court if there is no jury.

(b) If the crime does not result in substantial bodily harm to the victim and the victim is 16 years of age or older, for a category A felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of life with the possibility of parole.

(c) If the crime does not result in substantial bodily harm to the victim and the victim is a child under the age of 16, for a category A felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of life with the possibility of parole.

In addition to any other penalty, a person convicted pursuant to this subsection may be punished by a fine of not more than \$10,000.

CREDIT(S)

Amended by Laws 1967, p. 471; Laws 1971, p. 1385; Laws 1973, p. 1805; Laws 1977, p. 1628; Laws 1979, p. 1426; Laws 1981, p. 903; Laws 1985, p. 247; Laws 1991, p. 123; Laws 1995, p. 1188; Laws 2005, c. 507, § 28, eff. July 1, 2005; Laws 2009, c. 42, § 2, eff. May 6, 2009.

NEV. REV. STAT. ANN. § 200.508 (2013). Abuse, neglect or endangerment of child: Penalties; definitions.

1. A person who willfully causes a child who is less than 18 years of age to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 15 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years,

unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

2. A person who is responsible for the safety or welfare of a child and who permits or allows that child to suffer unjustifiable physical pain or mental suffering as a result of abuse or neglect or to be placed in a situation where the child may suffer physical pain or mental suffering as the result of abuse or neglect:

(a) If substantial bodily or mental harm results to the child:

(1) If the child is less than 14 years of age and the harm is the result of sexual abuse or exploitation, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served; or

(2) In all other such cases to which subparagraph (1) does not apply, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years; or

(b) If substantial bodily or mental harm does not result to the child:

(1) If the person has not previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a gross misdemeanor; or

(2) If the person has previously been convicted of a violation of this section or of a violation of the law of any other jurisdiction that prohibits the same or similar conduct, is guilty of a category C felony and shall be punished as provided in NRS 193.130,

unless a more severe penalty is prescribed by law for an act or omission that brings about the abuse or neglect.

3. A person does not commit a violation of subsection 1 or 2 by virtue of the sole fact that he delivers or allows the delivery of a child to a provider of emergency services pursuant to NRS 432B.630.

4. As used in this section:

(a) "Abuse or neglect" means physical or mental injury of a nonaccidental nature, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child under the age of 18 years, as set forth in paragraph (d) and NRS 432B.070; , 432B.100; , 432B.110; , 432B.140; and 432B.150, under circumstances which indicate that the child's health or welfare is harmed or threatened with harm.

(b) "Allow" means to do nothing to prevent or stop the abuse or neglect of a child in circumstances where the person knows or has reason to know that the child is abused or neglected.

(c) "Permit" means permission that a reasonable person would not grant and which amounts to a neglect of responsibility attending the care, custody and control of a minor child.

(d) "Physical injury" means:

(1) Permanent or temporary disfigurement; or

(2) Impairment of any bodily function or organ of the body.

(e) "Substantial mental harm" means an injury to the intellectual or psychological capacity or the emotional condition of a child as evidenced by an observable and substantial impairment of the ability of the child to function within his normal range of performance or behavior.

CREDIT(S)

Added by Laws 1971, p. 772. Amended by Laws 1975, p. 1141; Laws 1977, pp. 738, 1629; Laws 1985, p. 1399; Laws 1989, pp. 866, 1510, 1512; Laws 1995, p. 1193; Laws 1997, pp. 850, 1720; Laws 1999, pp. 470, 472; Laws 2001, c. 276, § 14, eff. May 31, 2001; Laws 2001, c. 258, § 1, eff. Oct. 1, 2001; Laws 2003, c. 2, § 23, eff. March 5, 2003.

NEV. REV. STAT. ANN. § 200.5083 (2013). Mutilation of genitalia of female child: Penalties; definitions.

1. A person who willfully:

(a) Mutilates, or aids, abets, encourages or participates in the mutilation of the genitalia of a female child; or

(b) Removes a female child from this state for the purpose of mutilating the genitalia of the child,

is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 10 years, and may be further punished by a fine of not more than \$10,000.

2. It is not a defense that:

(a) The person engaging in the conduct prohibited by subsection 1 believes that the conduct is necessary or appropriate as a matter of custom, ritual or standard practice; or

(b) The child, the parent or legal guardian of the child, or another person legally responsible for the child has consented to the conduct prohibited by subsection 1.

3. As used in this section:

(a) "Child" means a person who is under 18 years of age.

(b) "Mutilates the genitalia of a female child" means the removal or infibulation in whole or in part of the clitoris, vulva, labia major or labia minor for nonmedical purposes.

CREDIT(S)

Added by Laws 1997, p. 678.

NEB. REV. STAT. ANN. § 200.710 (2013). Unlawful to use minor in producing pornography or as subject of sexual portrayal in performance.

1. A person who knowingly uses, encourages, entices or permits a minor to simulate or engage in or assist others to simulate or engage in sexual conduct to produce a performance is guilty of a category A felony and shall be punished as provided in NRS 200.750.

2. A person who knowingly uses, encourages, entices, coerces or permits a minor to be the subject of a sexual portrayal in a performance is guilty of a category A felony and

shall be punished as provided in NRS 200.750, regardless of whether the minor is aware that the sexual portrayal is part of a performance.

CREDIT(S)

Added by Laws 1979, p. 437. Amended by Laws 1983, p. 815. Substituted in 1983 revision by NRS 200.509. Amended by Laws 1995, pp. 951, 1196, 1337.

NEV. REV. STAT. ANN. § 200.720 (2013). Promotion of sexual performance of minor unlawful

A person who knowingly promotes a performance of a minor:

1. Where the minor engages in or simulates, or assists others to engage in or simulate, sexual conduct; or
2. Where the minor is the subject of a sexual portrayal, is guilty of a category A felony and shall be punished as provided in NRS 200.750.

CREDIT(S)

Added by Laws 1983, p. 814. Amended by Laws 1995, pp. 951, 1196, 1337.

NEV. REV. STAT. ANN. § 201.195 (2013). Solicitation of minor to engage in acts constituting crime against nature; penalties.

1. A person who incites, entices or solicits a minor to engage in acts which constitute the infamous crime against nature:

(a) If the minor actually engaged in such acts as a result and:

(1) The minor was less than 14 years of age, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served.

(2) The minor was 14 years of age or older, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.

(b) If the minor did not engage in such acts:

(1) For the first offense, is guilty of a gross misdemeanor.

(2) For any subsequent offense, is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served.

2. As used in this section, the "infamous crime against nature" means anal intercourse, cunnilingus or fellatio between natural persons of the same sex. Any sexual penetration, however slight, is sufficient to complete the infamous crime against nature.

CREDIT(S)

Added by Laws 1979, p. 662. Amended by Laws 1989, p. 1511; Laws 1991, p. 1007; Laws 1993, p. 515; Laws 1995, p. 1198; Laws 1997, pp. 1721, 2500, 3187; Laws 1999, pp. 470, 472; Laws 2005, c. 507, § 32, eff. July 1, 2005.

NEV. REV. STAT. ANN. § 201.230 (2013). Lewdness with child under 14 years; penalties.

1. A person who willfully and lewdly commits any lewd or lascivious act, other than acts constituting the crime of sexual assault, upon or with the body, or any part or member thereof, of a child under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of that person or of that child, is guilty of lewdness with a child.

2. Except as otherwise provided in subsection 3, a person who commits lewdness with a child is guilty of a category A felony and shall be punished by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 10 years has been served, and may be further punished by a fine of not more than \$10,000.

3. A person who commits lewdness with a child and who has been previously convicted of:

(a) Lewdness with a child pursuant to this section or any other sexual offense against a child; or

(b) An offense committed in another jurisdiction that, if committed in this State, would constitute lewdness with a child pursuant to this section or any other sexual offense against a child,

is guilty of a category A felony and shall be punished by imprisonment in the state prison for life without the possibility of parole.

4. For the purpose of this section, "other sexual offense against a child" has the meaning ascribed to it in subsection 5 of NRS 200.366.

CREDIT(S)

Amended by Laws 1961, p. 92; Laws 1967, p. 477; Laws 1973, pp. 96, 255, 1406; Laws 1977, pp. 867, 1632; Laws 1979, p. 1430; Laws 1983, p. 207; Laws 1991, p. 1009; Laws 1995, p. 1200; Laws 1997, pp. 1722, 2502, 3190; Laws 1999, pp. 470, 472; Laws 2003, c. 461, § 2, eff. Oct. 1, 2003; Laws 2005, c. 507, § 33, eff. July 1, 2005.

NEV. REV. STAT. ANN. § 201.540 (2013). Sexual conduct between certain employees of school or volunteers at school and pupil: Penalty; exception.

1. Except as otherwise provided in subsection 4, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 16 or 17 years of age and:

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. Except as otherwise provided in subsection 4, a person who:

(a) Is 21 years of age or older;

(b) Is or was employed in a position of authority by a public school or private school or is or was volunteering in a position of authority at a public or private school; and

(c) Engages in sexual conduct with a pupil who is 14 or 15 years of age and who :

(1) Who is or was enrolled in or attending the public school or private school at which the person is or was employed or volunteering, ; or

(2) With whom the person has had contact in the course of performing his or her duties as an employee or volunteer,

is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years, and may be further punished by a fine of not more than \$5,000.

3. For the purposes of subsections 1 and 2, a person shall be deemed to be or have been employed in a position of authority by a public school or private school or deemed to be or have been volunteering in a position of authority at a public or private school if the person is or was employed or volunteering as:

(a) A teacher or instructor;

(b) An administrator;

(c) A head or assistant coach; or

(d) A teacher's aide or an auxiliary, nonprofessional employee who assists licensed personnel in the instruction or supervision of pupils pursuant to NRS 391.100.

4. The provisions of this section do not apply to a person who is married to the pupil.

CREDIT(S)

Added by Laws 1997, p. 2522. Amended by Laws 2001, c. 137, § 2, eff. July 1, 2001; Laws 2013, c. 387, § 1, eff. July 1, 2013.

NEV. REV. STAT. ANN. § 201.550 (2013). Sexual conduct between certain employees of college or university and student: Penalty; exception.

1. Except as otherwise provided in subsection 3, a person who:

(a) Is 21 years of age or older;

(b) Is employed in a position of authority by a college or university; and

(c) Engages in sexual conduct with a student who is 16 or 17 years of age and who is enrolled in or attending the college or university at which the person is employed,

is guilty of a category C felony and shall be punished as provided in NRS 193.130.

2. For the purposes of subsection 1, a person shall be deemed to be employed in a position of authority by a college or university if the person is employed as:

(a) A teacher, instructor or professor;

(b) An administrator; or

(c) A head or assistant coach.

3. The provisions of this section do not apply to a person who is married to the student.

CREDIT(S)

Added by Laws 1997, p. 2523.

NEV. REV. STAT. ANN. § 201.560 (2013). Definitions; exception; penalties.

1. Except as otherwise provided in subsection 3, a person commits the crime of luring a child if the person knowingly contacts or communicates with or attempts to contact or communicate with:

(a) A child who is less than 16 years of age and who is at least 5 years younger than the person with the intent to persuade, lure or transport the child away from his home or from any location known to his parent or guardian or other person legally responsible for the child to a place other than where the child is located, for any purpose:

(1) Without the express consent of the parent or guardian or other person legally responsible for the child; and

(2) With the intent to avoid the consent of the parent or guardian or other person legally responsible for the child; or

(b) Another person whom he believes to be a child who is less than 16 years of age and at least 5 years younger than he is, regardless of the actual age of that other person, with the intent to persuade or lure the person to engage in sexual conduct.

2. Except as otherwise provided in subsection 3, a person commits the crime of luring a person with mental illness if he knowingly contacts or communicates with a person with mental illness with the intent to persuade, lure or transport the person with mental illness away from his home or from any location known to any person legally responsible for the person with mental illness to a place other than where the person with mental illness is located:

(a) For any purpose that a reasonable person under the circumstances would know would endanger the health, safety or welfare of the person with mental illness;

(b) Without the express consent of the person legally responsible for the person with mental illness; and

(c) With the intent to avoid the consent of the person legally responsible for the person with mental illness.

3. The provisions of this section do not apply if the contact or communication is made or attempted with the intent to prevent imminent bodily, emotional or psychological harm to the child, person believed to be a child or person with mental illness.

4. A person who violates or attempts to violate the provisions of this section through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less

than 1 year and a maximum term of not more than 10 years and may be further punished by a fine of not more than \$10,000;

(b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category C felony and shall be punished as provided in NRS 193.130; or

(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.

5. A person who violates or attempts to violate the provisions of this section in a manner other than through the use of a computer, system or network:

(a) With the intent to engage in sexual conduct with the child, person believed to be a child or person with mental illness or to cause the child, person believed to be a child or person with mental illness to engage in sexual conduct, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years and may be further punished by a fine of not more than \$10,000;

(b) By providing the child, person believed to be a child or person with mental illness with material that is harmful to minors or requesting the child, person believed to be a child or person with mental illness to provide the person with material that is harmful to minors, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 6 years and may be further punished by a fine of not more than \$10,000; or

(c) If paragraph (a) or (b) does not apply, is guilty of a gross misdemeanor.

6. As used in this section:

(a) "Computer" has the meaning ascribed to it in NRS 205.4735.

(b) "Harmful to minors" has the meaning ascribed to it in NRS 201.257.

(c) "Material" means anything that is capable of being used or adapted to arouse interest, whether through the medium of reading, observation, sound or in any other manner.

(d) "Network" has the meaning ascribed to it in NRS 205.4745.

(e) "Person with mental illness" means a person who has any mental dysfunction leading to impaired ability to maintain himself and to function effectively in his life situation without external support.

(f) "Sexual conduct" has the meaning ascribed to it in NRS 201.520.

(g) "System" has the meaning ascribed to it in NRS 205.476.

CREDIT(S)

Added by Laws 2001, c. 560, § 4, eff. June 13, 2001. Amended by Laws 2003, c. 261, § 2, eff. May 28, 2003; Laws 2003, c. 58, § 3, eff. July 1, 2003; Laws 2007, c. 66, § 1.

NEW HAMPSHIRE

N.H. REV. STAT. ANN. § 632-A:2 (2013). Aggravated Felonious Sexual Assault.

I. A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:

(a) When the actor overcomes the victim through the actual application of physical force, physical violence or superior physical strength.

(b) When the victim is physically helpless to resist.

(c) When the actor coerces the victim to submit by threatening to use physical violence or superior physical strength on the victim, and the victim believes that the actor has the present ability to execute these threats.

(d) When the actor coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim believes that the actor has the ability to execute these threats in the future.

(e) When the victim submits under circumstances involving false imprisonment, kidnapping or extortion.

(f) When the actor, without the prior knowledge or consent of the victim, administers or has knowledge of another person administering to the victim any intoxicating substance which mentally incapacitates the victim.

(g) When the actor provides therapy, medical treatment or examination of the victim and in the course of that therapeutic or treating relationship or within one year of termination of that therapeutic or treating relationship:

(1) Acts in a manner or for purposes which are not professionally recognized as ethical or acceptable; or

(2) Uses this position as such provider to coerce the victim to submit.

(h) When, except as between legally married spouses, the victim has a disability that renders him or her incapable of freely arriving at an independent choice as to whether or not to engage in sexual conduct, and the actor knows or has reason to know that the victim has such a disability.

(i) When the actor through concealment or by the element of surprise is able to cause sexual penetration with the victim before the victim has an adequate chance to flee or resist.

(j) When, except as between legally married spouses, the victim is 13 years of age or older and under 16 years of age and:

(1) the actor is a member of the same household as the victim; or

(2) the actor is related by blood or affinity to the victim.

(k) When, except as between legally married spouses, the victim is 13 years of age or older and under 18 years of age and the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit.

(l) When the victim is less than 13 years of age.

(m) When at the time of the sexual assault, the victim indicates by speech or conduct that there is not freely given consent to performance of the sexual act.

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

II. A person is guilty of aggravated felonious sexual assault without penetration when he intentionally touches whether directly, through clothing, or otherwise, the genitalia of a person under the age of 13 under circumstances that can be reasonably construed as being for the purpose of sexual arousal or gratification.

III. A person is guilty of aggravated felonious sexual assault when such person engages in a pattern of sexual assault against another person, not the actor's legal spouse, who is less than 16 years of age. The mental state applicable to the underlying acts of sexual assault need not be shown with respect to the element of engaging in a pattern of sexual assault.

IV. A person is guilty of aggravated felonious sexual assault when such person engages in sexual penetration as defined in RSA 632-A:1, V with another person under 18 years of age whom such person knows to be his or her ancestor, descendant, brother or sister of the whole or half blood, uncle, aunt, nephew, or niece. The relationships referred to herein include blood relationships without regard to legitimacy, stepchildren, and relationships of parent and child by adoption.

Source. 1975, 302:1. 1981, 415:2, 3. 1986, 132:1. 1992, 254:6. 1994, 185:2. 1995, 66:1. 1997, 220:2. 1998, 240:2. 1999, 177:2. 2003, 226:1, 2, eff. Jan. 1, 2004. 2008, 334:13, eff. Jan. 1, 2009. 2012, 105:1, eff. July 28, 2012.

N.H. REV. STAT. ANN. § 632-A:3 (2013). Felonious Sexual Assault.

A person is guilty of a class B felony if such person:

I. Subjects a person to sexual contact and causes serious personal injury to the victim under any of the circumstances named in RSA 632-A:2; or

II. Engages in sexual penetration with a person, other than his legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or more; or

III. Engages in sexual contact with a person other than his legal spouse who is under 13 years of age.

IV. (a) Engages in sexual contact with the person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

(b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense.

(c) For the purpose of this paragraph, “sexual contact” means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or the causing of such contact, can reasonably be construed as being for the purpose of sexual arousal or gratification of the person in the position of authority, or the humiliation of the person being touched.

Source. 1975, 302:1. 1981, 415:4. 1985, 228:4. 1997, 220:3. 2003, 226:3, 4. 2006, 162:1, eff. Jan. 1, 2007. 2008, 334:9, eff. Jan. 1, 2009. 2010, 223:1, eff. Jan. 1, 2011.

N.H. REV. STAT. ANN. § 632-A:4 (2013). Sexual Assault.

I. A person is guilty of a class A misdemeanor under any of the following circumstances:

(a) When the actor subjects another person who is 13 years of age or older to sexual contact under any of the circumstances named in RSA 632-A:2.

(b) When the actor subjects another person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age to sexual contact where the age difference between the actor and the other person is 5 years or more.

(c) In the absence of any of the circumstances set forth in RSA 632-A:2, when the actor engages in sexual penetration with a person, other than the actor's legal spouse, who is 13 years of age or older and under 16 years of age where the age difference between the actor and the other person is 4 years or less.

II. A person found guilty under subparagraph I(c) of this section shall not be required to register as a sexual offender under RSA 651-B.

III. (a) A person is guilty of a misdemeanor if such person engages in sexual contact or sexual penetration with another person, or causes the person to engage in sexual contact on himself or herself in the presence of the actor, when the actor is in a position of authority over the person under any of the following circumstances:

(1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or

(2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

(b) Consent of the victim under any of the circumstances set forth in this paragraph shall not be considered a defense.

(c) For the purpose of this paragraph, "sexual contact" means the intentional touching of the person's sexual or intimate parts, including genitalia, anus, breasts, and buttocks, where such contact, or the causing of such contact, can reasonably be construed as being for the purpose of sexual arousal or gratification of the person in the position of authority, or the humiliation of the person being touched.

Source. 1975, 302:1. 1985, 228:5. 2003, 226:5; 316:7. 2005, 290:1, eff. Jan. 1, 2006. 2008, 334:14, eff. Jan. 1, 2009. 2010, 223:2, eff. Jan. 1, 2011.

N.H. REV. STAT. ANN. § 639:3 (2013). Endangering Welfare of Child or Incompetent.

I. A person is guilty of endangering the welfare of a child or incompetent if he knowingly endangers the welfare of a child under 18 years of age or of an incompetent person by purposely violating a duty of care, protection or support he owes to such child or incompetent, or by inducing such child or incompetent to engage in conduct that endangers his health or safety.

II. In the prosecution of any person under this section, the tattooing or branding by any person of a child under the age of 18 constitutes endangering the welfare of such child.

III. In the prosecution of any person under this section, the solicitation by any person of a child under the age of 16 to engage in sexual activity as defined by RSA 649-A:2, III for the purpose of creating a visual representation as defined in RSA 649-A:2, IV, or to engage in sexual penetration as defined by RSA 632-A:1, V, constitutes endangering the welfare of such child.

IV. A person who pursuant to the tenets of a recognized religion fails to conform to an otherwise existing duty of care or protection is not guilty of an offense under this section.

V. A person who endangers the welfare of a child or incompetent by violating paragraph III of this section is guilty of a class B felony. All other violations of this section are misdemeanors.

VI. No person acting in accordance with the provisions of RSA 132-A shall be guilty of an offense under this section.

Source. 1971, 518:1. 1983, 448:1. 2002, 195:2. 2003, 40:2, eff. June 4, 2003.

N.H. REV. STAT. ANN. § 645:1 (2013). Indecent Exposure and Lewdness.

I. A person is guilty of a misdemeanor if such person fornicates, exposes his or her genitals, or performs any other act of gross lewdness under circumstances which he or she should know will likely cause affront or alarm.

II. A person is guilty of a class B felony if:

(a) Such person purposely performs any act of sexual penetration or sexual contact on himself or herself or another in the presence of a child who is less than 16 years of age.

(b) Such person purposely transmits to a child who is less than 16 years of age, or an individual whom the actor reasonably believes is a child who is less than 16 years of age, an image of himself or herself fornicating, exposing his or her genitals, or performing any other act of gross lewdness.

(c) Having previously been convicted of an offense under paragraph I, or of an offense that includes the same conduct under any other jurisdiction, the person subsequently commits an offense under paragraph I.

III. A person shall be guilty of a class A felony if having previously been convicted of 2 or more offenses under paragraph II, or a reasonably equivalent statute in another state, the person subsequently commits an offense under this section.

Source. 1971, 518:1. 1992, 254:10. 1993, 297:1. 1999, 321:1, eff. Jan. 1, 2000. 2008, 323:5, eff. Jan. 1, 2009.

N.H. REV. STAT. ANN. § 649-A: 3-b (2013). Manufacture of Child Sexual Abuse Images

I. No person shall knowingly create, produce, manufacture, or direct a visual representation of a child engaging in or being engaged in sexually explicit conduct, or participate in that portion of such visual representation that consists of a child engaging in or being engaged in sexually explicit conduct.

II. If such person has had no previous convictions in this state or another state for the conduct prohibited in this section, the defendant may be sentenced to a maximum sentence not to exceed 30 years and a minimum sentence not to exceed 1/2 of the maximum. Upon conviction of an offense under this section based on an indictment alleging that the person has been previously convicted of an offense under this section or a reasonably equivalent offense in an out-of-state jurisdiction, a person may be sentenced to life imprisonment or for such term as the court may order.

Source. 2008, 323:2, eff. Jan. 1, 2009.

NEW JERSEY

N.J. STAT. ANN. § 2C:14-2 (2013). Sexual assault

a. An actor is guilty of aggravated sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

(1) The victim is less than 13 years old;

(2) The victim is at least 13 but less than 16 years old; and

(a) The actor is related to the victim by blood or affinity to the third degree, or

(b) The actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional, or occupational status, or

(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;

(3) The act is committed during the commission, or attempted commission, whether alone or with one or more other persons, of robbery, kidnapping, homicide, aggravated assault on another, burglary, arson or criminal escape;

(4) The actor is armed with a weapon or any object fashioned in such a manner as to lead the victim to reasonably believe it to be a weapon and threatens by word or gesture to use the weapon or object;

(5) The actor is aided or abetted by one or more other persons and the actor uses physical force or coercion;

(6) The actor uses physical force or coercion and severe personal injury is sustained by the victim;

(7) The victim is one whom the actor knew or should have known was physically helpless, mentally incapacitated, or had a mental disease or defect which rendered the victim temporarily or permanently incapable of understanding the nature of his conduct, including, but not limited to, being incapable of providing consent.

Aggravated sexual assault is a crime of the first degree.

b. An actor is guilty of sexual assault if he commits an act of sexual contact with a victim who is less than 13 years old and the actor is at least four years older than the victim.

c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:

(1) The actor uses physical force or coercion, but the victim does not sustain severe personal injury;

(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status;

(3) The victim is at least 16 but less than 18 years old and:

(a) The actor is related to the victim by blood or affinity to the third degree; or

(b) The actor has supervisory or disciplinary power of any nature or in any capacity over the victim; or

(c) The actor is a resource family parent, a guardian, or stands in loco parentis within the household;

(4) The victim is at least 13 but less than 16 years old and the actor is at least four years older than the victim.

Sexual assault is a crime of the second degree.

CREDIT(S)

L.1978, c. 95, § 2C:14-2, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 26, eff. Sept. 1, 1979; L.1983, c. 249, § 2, eff. July 7, 1983; L.1989, c. 228, § 3, eff. Dec. 29, 1989; L.1997, c. 194, § 1, eff. Aug. 8, 1997; L.2001, c. 60, § 1, eff. April 19, 2001; L.2004, c. 130, § 13, eff. Aug. 27, 2004; L.2011, c. 232, § 4, eff. March 17, 2012.

**N.J. STAT. ANN. § 2C:14-3 (2013). Aggravated criminal sexual contact;
criminal sexual contact**

a. An actor is guilty of aggravated criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in 2C:14-2 a.(2) through (7).

Aggravated criminal sexual contact is a crime of the third degree.

b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C:14-2 c.(1) through (4).

Criminal sexual contact is a crime of the fourth degree.

CREDIT(S)

L.1978, c. 95, § 2C:14-3, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 27, eff. Sept. 1, 1979; L.1997, c. 194, § 2, eff. Aug. 8, 1997.

N.J. STAT. ANN. § 2C:14-4 (2013). Lewdness

a. A person commits a disorderly persons offense if he does any flagrantly lewd and offensive act which he knows or reasonably expects is likely to be observed by other nonconsenting persons who would be affronted or alarmed.

b. A person commits a crime of the fourth degree if:

(1) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a child who is less than 13 years of age where the actor is at least four years older than the child.

(2) He exposes his intimate parts for the purpose of arousing or gratifying the sexual desire of the actor or of any other person under circumstances where the actor knows or reasonably expects he is likely to be observed by a person who because of mental disease or defect is unable to understand the sexual nature of the actor's conduct.

c. As used in this section:

"lewd acts" shall include the exposing of the genitals for the purpose of arousing or gratifying the sexual desire of the actor or of any other person.

CREDIT(S)

L.1978, c. 95, § 2C:14-4, eff. Sept. 1, 1979. Amended by L.1992, c. 8, § 1, eff. May 13, 1992.

N.J. STAT. ANN. § 2C:24-4 (2013). Endangering welfare of children

a. Any person having a legal duty for the care of a child or who has assumed responsibility for the care of a child who engages in sexual conduct which would impair or debauch the morals of the child, or who causes the child harm that would make the child an abused or neglected child as defined in R.S.9:6-1, R.S.9:6-3 and section 1 of P.L.1974, c. 119 (C.9:6-8.21) is guilty of a crime of the second degree. Any other person who engages in conduct or who causes harm as described in this subsection to a child under the age of 18 is guilty of a crime of the third degree.

b. (1) As used in this subsection:

“Child” means any person under 18 years of age.

“Internet” means the international computer network of both federal and non-federal interoperable packet switched data networks.

“Prohibited sexual act” means

(a) Sexual intercourse; or

(b) Anal intercourse; or

(c) Masturbation; or

(d) Bestiality; or

(e) Sadism; or

(f) Masochism; or

(g) Fellatio; or

(h) Cunnilingus; or

(i) Nudity, if depicted for the purpose of sexual stimulation or gratification of any person who may view such depiction; or

(j) Any act of sexual penetration or sexual contact as defined in N.J.S.2C:14-1.

“Reproduction” means, but is not limited to, computer generated images.

(2) (Deleted by amendment, P.L.2001, c. 291).

(3) A person commits a crime of the second degree if he causes or permits a child to engage in a prohibited sexual act or in the simulation of such an act if the person knows, has reason to know or intends that the prohibited act may be photographed, filmed, reproduced, or reconstructed in any manner, including on the Internet, or may be part of an exhibition or performance. If the person is a parent, guardian or other person legally charged with the care or custody of the child, the person shall be guilty of a crime of the first degree.

(4) Any person who photographs or films a child in a prohibited sexual act or in the simulation of such an act or who uses any device, including a computer, to reproduce or reconstruct the image of a child in a prohibited sexual act or in the simulation of such an act is guilty of a crime of the second degree.

(5)(a) Any person who knowingly receives for the purpose of selling or who knowingly sells, procures, manufactures, gives, provides, lends, trades, mails, delivers, transfers, publishes, distributes, circulates, disseminates, presents, exhibits, advertises, offers or agrees to offer, through any means, including the Internet, any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, is guilty of a crime of the second degree.

(b) Any person who knowingly possesses or knowingly views any photograph, film, videotape, computer program or file, video game or any other reproduction or reconstruction which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, including on the Internet, is guilty of a crime of the third degree.

(6) For purposes of this subsection, a person who is depicted as or presents the appearance of being under the age of 18 in any photograph, film, videotape, computer

program or file, video game or any other reproduction or reconstruction shall be rebuttably presumed to be under the age of 18. If the child who is depicted as engaging in, or who is caused to engage in, a prohibited sexual act or simulation of a prohibited sexual act is under the age of 18, the actor shall be strictly liable and it shall not be a defense that the actor did not know that the child was under the age of 18, nor shall it be a defense that the actor believed that the child was 18 years of age or older, even if such a mistaken belief was reasonable.

CREDIT(S)

L.1978, c. 95, § 2C:24-4, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 46, eff. Sept. 1, 1979; L.1983, c. 494, § 1, eff. Jan. 17, 1984; L.1992, c. 2, § 1, eff. April 2, 1992; L.1992, c. 6, § 1, eff. May 13, 1992; L.1995, c. 109, § 1, eff. June 1, 1995; L.1998, c. 126, § 1, eff. May 1, 1999; L.2001, c. 291, § 1, eff. Dec. 28, 2001, retroactive to May 1, 1999; L.2013, c. 51, § 13, eff. July 1, 2013.

NEW MEXICO

N.M. STAT. ANN. § 30-6A-3 (2013). Sexual exploitation of children

A. It is unlawful for a person to intentionally possess any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

B. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts any prohibited sexual act or simulation of such act and if that person knows or has reason to know that one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a third degree felony.

C. It is unlawful for a person to intentionally cause or permit a child under eighteen years of age to engage in any prohibited sexual act or simulation of such an act if that person knows, has reason to know or intends that the act may be recorded in any obscene visual or print medium or performed publicly. A person who violates the provisions of this subsection is guilty of a third degree felony, unless the child is under the age of thirteen, in which event the person is guilty of a second degree felony.

D. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if one or more of the participants in that act is a child under eighteen years of age. A person who violates the provisions of this subsection is guilty of a second degree felony.

E. It is unlawful for a person to intentionally manufacture any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a fourth degree felony.

F. It is unlawful for a person to intentionally distribute any obscene visual or print medium depicting any prohibited sexual act or simulation of such an act if that person knows or has reason to know that the obscene medium depicts a prohibited sexual act or simulation of such an act and if that person knows or has reason to know that a real child under eighteen years of age, who is not a participant, is depicted as a participant in that act. A person who violates the provisions of this subsection is guilty of a third degree felony.

G. The penalties provided for in this section shall be in addition to those set out in Section 30-9-11 NMSA 1978.

CREDIT(S)

L. 1984, Ch. 92, § 3; L. 1989, Ch. 170, § 1; L. 1993, Ch. 116, § 2; L. 2001, Ch. 2, § 2, eff. July 1, 2001; L. 2007, Ch. 144, § 1, eff. July 1, 2007.

N.M. STAT. ANN. § 30-9-1 (2013). Enticement of child

Enticement of child consists of:

A. enticing, persuading or attempting to persuade a child under the age of sixteen years to enter any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code; or

B. having possession of a child under the age of sixteen years in any vehicle, building, room or secluded place with intent to commit an act which would constitute a crime under Article 9 of the Criminal Code.

Whoever commits enticement of child is guilty of a misdemeanor.

CREDIT(S)

L. 1963, Ch. 303, § 9-10.

N.M. STAT. ANN. § 30-9-11 (2013). Criminal sexual penetration

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

C. Aggravated criminal sexual penetration consists of all criminal sexual penetration perpetrated on a child under thirteen years of age with an intent to kill or with a depraved mind regardless of human life. Whoever commits aggravated criminal sexual penetration is guilty of a first degree felony for aggravated criminal sexual penetration.

D. Criminal sexual penetration in the first degree consists of all criminal sexual penetration perpetrated:

(1) on a child under thirteen years of age; or

(2) by the use of force or coercion that results in great bodily harm or great mental anguish to the victim.

Whoever commits criminal sexual penetration in the first degree is guilty of a first degree felony.

E. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

(1) by the use of force or coercion on a child thirteen to eighteen years of age;

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

(3) by the use of force or coercion that results in personal injury to the victim;

(4) by the use of force or coercion when the perpetrator is aided or abetted by one or more persons;

(5) in the commission of any other felony; or

(6) when the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual penetration in the second degree is guilty of a second degree felony. Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum,

mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of the Criminal Sentencing Act [31-18-12 NMSA 1978].

F. Criminal sexual penetration in the third degree consists of all criminal sexual penetration perpetrated through the use of force or coercion not otherwise specified in this section.

Whoever commits criminal sexual penetration in the third degree is guilty of a third degree felony.

G. Criminal sexual penetration in the fourth degree consists of all criminal sexual penetration:

(1) not defined in Subsections D through F of this section perpetrated on a child thirteen to sixteen years of age when the perpetrator is at least eighteen years of age and is at least four years older than the child and not the spouse of that child; or

(2) perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual penetration in the fourth degree is guilty of a fourth degree felony.

CREDIT(S)

L. 1975, Ch. 109, § 2. Amended by L. 1987, Ch. 203, § 1; L. 1991, Ch. 26, § 1; L. 1993, Ch. 177, § 2; L. 1995, Ch. 159, § 1, eff. July 1, 1995; L. 2001, Ch. 161, § 2, eff. July 1, 2001; L. 2003, Sp.Sess., Ch. 1, § 3; L. 2007, Ch. 69, § 1, eff. July 1, 2007; L. 2009, Ch. 56, § 1, eff. July 1, 2009.

N.M. STAT. ANN. § 30-9-13 (2013). Criminal sexual contact of a minor

A. Criminal sexual contact of a minor is the unlawful and intentional touching of or applying force to the intimate parts of a minor or the unlawful and intentional causing of a minor to touch one's intimate parts. For the purposes of this section, "intimate parts" means the primary genital area, groin, buttocks, anus or breast.

B. Criminal sexual contact of a minor in the second degree consists of all criminal sexual contact of the unclothed intimate parts of a minor perpetrated:

(1) on a child under thirteen years of age; or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses that authority to coerce the child to submit;

(b) the perpetrator uses force or coercion that results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the second degree is guilty of a second degree felony for a sexual offense against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.

C. Criminal sexual contact of a minor in the third degree consists of all criminal sexual contact of a minor perpetrated:

(1) on a child under thirteen years of age; or

(2) on a child thirteen to eighteen years of age when:

(a) the perpetrator is in a position of authority over the child and uses this authority to coerce the child to submit;

(b) the perpetrator uses force or coercion which results in personal injury to the child;

(c) the perpetrator uses force or coercion and is aided or abetted by one or more persons; or

(d) the perpetrator is armed with a deadly weapon.

Whoever commits criminal sexual contact of a minor in the third degree is guilty of a third degree felony for a sexual offense against a child.

D. Criminal sexual contact of a minor in the fourth degree consists of all criminal sexual contact:

(1) not defined in Subsection C of this section, of a child thirteen to eighteen years of age perpetrated with force or coercion; or

(2) of a minor perpetrated on a child thirteen to eighteen years of age when the perpetrator, who is a licensed school employee, an unlicensed school employee, a school contract employee, a school health service provider or a school volunteer, and who is at least eighteen years of age and is at least four years older than the child and not the spouse of that child, learns while performing services in or for a school that the child is a student in a school.

Whoever commits criminal sexual contact in the fourth degree is guilty of a fourth degree felony.

CREDIT(S)

L. 1975, Ch. 109, § 4; L. 1987, Ch. 203, § 2; L. 1991, Ch. 26, § 3; L. 2001, Ch. 161, § 3, eff. July 1, 2001; L. 2003, Sp.Sess., Ch. 1, § 4.

N.M. STAT. ANN. § 30-9-14.3 (2013). Aggravated indecent exposure

A. Aggravated indecent exposure consists of a person knowingly and intentionally exposing his primary genital area to public view in a lewd and lascivious manner, with the intent to threaten or intimidate another person, while committing one or more of the following acts or criminal offenses:

- (1) exposure to a child less than eighteen years of age;
- (2) assault, as provided in Section 30-3-1 NMSA 1978;
- (3) aggravated assault, as provided in Section 30-3-2 NMSA 1978;
- (4) assault with intent to commit a violent felony, as provided in Section 30-3-3 NMSA 1978;
- (5) battery, as provided in Section 30-3-4 NMSA 1978;
- (6) aggravated battery, as provided in Section 30-3-5 NMSA 1978;
- (7) criminal sexual penetration, as provided in Section 30-9-11 NMSA 1978; or
- (8) abuse of a child, as provided in Section 30-6-1 NMSA 1978.

B. As used in this section, "primary genital area" means the mons pubis, penis, testicles, mons veneris, vulva or vagina.

C. Whoever commits aggravated indecent exposure is guilty of a fourth degree felony.

D. In addition to any punishment provided pursuant to the provisions of this section, the court shall order a person convicted for committing aggravated indecent exposure to participate in and complete a program of professional counseling at his own expense.

CREDIT(S)

L. 1996, Ch. 84, § 2, eff. July 1, 1996.

N.M. STAT. ANN. § 30-9-20 (2013). Voyeurism prohibited; penalties

A. Voyeurism consists of intentionally using the unaided eye to view or intentionally using an instrumentality to view, photograph, videotape, film, webcast or record the intimate areas of another person without the knowledge and consent of that person:

(1) while the person is in the interior of a bedroom, bathroom, changing room, fitting room, dressing room or tanning booth or the interior of any other area in which the person has a reasonable expectation of privacy; or

(2) under circumstances where the person has a reasonable expectation of privacy, whether in a public or private place.

B. Whoever commits voyeurism is guilty of a misdemeanor, except if the victim is less than eighteen years of age, the offender is guilty of a fourth degree felony.

C. As used in this section:

(1) "intimate areas" means the primary genital area, groin, buttocks, anus or breasts or the undergarments that cover those areas; and

(2) "instrumentality" means a periscope, telescope, binoculars, camcorder, computer, motion picture camera, digital camera, telephone camera, photographic camera or electronic device of any type.

CREDIT(S)

Added by L. 2007, Ch. 238, § 1, eff. July 1, 2007.

NEW YORK

N.Y. PENAL LAW § 120.70 (2013). Luring a child

1. A person is guilty of luring a child when he or she lures a child into a motor vehicle, aircraft, watercraft, isolated area, building, or part thereof, for the purpose of committing against such child any of the following offenses: an offense as defined in section 70.02 of this chapter; an offense as defined in section 125.25 or 125.27 of this chapter; a felony offense that is a violation of article one hundred thirty of this chapter; an offense as

defined in section 135.25 of this chapter; an offense as defined in sections 230.30, 230.33 or 230.34 of this chapter; an offense as defined in sections 255.25, 255.26, or 255.27 of this chapter; or an offense as defined in sections 263.05, 263.10, or 263.15 of this chapter. For purposes of this subdivision “child” means a person less than seventeen years of age. Nothing in this section shall be deemed to preclude, if the evidence warrants, a conviction for the commission or attempted commission of any crime, including but not limited to a crime defined in article one hundred thirty-five of this chapter.

2. Luring a child is a class E felony, provided, however, that if the underlying offense the actor intended to commit against such child constituted a class A or a class B felony, then the offense of luring a child in violation of this section shall be deemed respectively, a class C felony or class D felony.

CREDIT(S)

(Added L.2008, c. 405, § 1, eff. Oct. 4, 2008.)

N.Y. PENAL LAW § 130.25 (2013). Rape in the third degree

A person is guilty of rape in the third degree when:

1. He or she engages in sexual intercourse with another person [fig 1] who is incapable of consent by reason of some factor other than being less than seventeen years old; [fig 2]
2. Being twenty-one years old or more, he or she engages in sexual intercourse with another person [fig 1] less than seventeen years old [fig 2] ; or
3. He or she engages in sexual intercourse with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Rape in the third degree is a class E felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.1987, c. 510, § 1; L.2000, c. 1, § 32, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.30 (2013). Rape in the second degree

A person is guilty of rape in the second degree when [fig 1] :

1. being eighteen years old or more, he or she engages in sexual intercourse with another person [fig 1] less than [fig 2] fifteen years old [fig 3] ; or

2. he or she engages in sexual intercourse with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of rape in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

Rape in the second degree is a class D felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.1987, c. 510, § 2; L.2000, c. 1, § 33, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.35 (2013). Rape in the first degree

A [fig 1] person is guilty of rape in the first degree when he or she engages in sexual intercourse with [fig 2] another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old [fig 1] ; or
4. Who is less than thirteen years old and the actor is eighteen years old or more.

Rape in the first degree is a class B felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 34, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.40 (2013). Criminal sexual act in the third degree

A person is guilty of [fig 1] criminal sexual act in the third degree when:

1. He or she engages in [fig 1] oral sexual conduct or anal sexual conduct with a person who is incapable of consent by reason of some factor other than being less than seventeen years old;
2. Being twenty-one years old or more, he or she engages in [fig 1] oral sexual conduct or anal sexual conduct with a person less than seventeen years old; or

3. He or she engages in [fig 1] oral sexual conduct or anal sexual conduct with another person without such person's consent where such lack of consent is by reason of some factor other than incapacity to consent.

Criminal sexual act in the third degree is a class E felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 35, eff. Feb. 1, 2001; L.2003, c. 264, § 18, eff. Nov. 1, 2003.)

N.Y. PENAL LAW § 130.45 (2013). Criminal sexual act in the second degree

A person is guilty of [fig 1] criminal sexual act in the second degree when:

1. being eighteen years old or more, he or she engages in [fig 1] oral sexual conduct or anal sexual conduct with another person less than fifteen years old; or
2. he or she engages in [fig 1] oral sexual conduct or anal sexual conduct with another person who is incapable of consent by reason of being mentally disabled or mentally incapacitated.

It shall be an affirmative defense to the crime of [fig 1] criminal sexual act in the second degree as defined in subdivision one of this section that the defendant was less than four years older than the victim at the time of the act.

[fig 1] Criminal sexual act in the second degree is a class D felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 36, eff. Feb. 1, 2001; L.2003, c. 264, § 19, eff. Nov. 1, 2003.)

N.Y. PENAL LAW § 130.50 (2013). Criminal sexual act in the first degree

A person is guilty of [fig 1] criminal sexual act in the first degree when he or she engages in [fig 2] oral sexual conduct or anal sexual conduct with another person:

1. By forcible compulsion; or
2. Who is incapable of consent by reason of being physically helpless; or
3. Who is less than eleven years old; or

4. Who is less than thirteen years old and the actor is eighteen years old or more.

[fig 1] Criminal sexual act in the first degree is a class B felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 37, eff. Feb. 1, 2001; L.2003, c. 264, § 20, eff. Nov. 1, 2003.)

N.Y. PENAL LAW § 130.53 (2013). Persistent sexual abuse

A person is guilty of persistent sexual abuse when he or she commits the crime of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree, as defined in section 130.55 of this article, or sexual abuse in the second degree, as defined in section 130.60 of this article, and, within the previous ten year period, has been convicted two or more times, in separate criminal transactions for which sentence was imposed on separate occasions, of forcible touching, as defined in section 130.52 of this article, sexual abuse in the third degree as defined in section 130.55 of this article, sexual abuse in the second degree, as defined in section 130. 60 of this article, or any offense defined in this article, of which the commission or attempted commission thereof is a felony.

Persistent sexual abuse is a class E felony.

CREDIT(S)

(Added L.2000, c. 1, § 38, eff. Feb. 1, 2001. Amended L.2003, c. 264, § 22, eff. Nov. 1, 2003.)

N.Y. PENAL LAW § 130.55 (2013). Sexual abuse in the third degree

A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent; except that in any prosecution under this section, it is an affirmative defense that (a) such other person's lack of consent was due solely to incapacity to consent by reason of being less than seventeen years old, and (b) such other person was more than fourteen years old, and (c) the defendant was less than five years older than such other person.

Sexual abuse in the third degree is a class B misdemeanor.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 39, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.60 (2013). Sexual abuse in the second degree

A person is guilty of sexual abuse in the second degree when he or she subjects another person to sexual contact and when such other person is:

1. Incapable of consent by reason of some factor other than being less than seventeen years old; or
2. Less than fourteen years old.

Sexual abuse in the second degree is a class A misdemeanor.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 40, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.65 (2013). Sexual abuse in the first degree

A person is guilty of sexual abuse in the first degree when he or she subjects another person to sexual contact:

1. By forcible compulsion; or
2. When the other person is incapable of consent by reason of being physically helpless; or
3. When the other person is less than eleven years old; or
4. When the other person is less than thirteen years old and the actor is twenty-one years old or older.

Sexual abuse in the first degree is a class D felony.

CREDIT(S)

(L.1965, c. 1030. Amended L.2000, c. 1, § 41, eff. Feb. 1, 2001; L.2011, c. 26, § 1, eff. Nov. 1, 2011.)

N.Y. PENAL LAW § 130.66 (2013). Aggravated sexual abuse in the third degree

1. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless; or

(c) When the other person is less than eleven years old.

2. A person is guilty of aggravated sexual abuse in the third degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person and such person is incapable of consent by reason of being mentally disabled or mentally incapacitated.

3. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the third degree is a class D felony.

CREDIT(S)

(Added L.1996, c. 181, § 2. Amended L.2000, c. 1, § 43, eff. Feb. 1, 2001; L.2009, c. 485, § 4, eff. Jan. 7, 2010.)

N.Y. PENAL LAW § 130.67 (2013). Aggravated sexual abuse in the second degree

1. A person is guilty of aggravated sexual abuse in the second degree when he or she inserts a finger in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless;
or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the second degree is a class C felony.

CREDIT(S)

(Added L.1988, c. 450, § 1. Amended L.2009, c. 485, § 5, eff. Jan. 7, 2010.)

N.Y. PENAL LAW § 130.70 (2013). Aggravated sexual abuse in the first degree

1. A person is guilty of aggravated sexual abuse in the first degree when he or she inserts a foreign object in the vagina, urethra, penis, rectum or anus of another person causing physical injury to such person:

(a) By forcible compulsion; or

(b) When the other person is incapable of consent by reason of being physically helpless;
or

(c) When the other person is less than eleven years old.

2. Conduct performed for a valid medical purpose does not violate the provisions of this section.

Aggravated sexual abuse in the first degree is a class B felony.

CREDIT(S)

(Added L.1978, c. 723, § 2. Amended L.1981, c. 696, § 2; L.1988, c. 450, § 2; L.2009, c. 485, § 6, eff. Jan. 7, 2010.)

N.Y. PENAL LAW § 130.75 (2013). Course of sexual conduct against a child in the first degree

1. A person is guilty of course of sexual conduct against a child in the first degree when, over a period of time not less than three months in duration [fig 1] :

(a) he or she engages in two or more acts of sexual conduct, which includes at least one act of sexual intercourse, [fig 1] oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than eleven years old; or

(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct, which [fig 1] include at least one act of sexual intercourse, [fig 2] oral sexual conduct, anal sexual conduct or aggravated sexual contact, with a child less than thirteen years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the first degree is a class B felony.

CREDIT(S)

(Added L.1996, c. 122, § 6. Amended L.2000, c. 1, § 44, eff. Feb. 1, 2001; L.2003, c. 264, § 23, eff. Nov. 1, 2003.)

N.Y. PENAL LAW § 130.80 (2013). Course of sexual conduct against a child in the second degree

1. A person is guilty of course of sexual conduct against a child in the second degree when, over a period of time not less than three months in duration [fig 1] :

(a) he or she engages in two or more acts of sexual conduct with a child less than eleven years old [fig 1] ; or

(b) he or she, being eighteen years old or more, engages in two or more acts of sexual conduct with a child less than thirteen years old.

2. A person may not be subsequently prosecuted for any other sexual offense involving the same victim unless the other charged offense occurred outside the time period charged under this section.

Course of sexual conduct against a child in the second degree is a class D felony.

CREDIT(S)

(Added L.1996, c. 122, § 6. Amended L.2000, c. 1, § 44, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 130.85 (2013). Female genital mutilation

1. A person is guilty of female genital mutilation when:

(a) a person knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not reached eighteen years of age; or

(b) being a parent, guardian or other person legally responsible and charged with the care or custody of a child less than eighteen years old, he or she knowingly consents to the circumcision, excision or infibulation of whole or part of such child's labia majora or labia minora or clitoris.

2. Such circumcision, excision, or infibulation is not a violation of this section if such act is:

(a) necessary to the health of the person on whom it is performed, and is performed by a person licensed in the place of its performance as a medical practitioner; or

(b) performed on a person in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a person licensed in the place it is performed as a medical practitioner, midwife, or person in training to become such a practitioner or midwife.

3. For the purposes of paragraph (a) of subdivision two of this section, no account shall be taken of the effect on the person on whom such procedure is to be performed of any belief on the part of that or any other person that such procedure is required as a matter of custom or ritual.

Female genital mutilation is a class E felony.

CREDIT(S)

(Added L.1997, c. 618, § 2, eff. Nov. 1, 1997.)

N.Y. PENAL LAW § 130.91 (2013). Sexually motivated felony

1. A person commits a sexually motivated felony when he or she commits a specified offense for the purpose, in whole or substantial part, of his or her own direct sexual gratification.

2. A "specified offense" is a felony offense defined by any of the following provisions of this chapter: assault in the second degree as defined in section 120.05, assault in the first degree as defined in section 120.10, gang assault in the second degree as defined in section 120.06, gang assault in the first degree as defined in section 120.07, stalking in the first degree as defined in section 120.60, manslaughter in the second degree as defined in subdivision one of section 125.15, manslaughter in the first degree as defined in section 125.20, murder in the second degree as defined in section 125.25, aggravated murder as defined in section 125.26, murder in the first degree as defined in section 125.27, kidnapping in the second degree as defined in section 135.20, kidnapping in the first degree as defined in section 135.25, burglary in the third degree as defined in section 140.20, burglary in the second degree as defined in section 140.25, burglary in the first degree as defined in section 140.30, arson in the second degree as defined in section 150.15, arson in the first degree as defined in section 150.20, robbery in the third degree as defined in section 160.05, robbery in the second degree as defined in section 160.10, robbery in the first degree as defined in section 160.15, promoting prostitution in the second degree as defined in section 230.30, promoting prostitution in the first degree as defined in section 230.32, compelling prostitution as defined in section 230.33, disseminating indecent material to minors in the first degree as defined in section 235.22, use of a child in a sexual performance as defined in section 263.05, promoting an obscene sexual performance by a child as defined in section 263.10, promoting a sexual performance by a child as defined in section 263.15, or any felony attempt or conspiracy to commit any of the foregoing offenses.

CREDIT(S)

(Added L.2007, c. 7, § 29, eff. April 13, 2007. Amended L.2010, c. 405, § 14, eff. Nov. 11, 2010.)

N.Y. PENAL LAW § 130.95 (2013). Predatory sexual assault

A person is guilty of predatory sexual assault when he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and when:

1. In the course of the commission of the crime or the immediate flight therefrom, he or she:

- (a) Causes serious physical injury to the victim of such crime; or
- (b) Uses or threatens the immediate use of a dangerous instrument; or

2. He or she has engaged in conduct constituting the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, against one or more additional persons; or

3. He or she has previously been subjected to a conviction for a felony defined in this article, incest as defined in section 255.25 of this chapter or use of a child in a sexual performance as defined in section 263.05 of this chapter.

Predatory sexual assault is a class A-II felony.

CREDIT(S)

(Added L.2006, c. 107, § 1, eff. June 23, 2006.)

N.Y. PENAL LAW § 130.96 (2013). Predatory sexual assault against a child

A person is guilty of predatory sexual assault against a child when, being eighteen years old or more, he or she commits the crime of rape in the first degree, criminal sexual act in the first degree, aggravated sexual abuse in the first degree, or course of sexual conduct against a child in the first degree, as defined in this article, and the victim is less than thirteen years old.

Predatory sexual assault against a child is a class A-II felony.

CREDIT(S)

(Added L.2006, c. 107, § 2, eff. June 23, 2006.)

N.Y. PENAL LAW § 260.10 (2013). Endangering the welfare of a child

A person is guilty of endangering the welfare of a child when:

1. He or she knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of a child less than seventeen years old or directs or authorizes such child to engage in an occupation involving a substantial risk of danger to his or her life or health; or

2. Being a parent, guardian or other person legally charged with the care or custody of a child less than eighteen years old, he or she fails or refuses to exercise reasonable diligence in the control of such child to prevent him or her from becoming an “abused child,” a “neglected child,” a “juvenile delinquent” or a “person in need of supervision,” as those terms are defined in articles ten, three and seven of the family court act.

3. A person is not guilty of the provisions of this section when he or she engages in the conduct described in subdivision one of section 260.00 of this article: (a) with the intent to wholly abandon the child by relinquishing responsibility for and right to the care and

custody of such child; (b) with the intent that the child be safe from physical injury and cared for in an appropriate manner; (c) the child is left with an appropriate person, or in a suitable location and the person who leaves the child promptly notifies an appropriate person of the child's location; and (d) the child is not more than thirty days old.

Endangering the welfare of a child is a class A misdemeanor.

CREDIT(S)

(L.1965, c. 1030. Amended L.1967, c. 791, § 44; L.1970, c. 389, § 1; L.1970, c. 962, § 14; L.1982, c. 920, § 81; L.1990, c. 476, § 1; L.2010, c. 447, § 2, eff. Aug. 30, 2010.)

N.Y. PENAL LAW § 263.05 (2013). Use of a child in a sexual performance

A person is guilty of the use of a child in a sexual performance if knowing the character and content thereof he employs, authorizes or induces a child less than [fig 1] seventeen years of age to engage in a sexual performance or being a parent, legal guardian or custodian of such child, he consents to the participation by such child in a sexual performance.

Use of a child in a sexual performance is a class C felony.

CREDIT(S)

(Added L.1977, c. 910, § 2. Amended L.2000, c. 1, § 19, eff. Feb. 1, 2001.)

N.Y. PENAL LAW § 263.30 (2013). Facilitating a sexual performance by a child with a controlled substance or alcohol

1. A person is guilty of facilitating a sexual performance by a child with a controlled substance or alcohol when he or she:

(a)(i) knowingly and unlawfully possesses a controlled substance as defined in section thirty-three hundred six of the public health law or any controlled substance that requires a prescription to obtain, (ii) administers that substance to a person under the age of seventeen without such person's consent, (iii) intends to commit against such person conduct constituting a felony as defined in section 263.05, 263.10, or 263.15 of this article, and (iv) does so commit or attempt to commit such conduct against such person; or

(b)(i) administers alcohol to a person under the age of seventeen without such person's consent, (ii) intends to commit against such person conduct constituting a felony defined

in section 263.05, 263.10, or 263.15 of this article, and (iii) does so commit or attempt to commit such conduct against such person.

2. For the purposes of this section, “controlled substance” means any substance or preparation, compound, mixture, salt, or isomer of any substance defined in section thirty-three hundred six of the public health law.

Facilitating a sexual performance by a child with a controlled substance or alcohol is a class B felony.

CREDIT(S)

(Added L.2008, c. 431, § 1, eff. Nov. 1, 2008.)

NORTH CAROLINA

N.C. GEN. STAT. § 14-27.2 (2013). First-degree rape

(a) A person is guilty of rape in the first degree if the person engages in vaginal intercourse:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

(c) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

CREDIT(S)

Added by Laws 1979, c. 682, § 1. Amended by Laws 1979 (2nd Sess.), c. 1316, § 4; Laws 1981, c. 106, §§ 1, 2; Laws 1983, c. 175, §§ 4, 10; Laws 1983, c. 720, § 4; Laws 1994 (Ex. Sess.), c. 22, § 2, eff. Oct. 1, 1994; S.L. 2004-128, § 7, eff. Dec. 1, 2004.

N.C. GEN. STAT. § 14-27.2A (2013). Rape of a child; adult offender

(a) A person is guilty of rape of a child if the person is at least 18 years of age and engages in vaginal intercourse with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S. 15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) Upon conviction, a person convicted under this section has no rights to custody of or rights of inheritance from any child born as a result of the commission of the rape, nor shall the person have any rights related to the child under Chapter 48 or Subchapter 1 of Chapter 7B of the General Statutes.

(e) The offense under G.S. 14-27.2(a)(1) is a lesser included offense of the offense in this section.

CREDIT(S)

Added by S.L. 2008-117, § 1, eff. Dec. 1, 2008.

N.C. GEN. STAT. § 14-27.4 (2013). First-degree sexual offense

(a) A person is guilty of a sexual offense in the first degree if the person engages in a sexual act:

(1) With a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim; or

(2) With another person by force and against the will of the other person, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.

(b) Any person who commits an offense defined in this section is guilty of a Class B1 felony.

CREDIT(S)

Added by Laws 1979, c. 682, § 1. Amended by Laws 1979 (2nd Sess.), c. 1316, § 6; Laws 1981, c. 106, §§ 3, 4; Laws 1983, c. 175, §§ 5, 10; Laws 1983, c. 720, § 4; Laws 1994 (Ex. Sess.), c. 22, § 3, eff. Oct. 1, 1994.

N.C. GEN. STAT. § 14-27.4A (2013). Sexual offense with a child; adult offender

(a) A person is guilty of sexual offense with a child if the person is at least 18 years of age and engages in a sexual act with a victim who is a child under the age of 13 years.

(b) A person convicted of violating this section is guilty of a Class B1 felony and shall be sentenced pursuant to Article 81B of Chapter 15A of the General Statutes, except that in no case shall the person receive an active punishment of less than 300 months, and except as provided in subsection (c) of this section. Following the termination of active punishment, the person shall be enrolled in satellite-based monitoring for life pursuant to Part 5 of Article 27A of Chapter 14 of the General Statutes.

(c) Notwithstanding the provisions of Article 81B of Chapter 15A of the General Statutes, the court may sentence the defendant to active punishment for a term of months greater than that authorized pursuant to G.S. 15A-1340.17, up to and including life imprisonment without parole, if the court finds that the nature of the offense and the harm inflicted are of such brutality, duration, severity, degree, or scope beyond that normally committed in such crimes, or considered in basic aggravation of these crimes, so as to require a sentence to active punishment in excess of that authorized pursuant to G.S.

15A-1340.17. If the court sentences the defendant pursuant to this subsection, it shall make findings of fact supporting its decision, to include matters it considered as egregious aggravation. Egregious aggravation can include further consideration of existing aggravating factors where the conduct of the defendant falls outside the heartland of cases even the aggravating factors were designed to cover. Egregious aggravation may also be considered based on the extraordinarily young age of the victim, or the depraved torture or mutilation of the victim, or extraordinary physical pain inflicted on the victim.

(d) The offense under G.S. 14-27.4(a)(1) is a lesser included offense of the offense in this section.

CREDIT(S)

Added by S.L. 2008-117, § 2, eff. Dec. 1, 2008.

N.C. GEN. STAT. § 14-27.7 (2013). Intercourse and sexual offenses with certain victims; consent no defense

(a) If a defendant who has assumed the position of a parent in the home of a minor victim engages in vaginal intercourse or a sexual act with a victim who is a minor residing in the home, or if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony. Consent is not a defense to a charge under this section.

(b) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel, and who is at least four years older than the victim engages in vaginal intercourse or a sexual act with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school, but before the victim ceases to be a student, the defendant is guilty of a Class G felony, except when the defendant is lawfully married to the student. The term "same school" means a school at which the student is enrolled and the defendant is employed, assigned, or volunteers. A defendant who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and is less than four years older than the victim and engages in vaginal intercourse or a sexual act with a victim who is a student, is guilty of a Class A1 misdemeanor. This subsection shall apply unless the conduct is covered under some other provision of law providing for greater punishment. Consent is not a defense to a charge under this section. For purposes of this subsection, the terms "school", "school personnel", and "student" shall have the same meaning as in G.S. 14-202.4(d). For purposes of this subsection, the term "school safety officer" shall include a school resource officer or any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools.

CREDIT(S)

Added by Laws 1979, c. 682, § 1. Amended by Laws 1979 (2nd Sess.), c. 1316, § 9; Laws 1981, c. 63, Laws 1981, c. 179, § 14; Laws 1993, c. 539, § 1132, eff. Oct. 1, 1994; Laws 1994 (Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999-300, § 2, eff. Dec. 1, 1999; S.L. 2003-98, § 1, eff. Dec. 1, 2003.

N.C. GEN. STAT. § 14-27.7A (2013). Statutory rape or sexual offense of person who is 13, 14, or 15 years old

(a) A defendant is guilty of a Class B1 felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is at least six years older than the person, except when the defendant is lawfully married to the person.

(b) A defendant is guilty of a Class C felony if the defendant engages in vaginal intercourse or a sexual act with another person who is 13, 14, or 15 years old and the defendant is more than four but less than six years older than the person, except when the defendant is lawfully married to the person.

CREDIT(S)

Added by Laws 1995, c. 281, § 1, eff. Dec. 1, 1995.

N.C. GEN. STAT. § 14-190.9 (2013). Indecent exposure

(a) Unless the conduct is punishable under subsection (a1) of this section, any person who shall willfully expose the private parts of his or her person in any public place and in the presence of any other person or persons, except for those places designated for a public purpose where the same sex exposure is incidental to a permitted activity, or aids or abets in any such act, or who procures another to perform such act; or any person, who as owner, manager, lessee, director, promoter or agent, or in any other capacity knowingly hires, leases or permits the land, building, or premises of which he is owner, lessee or tenant, or over which he has control, to be used for purposes of any such act, shall be guilty of a Class 2 misdemeanor.

(a1) Unless the conduct is prohibited by another law providing greater punishment, any person at least 18 years of age who shall willfully expose the private parts of his or her person in any public place in the presence of any other person less than 16 years of age for the purpose of arousing or gratifying sexual desire shall be guilty of a Class H felony. An offense committed under this subsection shall not be considered to be a lesser included offense under G.S. 14-202.1.

(b) Notwithstanding any other provision of law, a woman may breast feed in any public or private location where she is otherwise authorized to be, irrespective of whether the nipple of the mother's breast is uncovered during or incidental to the breast feeding.

(c) Notwithstanding any other provision of law, a local government may regulate the location and operation of sexually oriented businesses. Such local regulation may restrict or prohibit nude, seminude, or topless dancing to the extent consistent with the constitutional protection afforded free speech.

CREDIT(S)

Added by Laws 1971, c. 591, § 1. Amended by Laws 1993, c. 301, § 1; eff. July 7, 1993; Laws 1993, c. 539, § 124; Laws 1994(1st Ex.Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1998-46, § 3. eff. July 15, 1998; S.L. 2005-226, § 1, eff. Dec. 1, 2005.

N.C. GEN. STAT. § 14-190.16 (2013). First degree sexual exploitation of a minor

(a) Offense. -- A person commits the offense of first degree sexual exploitation of a minor if, knowing the character or content of the material or performance, he:

(1) Uses, employs, induces, coerces, encourages, or facilitates a minor to engage in or assist others to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(2) Permits a minor under his custody or control to engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(3) Transports or finances the transportation of a minor through or across this State with the intent that the minor engage in sexual activity for a live performance or for the purpose of producing material that contains a visual representation depicting this activity; or

(4) Records, photographs, films, develops, or duplicates for sale or pecuniary gain material that contains a visual representation depicting a minor engaged in sexual activity.

(b) Inference. -- In a prosecution under this section, the trier of fact may infer that a participant in sexual activity whom material through its title, text, visual representations, or otherwise represents or depicts as a minor is a minor.

(c) Mistake of Age. -- Mistake of age is not a defense to a prosecution under this section.

(d) Punishment and Sentencing. -- Violation of this section is a Class C felony.

CREDIT(S)

Added by Laws 1985, c. 703, § 9. Amended by Laws 1993, c. 539, §§ 1196, 1197, eff. Oct. 1, 1994; Laws 1994(1st Ex.Sess.), c. 24, § 14(c), eff. March 26, 1994; Laws 1995, c.

507, §§ 19.5(o), 28.12, eff. Dec. 1, 1995; S.L. 2008-117, § 3, eff. Dec. 1, 2008; S.L. 2008-218, § 2, eff. Dec. 1, 2008.

N.C. GEN. STAT. § 14-202.1 (2013). Taking indecent liberties with children

(a) A person is guilty of taking indecent liberties with children if, being 16 years of age or more and at least five years older than the child in question, he either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex under the age of 16 years for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex under the age of 16 years.

(b) Taking indecent liberties with children is punishable as a Class F felony.

CREDIT(S)

Added by Laws 1955, c. 764. Amended by Laws 1975, c. 779; Laws 1979, c. 760, § 5; Laws 1993, c. 539, § 1201; eff. Oct. 1, 1994; Laws 1994 (1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994.

N.C. GEN. STAT. § 14-202.2 (2013). Indecent liberties between children

(a) A person who is under the age of 16 years is guilty of taking indecent liberties with children if the person either:

(1) Willfully takes or attempts to take any immoral, improper, or indecent liberties with any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire; or

(2) Willfully commits or attempts to commit any lewd or lascivious act upon or with the body or any part or member of the body of any child of either sex who is at least three years younger than the defendant for the purpose of arousing or gratifying sexual desire.

(b) A violation of this section is punishable as a Class 1 misdemeanor.

CREDIT(S)

Added by Laws 1995, c. 494, § 1, eff. Oct. 1, 1995. Amended by Laws 1995 (Reg. Sess., 1996), c. 742, § 12, eff. June 21, 1996.

N.C. GEN. STAT. § 14-202.4 (2013). Taking indecent liberties with a student

(a) If a defendant, who is a teacher, school administrator, student teacher, school safety officer, or coach, at any age, or who is other school personnel and is at least four years older than the victim, takes indecent liberties with a victim who is a student, at any time during or after the time the defendant and victim were present together in the same school but before the victim ceases to be a student, the defendant is guilty of a Class I felony, unless the conduct is covered under some other provision of law providing for greater punishment. A person is not guilty of taking indecent liberties with a student if the person is lawfully married to the student.

(b) If a defendant, who is school personnel, other than a teacher, school administrator, student teacher, school safety officer, or coach, and who is less than four years older than the victim, takes indecent liberties with a student as provided in subsection (a) of this section, the defendant is guilty of a Class A1 misdemeanor.

(c) Consent is not a defense to a charge under this section.

(d) For purposes of this section, the following definitions apply:

(1) "Indecent liberties" means:

a. Willfully taking or attempting to take any immoral, improper, or indecent liberties with a student for the purpose of arousing or gratifying sexual desire; or

b. Willfully committing or attempting to commit any lewd or lascivious act upon or with the body or any part or member of the body of a student.

For purposes of this section, the term indecent liberties does not include vaginal intercourse or a sexual act as defined by G.S. 14-27.1.

(1a) "Same school" means a school at which (i) the student is enrolled or is present for a school-sponsored or school-related activity and (ii) the school personnel is employed, volunteers, or is present for a school-sponsored or school-related activity.

(2) "School" means any public school, charter school, or nonpublic school under Parts 1 and 2 of Article 39 of Chapter 115C of the General Statutes.

(3) "School personnel" means any person included in the definition contained in G.S. 115C-332(a)(2), and any person who volunteers at a school or a school-sponsored activity.

(3a) "School safety officer" means any other person who is regularly present in a school for the purpose of promoting and maintaining safe and orderly schools and includes a school resource officer.

(4) "Student" means a person enrolled in kindergarten, or in grade one through grade 12 in any school.

CREDIT(S)

Added by S.L. 1999-300, § 1, eff. Dec. 1, 1999. Amended by S.L. 2003-98, § 2, eff. Dec. 1, 2003; S.L. 2004-203, § 19(a), eff. Dec. 1, 2004.

N.C. GEN. STAT. § 14-316.1 (2013). Contributing to delinquency and neglect by parents and others

Any person who is at least 16 years old who knowingly or willfully causes, encourages, or aids any juvenile within the jurisdiction of the court to be in a place or condition, or to commit an act whereby the juvenile could be adjudicated delinquent, undisciplined, abused, or neglected as defined by G.S. 7B-101 and G.S. 7B-1501 shall be guilty of a Class 1 misdemeanor.

It is not necessary for the district court exercising juvenile jurisdiction to make an adjudication that any juvenile is delinquent, undisciplined, abused, or neglected in order to prosecute a parent or any person, including an employee of the Division of Juvenile Justice of the Department of Public Safety under this section. An adjudication that a juvenile is delinquent, undisciplined, abused, or neglected shall not preclude a subsequent prosecution of a parent or any other person including an employee of the Division of Juvenile Justice of the Department of Public Safety, who contributes to the delinquent, undisciplined, abused, or neglected condition of any juvenile.

CREDIT(S)

Amended by Laws 1959, c. 1284; Laws 1969, c. 911, § 4; Laws 1971, c. 1180, § 5; Laws 1979, c. 692; Laws 1983, c. 175, §§ 8, 10; Laws 1983, c. 720, § 4; Laws 1993, c. 539, § 219, eff. Oct. 1, 1994; Laws 1994(1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1997-443, § 11A.118(a), eff. July 1, 1997; S.L. 1998-202, § 4(b), eff. Jan. 1, 1999; S.L. 2000-137, § 4(c), eff. July 20, 2000; S.L. 2011-145, § 19.1(l), eff. Jan. 1, 2012.

N.C. GEN. STAT. § 14-318.4 (2013). Child abuse a felony

(a) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious physical injury upon or to the child or who intentionally commits an assault upon the child which results in any serious physical injury to the child is guilty of a Class D felony, except as otherwise provided in subsection (a3) of this section.

(a1) Any parent of a child less than 16 years of age, or any other person providing care to or supervision of the child, who commits, permits, or encourages any act of prostitution with or by the child is guilty of child abuse and shall be punished as a Class D felon.

(a2) Any parent or legal guardian of a child less than 16 years of age who commits or allows the commission of any sexual act upon the child is guilty of a Class D felony.

(a3) A parent or any other person providing care to or supervision of a child less than 16 years of age who intentionally inflicts any serious bodily injury to the child or who intentionally commits an assault upon the child which results in any serious bodily injury to the child, or which results in permanent or protracted loss or impairment of any mental or emotional function of the child, is guilty of a Class B2 felony.

(a4) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class E felony if the act or omission results in serious bodily injury to the child.

(a5) A parent or any other person providing care to or supervision of a child less than 16 years of age whose willful act or grossly negligent omission in the care of the child shows a reckless disregard for human life is guilty of a Class G felony if the act or omission results in serious physical injury to the child.

(a6) For purposes of this section, a “grossly negligent omission” in providing care to or supervision of a child includes the failure to report a child as missing to law enforcement as provided in G.S. 14-318.5(b).

(b) The felony of child abuse is an offense additional to other civil and criminal provisions and is not intended to repeal or preclude any other sanctions or remedies.

(c) Abandonment of an infant less than seven days of age pursuant to G.S. 14-322.3 may be treated as a mitigating factor in sentencing for a conviction under this section involving that infant.

(d) The following definitions apply in this section:

(1) Serious bodily injury.--Bodily injury that creates a substantial risk of death or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.

(2) Serious physical injury.--Physical injury that causes great pain and suffering. The term includes serious mental injury.

CREDIT(S)

Added by Laws 1979, c. 897, § 1. Amended by Laws 1979 (2nd Ex. Sess.), c. 1316, § 18; Laws 1981, c. 63, § 1; Laws 1981, c. 179, § 14; Laws 1983, c. 653, § 1; Laws 1983, c. 916, § 1; Laws 1985, c. 509, § 5; Laws 1985, c. 668, § 1; Laws 1993, c. 539, § 1233, eff. Oct. 1, 1994; Laws 1994(1st Ex. Sess.), c. 24, § 14(c), eff. March 26, 1994; S.L. 1999-451, § 1, eff. Dec. 1, 1999; S.L. 2001-291, § 5, eff. July 19, 2001; S.L. 2008-191, § 2, eff. Dec. 1, 2008; S.L. 2013-35, § 1, eff. Dec. 1, 2013; S.L. 2013-52, § 3, eff. Dec. 1, 2013.

NORTH DAKOTA

N.D. CENT. CODE § 12.1-20-03 (2013). Gross sexual imposition -- Penalty.

1. A person who engages in a sexual act with another, or who causes another to engage in a sexual act, is guilty of an offense if:

a. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being;

b. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means with intent to prevent resistance;

c. That person knows or has reasonable cause to believe that the victim is unaware that a sexual act is being committed upon him or her;

d. The victim is less than fifteen years old; or

e. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders him or her incapable of understanding the nature of his or her conduct.

2. A person who engages in sexual contact with another, or who causes another to engage in sexual contact, is guilty of an offense if:

- a. The victim is less than fifteen years old;
- b. That person compels the victim to submit by force or by threat of imminent death, serious bodily injury, or kidnapping, to be inflicted on any human being; or
- c. That person knows or has reasonable cause to believe that the victim is unaware that sexual contact is being committed on the victim.

3. a. An offense under this section is a class AA felony if in the course of the offense the actor inflicts serious bodily injury upon the victim, if the actor's conduct violates subdivision a of subsection 1, or if the actor's conduct violates subdivision d of subsection 1 and the actor was at least twenty-two years of age at the time of the offense. For any conviction of a class AA felony under subdivision a of subsection 1, the court shall impose a minimum sentence of twenty years' imprisonment, with probation supervision to follow the incarceration. The court may deviate from the mandatory sentence if the court finds that the sentence would impose a manifest injustice as defined in section 39-01-01 and the defendant has accepted responsibility for the crime or cooperated with law enforcement. However, a defendant convicted of a class AA felony under this section may not be sentenced to serve less than five years of incarceration.

b. Otherwise the offense is a class A felony.

4. If, as a result of injuries sustained during the course of an offense under this section, the victim dies, the offense is a class AA felony, for which the maximum penalty of life imprisonment without parole must be imposed.

CREDIT(S)

S.L. 1973, ch. 117, § 1; S.L. 1977, ch. 122, § 2; S.L. 1987, ch. 168, § 1; S.L. 1997, ch. 123, § 1; S.L. 2005, ch. 115, § 2; S.L. 2007, ch. 123, § 2, eff. Aug. 1, 2007; S.L. 2009, ch. 131, § 2, eff. Aug. 1, 2009.

N.D. CENT. CODE § 12.1-20-03.1 (2013). Continuous sexual abuse of a child.

1. An individual in adult court is guilty of an offense if the individual engages in any combination of three or more sexual acts or sexual contacts with a minor under the age of fifteen years during a period of three or more months. The offense is a class AA felony if the actor was at least twenty-two years of age at the time of the offense. Otherwise, the offense is a class A felony. The court may not defer imposition of sentence.

2. If more than three sexual acts or contacts are alleged, a jury must unanimously agree that any combination of three or more acts or contacts occurred. The jury does not need to unanimously agree which three acts or contacts occurred.

3. No other felony offense under this chapter involving the same victim may be charged in the same proceeding with a charge under this section unless the other charged offense occurred outside the time period charged under this section or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, but a separate count may be charged for each victim if more than one victim is involved.

CREDIT(S)

S.L. 1997, ch. 124, § 2; S.L. 2005, ch. 115, § 3; S.L. 2007, ch. 123, § 3, eff. Aug. 1, 2007.

N.D. CENT. CODE § 12.1-20-05 (2013). Corruption or solicitation of minors.

1. An adult who engages in, solicits with the intent to engage in, or causes another to engage in a sexual act with a minor, is guilty of a class A misdemeanor if the victim is a minor fifteen years of age or older.

2. An adult who solicits with the intent to engage in a sexual act with a minor under age fifteen or engages in or causes another to engage in a sexual act when the adult is at least twenty-two years of age and the victim is a minor fifteen years of age or older, is guilty of a class C felony.

3. An adult who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. An adult who commits a violation of subsection 2 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

CREDIT(S)

S.L. 1973, ch. 117, § 1; S.L. 1977, ch. 122, § 4; S.L. 1979, ch. 179, § 2; S.L. 1997, ch. 122, § 2; S.L. 2001, ch. 134, § 3; S.L. 2007, ch. 124, § 2, eff. Aug. 1, 2007.

N.D. CENT. CODE § 12.1-20-07 (2013). Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

a. That person knows or has reasonable cause to believe that the contact is offensive to the other person;

b. That person knows or has reasonable cause to believe that the other person suffers from a mental disease or defect which renders that other person incapable of understanding the nature of that other person's conduct;

c. That person or someone with that person's knowledge has substantially impaired the victim's power to appraise or control the victim's conduct, by administering or employing without the victim's knowledge intoxicants, a controlled substance as defined in chapter 19-03.1, or other means for the purpose of preventing resistance;

d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;

e. The other person is a minor, fifteen years of age or older, and the actor is the other person's parent, guardian, or is otherwise responsible for general supervision of the other person's welfare; or

f. The other person is a minor, fifteen years of age or older, and the actor is an adult.

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

CREDIT(S)

S.L. 1973, ch. 117, § 1; S.L. 1977, ch. 122, § 5; S.L. 1997, ch. 122, § 3; S.L. 1997, ch. 123, § 2; S.L. 2001, ch. 135, § 2.

N.D. CENT. CODE § 12.1-20-12.1 (2013). Indecent exposure.

1. A person, with intent to arouse, appeal to, or gratify that person's lust, passions, or sexual desires, is guilty of a class A misdemeanor if that person:

a. Masturbates in a public place or in the presence of a minor; or

b. Exposes one's penis, vulva, or anus in a public place or to a minor in a public or private place.

2. A person is guilty of a class C felony if the person violates subsection 1 after a previous conviction for violating subsection 1, after a previous conviction for violating section 12.1-20-12.2, or after being required to register under section 12.1-32-15.

3. A person who commits a violation of subsection 1 within fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class C felony. A person who commits a violation of subsection 2 within

fifty feet [15.24 meters] of or on the real property comprising a public or nonpublic elementary, middle, or high school is guilty of a class B felony.

4. The act of a woman discreetly breastfeeding her child is not a violation of this section.

CREDIT(S)

S.L. 1979, ch. 179, § 1; S.L. 2001, ch. 134, § 5; S.L. 2003, ch. 106, § 2; S.L. 2007, ch. 124, § 3, eff. Aug. 1, 2007; S.L. 2009, ch. 220, § 1, eff. Aug. 1, 2009.

N.D. CENT. CODE § 12.1-27.1-03 (2013). Promoting obscenity to minors -- Minor performing in obscene performance -- Classification of offenses.

1. It is a class C felony for a person, knowing of its character, to recklessly promote to a minor any material or performance which is harmful to minors, or to admit a minor to premises where a performance harmful to minors is exhibited or takes place.

2. It is a class C felony to permit a minor to participate in a performance which is harmful to minors.

CREDIT(S)

S.L. 1975, ch. 119, § 3; S.L. 1989, ch. 169, § 2.

N.D. CENT. CODE § 12.1-27.2-02 (2013). Use of a minor in a sexual performance.

A person is guilty of a class B felony if, knowing the character and content of a performance, that person employs, authorizes, or induces a minor to engage in sexual conduct during a performance or, if being a parent, legal guardian, or custodian of a minor, that person consents to the participation by the minor in sexual conduct during a performance.

CREDIT(S)

S.L. 1985, ch. 177, § 1; S.L. 1989, ch. 169, § 4.

N.D. CENT. CODE § 12.1-36-01 (2013). Surgical alteration of the genitals of female minor -- Penalty -- Exception.

1. Except as provided in subsection 2, any person who knowingly separates or surgically alters normal, healthy, functioning genital tissue of a female minor is guilty of a class C felony.

2. A surgical operation is not a violation of this section if a licensed medical practitioner performs the operation to correct an anatomical abnormality or to remove diseased tissue that is an immediate threat to the health of the female minor. In applying this subsection, any belief that the operation is required as a matter of custom, ritual, or standard of practice may not be taken into consideration.

CREDIT(S)

S.L. 1995, ch. 140, § 1.

OHIO

OHIO REV. CODE ANN. § 2907.02 (2013). Rape

(A) (1) No person shall engage in sexual conduct with another who is not the spouse of the offender or who is the spouse of the offender but is living separate and apart from the offender, when any of the following applies:

(a) For the purpose of preventing resistance, the offender substantially impairs the other person's judgment or control by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(b) The other person is less than thirteen years of age, whether or not the offender knows the age of the other person.

(c) The other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the other person's ability to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age.

(2) No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force.

(B) Whoever violates this section is guilty of rape, a felony of the first degree. If the offender under division (A)(1)(a) of this section substantially impairs the other person's judgment or control by administering any controlled substance described in section 3719.41 of the Revised Code to the other person surreptitiously or by force, threat of force, or deception, the prison term imposed upon the offender shall be one of the prison terms prescribed for a felony of the first degree in section 2929.14 of the Revised Code that is not less than five years. Except as otherwise provided in this division, notwithstanding sections 2929.11 to 2929.14 of the Revised Code, an offender under division (A)(1)(b) of this section shall be sentenced to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code. If an offender is convicted of or pleads guilty to a violation of division (A)(1)(b) of this section, if the

offender was less than sixteen years of age at the time the offender committed the violation of that division, and if the offender during or immediately after the commission of the offense did not cause serious physical harm to the victim, the victim was ten years of age or older at the time of the commission of the violation, and the offender has not previously been convicted of or pleaded guilty to a violation of this section or a substantially similar existing or former law of this state, another state, or the United States, the court shall not sentence the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, and instead the court shall sentence the offender as otherwise provided in this division. If an offender under division (A)(1)(b) of this section previously has been convicted of or pleaded guilty to violating division (A)(1)(b) of this section or to violating an existing or former law of this state, another state, or the United States that is substantially similar to division (A)(1)(b) of this section, if the offender during or immediately after the commission of the offense caused serious physical harm to the victim, or if the victim under division (A)(1)(b) of this section is less than ten years of age, in lieu of sentencing the offender to a prison term or term of life imprisonment pursuant to section 2971.03 of the Revised Code, the court may impose upon the offender a term of life without parole. If the court imposes a term of life without parole pursuant to this division, division (F) of section 2971.03 of the Revised Code applies, and the offender automatically is classified a tier III sex offender/child-victim offender, as described in that division.

(C) A victim need not prove physical resistance to the offender in prosecutions under this section.

(D) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(E) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(F) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

(G) It is not a defense to a charge under division (A)(2) of this section that the offender and the victim were married or were cohabiting at the time of the commission of the offense.

CREDIT(S)

(2007 S 10, eff. 1-1-08; 2006 S 260, eff. 1-2-07; 2002 H 485, eff. 6-13-02; 1997 H 32, eff. 3-10-98; 1995 S 2, eff. 7-1-96; 1993 S 31, eff. 9-27-93; 1985 H 475; 1982 H 269, § 4, S 199; 1975 S 144; 1972 H 511)

OHIO REV. CODE ANN. § 2907.03 (2013). Sexual battery

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(1) The offender knowingly coerces the other person to submit by any means that would prevent resistance by a person of ordinary resolution.

(2) The offender knows that the other person's ability to appraise the nature of or control the other person's own conduct is substantially impaired.

(3) The offender knows that the other person submits because the other person is unaware that the act is being committed.

(4) The offender knows that the other person submits because the other person mistakenly identifies the offender as the other person's spouse.

(5) The offender is the other person's natural or adoptive parent, or a stepparent, or guardian, custodian, or person in loco parentis of the other person.

(6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.

(7) The offender is a teacher, administrator, coach, or other person in authority employed by or serving in a school for which the state board of education prescribes minimum standards pursuant to division (D) of section 3301.07 of the Revised Code, the other person is enrolled in or attends that school, and the offender is not enrolled in and does not attend that school.

(8) The other person is a minor, the offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education, and the other person is enrolled in or attends that institution.

(9) The other person is a minor, and the offender is the other person's athletic or other type of coach, is the other person's instructor, is the leader of a scouting troop of which the other person is a member, or is a person with temporary or occasional disciplinary control over the other person.

(10) The offender is a mental health professional, the other person is a mental health client or patient of the offender, and the offender induces the other person to submit by falsely representing to the other person that the sexual conduct is necessary for mental health treatment purposes.

(11) The other person is confined in a detention facility, and the offender is an employee of that detention facility.

(12) The other person is a minor, the offender is a cleric, and the other person is a member of, or attends, the church or congregation served by the cleric.

(13) The other person is a minor, the offender is a peace officer, and the offender is more than two years older than the other person.

(B) Whoever violates this section is guilty of sexual battery. Except as otherwise provided in this division, sexual battery is a felony of the third degree. If the other person is less than thirteen years of age, sexual battery is a felony of the second degree, and the court shall impose upon the offender a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(C) As used in this section:

(1) "Cleric" has the same meaning as in section 2317.02 of the Revised Code.

(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code.

(3) "Institution of higher education" means a state institution of higher education defined in section 3345.011 [3345.01.1] of the Revised Code, a private nonprofit college or university located in this state that possesses a certificate of authorization issued by the Ohio board of regents pursuant to Chapter 1713. of the Revised Code, or a school certified under Chapter 3332. of the Revised Code.

(4) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

CREDIT(S)

(2008 H 209, eff. 4-7-09; 2006 H 95, eff. 8-3-06; 2006 S 17, eff. 8-3-06; 2002 H 510, eff. 3-31-03; 2002 S 9, eff. 5-14-02; 1997 H 32, eff. 3-10-98; 1997 S 6, eff. 6-20-97; 1995 S 2, eff. 7-1-96; 1994 H 454, eff. 7-19-94; 1972 H 511, eff. 1-1-74)

OHIO REV. CODE ANN. § 2907.04 (2013). Unlawful sexual conduct with minor

(A) No person who is eighteen years of age or older shall engage in sexual conduct with another, who is not the spouse of the offender, when the offender knows the other person is thirteen years of age or older but less than sixteen years of age, or the offender is reckless in that regard.

(B) Whoever violates this section is guilty of unlawful sexual conduct with a minor.

(1) Except as otherwise provided in divisions (B)(2), (3), and (4) of this section, unlawful sexual conduct with a minor is a felony of the fourth degree.

(2) Except as otherwise provided in division (B)(4) of this section, if the offender is less than four years older than the other person, unlawful sexual conduct with a minor is a misdemeanor of the first degree.

(3) Except as otherwise provided in division (B)(4) of this section, if the offender is ten or more years older than the other person, unlawful sexual conduct with a minor is a felony of the third degree.

(4) If the offender previously has been convicted of or pleaded guilty to a violation of section 2907.02, 2907.03, or 2907.04 of the Revised Code or a violation of former section 2907.12 of the Revised Code, unlawful sexual conduct with a minor is a felony of the second degree.

CREDIT(S)

(2000 H 442, eff. 10-17-00; 1995 S 2, eff. 7-1-96; 1990 H 44, eff. 7-24-90; 1972 H 511)

OHIO REV. CODE ANN. § 2907.05 (2013). Gross sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender purposely compels the other person, or one of the other persons, to submit by force or threat of force.

(2) For the purpose of preventing resistance, the offender substantially impairs the judgment or control of the other person or of one of the other persons by administering any drug, intoxicant, or controlled substance to the other person surreptitiously or by force, threat of force, or deception.

(3) The offender knows that the judgment or control of the other person or of one of the other persons is substantially impaired as a result of the influence of any drug or intoxicant administered to the other person with the other person's consent for the purpose of any kind of medical or dental examination, treatment, or surgery.

(4) The other person, or one of the other persons, is less than thirteen years of age, whether or not the offender knows the age of that person.

(5) The ability of the other person to resist or consent or the ability of one of the other persons to resist or consent is substantially impaired because of a mental or physical condition or because of advanced age, and the offender knows or has reasonable cause to believe that the ability to resist or consent of the other person or of one of the other persons is substantially impaired because of a mental or physical condition or because of advanced age.

(B) No person shall knowingly touch the genitalia of another, when the touching is not through clothing, the other person is less than twelve years of age, whether or not the offender knows the age of that person, and the touching is done with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.

(C) Whoever violates this section is guilty of gross sexual imposition.

(1) Except as otherwise provided in this section, gross sexual imposition committed in violation of division (A)(1), (2), (3), or (5) of this section is a felony of the fourth degree. If the offender under division (A)(2) of this section substantially impairs the judgment or control of the other person or one of the other persons by administering any controlled substance described in section 3719.41 of the Revised Code to the person surreptitiously or by force, threat of force, or deception, gross sexual imposition committed in violation of division (A)(2) of this section is a felony of the third degree.

(2) Gross sexual imposition committed in violation of division (A)(4) or (B) of this section is a felony of the third degree. Except as otherwise provided in this division, for gross sexual imposition committed in violation of division (A)(4) or (B) of this section there is a presumption that a prison term shall be imposed for the offense. The court shall impose on an offender convicted of gross sexual imposition in violation of division (A)(4) or (B) of this section a mandatory prison term equal to one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the third degree if either of the following applies:

(a) Evidence other than the testimony of the victim was admitted in the case corroborating the violation;

(b) The offender previously was convicted of or pleaded guilty to a violation of this section, rape, the former offense of felonious sexual penetration, or sexual battery, and the victim of the previous offense was less than thirteen years of age.

(D) A victim need not prove physical resistance to the offender in prosecutions under this section.

(E) Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

Evidence of specific instances of the defendant's sexual activity, opinion evidence of the defendant's sexual activity, and reputation evidence of the defendant's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, the defendant's past sexual activity with the victim, or is admissible against the defendant under section 2945.59 of the Revised Code, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(F) Prior to taking testimony or receiving evidence of any sexual activity of the victim or the defendant in a proceeding under this section, the court shall resolve the admissibility of the proposed evidence in a hearing in chambers, which shall be held at or before preliminary hearing and not less than three days before trial, or for good cause shown during the trial.

(G) Upon approval by the court, the victim may be represented by counsel in any hearing in chambers or other proceeding to resolve the admissibility of evidence. If the victim is indigent or otherwise is unable to obtain the services of counsel, the court, upon request, may appoint counsel to represent the victim without cost to the victim.

CREDIT(S)

(2007 S 10, eff. 1-1-08; 2006 H 95, eff. 8-3-06; 1997 H 32, eff. 3-10-98; 1993 S 31, eff. 9-27-93; 1990 H 208; 1977 H 134; 1975 S 144; 1972 H 511)

OHIO REV. CODE ANN. § 2907.06 (2013). Sexual imposition

(A) No person shall have sexual contact with another, not the spouse of the offender; cause another, not the spouse of the offender, to have sexual contact with the offender; or cause two or more other persons to have sexual contact when any of the following applies:

(1) The offender knows that the sexual contact is offensive to the other person, or one of the other persons, or is reckless in that regard.

(2) The offender knows that the other person's, or one of the other person's, ability to appraise the nature of or control the offender's or touching person's conduct is substantially impaired.

(3) The offender knows that the other person, or one of the other persons, submits because of being unaware of the sexual contact.

(4) The other person, or one of the other persons, is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of such person, and the offender is at least eighteen years of age and four or more years older than such other person.

(5) The offender is a mental health professional, the other person or one of the other persons is a mental health client or patient of the offender, and the offender induces the other person who is the client or patient to submit by falsely representing to the other person who is the client or patient that the sexual contact is necessary for mental health treatment purposes.

(B) No person shall be convicted of a violation of this section solely upon the victim's testimony unsupported by other evidence.

(C) Whoever violates this section is guilty of sexual imposition, a misdemeanor of the third degree. If the offender previously has been convicted of a violation of this section or of section 2907.02, 2907.03, 2907.04, 2907.05, or 2907.12* of the Revised Code, a violation of this section is a misdemeanor of the first degree.

CREDIT(S)

(2002 S 9, eff. 5-14-02; 1995 S 2, eff. 7-1-96; 1990 H 44, eff. 7-24-90; 1977 H 134; 1972 H 511)

OHIO REV. CODE ANN. § 2907.07 (2013). Importuning

(A) No person shall solicit a person who is less than thirteen years of age to engage in sexual activity with the offender, whether or not the offender knows the age of such person.

(B)(1) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, and the other person is thirteen years of age or older but less than sixteen years of age, whether or not the offender knows the age of the other person.

(2) No person shall solicit another, not the spouse of the offender, to engage in sexual conduct with the offender, when the offender is eighteen years of age or older and four or more years older than the other person, the other person is sixteen or seventeen years of age and a victim of a violation of section 2905.32 of the Revised Code, and the offender knows or has reckless disregard of the age of the other person.

(C) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is less than thirteen years of age, and the offender knows that the other person is less than thirteen years of age or is reckless in that regard.

(2) The other person is a law enforcement officer posing as a person who is less than thirteen years of age, and the offender believes that the other person is less than thirteen years of age or is reckless in that regard.

(D) No person shall solicit another by means of a telecommunications device, as defined in section 2913.01 of the Revised Code, to engage in sexual activity with the offender when the offender is eighteen years of age or older and either of the following applies:

(1) The other person is thirteen years of age or older but less than sixteen years of age, the offender knows that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the other person.

(2) The other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

(E) Divisions (C) and (D) of this section apply to any solicitation that is contained in a transmission via a telecommunications device that either originates in this state or is received in this state.

(F)(1) Whoever violates this section is guilty of importuning.

(2) Except as otherwise provided in this division, a violation of division (A) or (C) of this section is a felony of the third degree on a first offense, and, notwithstanding division (C) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (A) or (C) of this section is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the second degree.

(3) A violation of division (B) or (D) of this section is a felony of the fifth degree on a first offense, and, notwithstanding division (B) of section 2929.13 of the Revised Code, there is a presumption that a prison term shall be imposed as described in division (D) of section 2929.13 of the Revised Code. If the offender previously has been convicted of a sexually oriented offense or a child-victim oriented offense, a violation of division (B) or (D) of this section is a felony of the fourth degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed in section 2929.14 of the Revised Code for a felony of the fourth degree that is not less than twelve months in duration.

CREDIT(S)

(2012 H 262, eff. 6-27-12; 2008 S 183, eff. 9-11-08; 2006 S 260, eff. 1-2-07; 2003 S 5, eff. 7-31-03; 2002 S 175, eff. 5-7-02; 2000 H 724, eff. 3-22-01; 1972 H 511, eff. 1-1-74)

OHIO REV. CODE ANN. § 2907.08 (2013). Voyeurism

(A) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another, to spy or eavesdrop upon another.

(B) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, or otherwise record the other person in a state of nudity.

(C) No person, for the purpose of sexually arousing or gratifying the person's self, shall commit trespass or otherwise surreptitiously invade the privacy of another to videotape, film, photograph, otherwise record, or spy or eavesdrop upon the other person in a state of nudity if the other person is a minor.

(D) No person shall secretly or surreptitiously videotape, film, photograph, or otherwise record another person under or through the clothing being worn by that other person for the purpose of viewing the body of, or the undergarments worn by, that other person.

(E) (1) Whoever violates this section is guilty of voyeurism.

(2) A violation of division (A) of this section is a misdemeanor of the third degree.

(3) A violation of division (B) of this section is a misdemeanor of the second degree.

(4) A violation of division (D) of this section is a misdemeanor of the first degree.

(5) A violation of division (C) of this section is a felony of the fifth degree.

CREDIT(S)

(2008 H 74, eff. 4-7-09; 2006 H 310, eff. 6-15-06; 2000 H 332, eff. 1-1-01; 2000 H 504, eff. 10-10-00; 2000 H 448, eff. 10-5-00; 1997 S 82, eff. 1-30-98; 1972 H 511, eff. 1-1-74)

OHIO REV. CODE ANN. § 2907.09 (2013). Public indecency

(A) No person shall recklessly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront others who are in the person's physical proximity and who are not members of the person's household:

(1) Expose the person's private parts;

(2) Engage in sexual conduct or masturbation;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation.

(B) No person shall knowingly do any of the following, under circumstances in which the person's conduct is likely to be viewed by and affront another person who is a minor, who is not the spouse of the offender, and who resides in the person's household:

(1) Engage in masturbation;

(2) Engage in sexual conduct;

(3) Engage in conduct that to an ordinary observer would appear to be sexual conduct or masturbation;

(4) Expose the person's private parts with the purpose of personal sexual arousal or gratification or to lure the minor into sexual activity.

(C) (1) Whoever violates this section is guilty of public indecency and shall be punished as provided in divisions (C)(2), (3), (4), and (5) of this section.

(2) Except as otherwise provided in division (C)(2) of this section, a violation of division (A)(1) of this section is a misdemeanor of the fourth degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(1) of this section is a misdemeanor of the third degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to two violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to three or more violations of this section, a violation of division (A)(1) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(3) Except as otherwise provided in division (C)(3) of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the third degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the second degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (A)(2) or (3) of this section is a misdemeanor of the first degree or, if any person who was likely to view and be affronted by the offender's conduct was a minor, a felony of the fifth degree.

(4) Except as otherwise provided in division (C)(4) of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the second degree. If the offender previously has been convicted of or pleaded guilty to one violation of this section, a violation of division (B)(1), (2), or (3) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to two or more violations of this section, a violation of division (B)(1), (2), or (3) of this section is a felony of the fifth degree.

(5) Except as otherwise provided in division (C)(5) of this section, a violation of division (B)(4) of this section is a misdemeanor of the first degree. If the offender previously has been convicted of or pleaded guilty to any violation of this section, a violation of division (B)(4) of this section is a felony of the fifth degree.

CREDIT(S)

(2006 S 245, eff. 4-4-07; 2005 H 50, eff. 9-26-05; 1995 S 2, eff. 7-1-96; 1990 H 214, eff. 4-13-90; 1972 H 511)

OHIO REV. CODE ANN. § 2907.323 (2013). Illegal use of minor in nudity-oriented material or performance

(A) No person shall do any of the following:

(1) Photograph any minor who is not the person's child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor in a state of nudity, unless both of the following apply:

(a) The material or performance is, or is to be, sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(b) The minor's parents, guardian, or custodian consents in writing to the photographing of the minor, to the use of the minor in the material or performance, or to the transfer of the material and to the specific manner in which the material or performance is to be used.

(2) Consent to the photographing of the person's minor child or ward, or photograph the person's minor child or ward, in a state of nudity or consent to the use of the person's minor child or ward in a state of nudity in any material or performance, or use or transfer a material or performance of that nature, unless the material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance;

(3) Possess or view any material or performance that shows a minor who is not the person's child or ward in a state of nudity, unless one of the following applies:

(a) The material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into this state, or presented for a bona fide artistic,

medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(b) The person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred.

(B) Whoever violates this section is guilty of illegal use of a minor in a nudity-oriented material or performance. Whoever violates division (A)(1) or (2) of this section is guilty of a felony of the second degree. Except as otherwise provided in this division, whoever violates division (A)(3) of this section is guilty of a felony of the fifth degree. If the offender previously has been convicted of or pleaded guilty to a violation of this section or section 2907.321 or 2907.322 of the Revised Code, illegal use of a minor in a nudity-oriented material or performance in violation of division (A)(3) of this section is a felony of the fourth degree. If the offender who violates division (A)(1) or (2) of this section also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

CREDIT(S)

(2011 H 86, eff. 9-30-11; 2008 H 280, eff. 4-7-09; 1995 S 2, eff. 7-1-96; 1988 H 51, eff. 3-17-89; 1984 S 321, H 44)

OHIO REV. CODE ANN. § 2919.22 (2013). Endangering children

(A) No person, who is the parent, guardian, custodian, person having custody or control, or person in loco parentis of a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age, shall create a substantial risk to the health or safety of the child, by violating a duty of care, protection, or support. It is not a violation of a duty of care, protection, or support under this division when the parent, guardian, custodian, or person having custody or control of a child treats the physical or mental illness or defect of the child by spiritual means through prayer alone, in accordance with the tenets of a recognized religious body.

(B) No person shall do any of the following to a child under eighteen years of age or a mentally or physically handicapped child under twenty-one years of age:

(1) Abuse the child;

(2) Torture or cruelly abuse the child;

(3) Administer corporal punishment or other physical disciplinary measure, or physically restrain the child in a cruel manner or for a prolonged period, which punishment, discipline, or restraint is excessive under the circumstances and creates a substantial risk of serious physical harm to the child;

(4) Repeatedly administer unwarranted disciplinary measures to the child, when there is a substantial risk that such conduct, if continued, will seriously impair or retard the child's mental health or development;

(5) Entice, coerce, permit, encourage, compel, hire, employ, use, or allow the child to act, model, or in any other way participate in, or be photographed for, the production, presentation, dissemination, or advertisement of any material or performance that the offender knows or reasonably should know is obscene, is sexually oriented matter, or is nudity-oriented matter;

(6) Allow the child to be on the same parcel of real property and within one hundred feet of, or, in the case of more than one housing unit on the same parcel of real property, in the same housing unit and within one hundred feet of, any act in violation of section 2925.04 or 2925.041 of the Revised Code when the person knows that the act is occurring, whether or not any person is prosecuted for or convicted of the violation of section 2925.04 or 2925.041 of the Revised Code that is the basis of the violation of this division.

(C)(1) No person shall operate a vehicle, streetcar, or trackless trolley within this state in violation of division (A) of section 4511.19 of the Revised Code when one or more children under eighteen years of age are in the vehicle, streetcar, or trackless trolley. Notwithstanding any other provision of law, a person may be convicted at the same trial or proceeding of a violation of this division and a violation of division (A) of section 4511.19 of the Revised Code that constitutes the basis of the charge of the violation of this division. For purposes of sections 4511.191 to 4511.197 of the Revised Code and all related provisions of law, a person arrested for a violation of this division shall be considered to be under arrest for operating a vehicle while under the influence of alcohol,

a drug of abuse, or a combination of them or for operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the whole blood, blood serum or plasma, breath, or urine.

(2) As used in division (C)(1) of this section:

(a) “Controlled substance” has the same meaning as in section 3719.01 of the Revised Code.

(b) “Vehicle,” “streetcar,” and “trackless trolley” have the same meanings as in section 4511.01 of the Revised Code.

(D)(1) Division (B)(5) of this section does not apply to any material or performance that is produced, presented, or disseminated for a bona fide medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, member of the clergy, prosecutor, judge, or other person having a proper interest in the material or performance.

(2) Mistake of age is not a defense to a charge under division (B)(5) of this section.

(3) In a prosecution under division (B)(5) of this section, the trier of fact may infer that an actor, model, or participant in the material or performance involved is a juvenile if the material or performance, through its title, text, visual representation, or otherwise, represents or depicts the actor, model, or participant as a juvenile.

(4) As used in this division and division (B)(5) of this section:

(a) “Material,” “performance,” “obscene,” and “sexual activity” have the same meanings as in section 2907.01 of the Revised Code.

(b) “Nudity-oriented matter” means any material or performance that shows a minor in a state of nudity and that, taken as a whole by the average person applying contemporary community standards, appeals to prurient interest.

(c) “Sexually oriented matter” means any material or performance that shows a minor participating or engaging in sexual activity, masturbation, or bestiality.

(E)(1) Whoever violates this section is guilty of endangering children.

(2) If the offender violates division (A) or (B)(1) of this section, endangering children is one of the following, and, in the circumstances described in division (E)(2)(e) of this section, that division applies:

(a) Except as otherwise provided in division (E)(2)(b), (c), or (d) of this section, a misdemeanor of the first degree;

(b) If the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(2)(c) or (d) of this section, a felony of the fourth degree;

(c) If the violation is a violation of division (A) of this section and results in serious physical harm to the child involved, a felony of the third degree;

(d) If the violation is a violation of division (B)(1) of this section and results in serious physical harm to the child involved, a felony of the second degree.

(e) If the violation is a felony violation of division (B)(1) of this section and the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(3) If the offender violates division (B)(2), (3), (4), or (6) of this section, except as otherwise provided in this division, endangering children is a felony of the third degree. If the violation results in serious physical harm to the child involved, or if the offender previously has been convicted of an offense under this section or of any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, endangering children is a felony of the second degree. If the offender violates division (B)(2), (3), or (4) of this section and the offender also is convicted of or pleads guilty to a

specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code. If the offender violates division (B)(6) of this section and the drug involved is methamphetamine, the court shall impose a mandatory prison term on the offender as follows:

(a) If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than two years. If the violation is a violation of division (B)(6) of this section that is a felony of the third degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree that is not less than five years.

(b) If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section and the drug involved is methamphetamine, except as otherwise provided in this division, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than three years. If the violation is a violation of division (B)(6) of this section that is a felony of the second degree under division (E)(3) of this section, if the drug involved is methamphetamine, and if the offender previously has been convicted of or pleaded guilty to a violation of division (B)(6) of this section, a violation of division (A) of section 2925.04 of the Revised Code, or a violation of division (A) of section 2925.041 of the Revised Code, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree that is not less than five years.

(4) If the offender violates division (B)(5) of this section, endangering children is a felony of the second degree. If the offender also is convicted of or pleads guilty to a specification as described in section 2941.1422 of the Revised Code that was included in the indictment, count in the indictment, or information charging the offense, the court shall sentence the offender to a mandatory prison term as provided in division (B)(7) of section 2929.14 of the Revised Code and shall order the offender to make restitution as provided in division (B)(8) of section 2929.18 of the Revised Code.

(5) If the offender violates division (C) of this section, the offender shall be punished as follows:

(a) Except as otherwise provided in division (E)(5)(b) or (c) of this section, endangering children in violation of division (C) of this section is a misdemeanor of the first degree.

(b) If the violation results in serious physical harm to the child involved or the offender previously has been convicted of an offense under this section or any offense involving neglect, abandonment, contributing to the delinquency of, or physical abuse of a child, except as otherwise provided in division (E)(5)(c) of this section, endangering children in violation of division (C) of this section is a felony of the fifth degree.

(c) If the violation results in serious physical harm to the child involved and if the offender previously has been convicted of a violation of division (C) of this section, section 2903.06 or 2903.08 of the Revised Code, section 2903.07 of the Revised Code as it existed prior to March 23, 2000, or section 2903.04 of the Revised Code in a case in which the offender was subject to the sanctions described in division (D) of that section, endangering children in violation of division (C) of this section is a felony of the fourth degree.

(d) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction it imposes upon the offender pursuant to division (E)(5)(a), (b), or (c) of this section or pursuant to any other provision of law and in addition to any suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law, the court also may impose upon the offender a class seven suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(7) of section 4510.02 of the Revised Code.

(e) In addition to any term of imprisonment, fine, or other sentence, penalty, or sanction imposed upon the offender pursuant to division (E)(5)(a), (b), (c), or (d) of this section or pursuant to any other provision of law for the violation of division (C) of this section, if as part of the same trial or proceeding the offender also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the offender also shall be sentenced in accordance with section 4511.19 of the Revised Code for that violation of division (A) of section 4511.19 of the Revised Code.

(F)(1)(a) A court may require an offender to perform not more than two hundred hours of supervised community service work under the authority of an agency, subdivision, or charitable organization. The requirement shall be part of the community control sanction or sentence of the offender, and the court shall impose the community service in accordance with and subject to divisions (F)(1)(a) and (b) of this section. The court may require an offender whom it requires to perform supervised community service work as part of the offender's community control sanction or sentence to pay the court a reasonable fee to cover the costs of the offender's participation in the work, including, but not limited to, the costs of procuring a policy or policies of liability insurance to cover the period during which the offender will perform the work. If the court requires the offender to perform supervised community service work as part of the offender's community control sanction or sentence, the court shall do so in accordance with the following limitations and criteria:

(i) The court shall require that the community service work be performed after completion of the term of imprisonment or jail term imposed upon the offender for the violation of division (C) of this section, if applicable.

(ii) The supervised community service work shall be subject to the limitations set forth in divisions (B)(1), (2), and (3) of section 2951.02 of the Revised Code.

(iii) The community service work shall be supervised in the manner described in division (B)(4) of section 2951.02 of the Revised Code by an official or person with the qualifications described in that division. The official or person periodically shall report in writing to the court concerning the conduct of the offender in performing the work.

(iv) The court shall inform the offender in writing that if the offender does not adequately perform, as determined by the court, all of the required community service work, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code, and that, if the court orders that the offender be so committed, the court is authorized, but not required, to grant the offender credit upon the period of the commitment for the community service work that the offender adequately performed.

(b) If a court, pursuant to division (F)(1)(a) of this section, orders an offender to perform community service work as part of the offender's community control sanction or sentence

and if the offender does not adequately perform all of the required community service work, as determined by the court, the court may order that the offender be committed to a jail or workhouse for a period of time that does not exceed the term of imprisonment that the court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under the sentence or term that was imposed upon the offender for that violation and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code. The court may order that a person committed pursuant to this division shall receive hour-for-hour credit upon the period of the commitment for the community service work that the offender adequately performed. No commitment pursuant to this division shall exceed the period of the term of imprisonment that the sentencing court could have imposed upon the offender for the violation of division (C) of this section, reduced by the total amount of time that the offender actually was imprisoned under that sentence or term and by the total amount of time that the offender was confined for any reason arising out of the offense for which the offender was convicted and sentenced as described in sections 2949.08 and 2967.191 of the Revised Code.

(2) Division (F)(1) of this section does not limit or affect the authority of the court to suspend the sentence imposed upon a misdemeanor offender and place the offender under a community control sanction pursuant to section 2929.25 of the Revised Code, to require a misdemeanor or felony offender to perform supervised community service work in accordance with division (B) of section 2951.02 of the Revised Code, or to place a felony offender under a community control sanction.

(G)(1) If a court suspends an offender's driver's or commercial driver's license or permit or nonresident operating privilege under division (E)(5)(d) of this section, the period of the suspension shall be consecutive to, and commence after, the period of suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege that is imposed under Chapter 4506., 4509., 4510., or 4511. of the Revised Code or under any other provision of law in relation to the violation of division (C) of this section that is the basis of the suspension under division (E)(5)(d) of this section or in relation to the violation of division (A) of section 4511.19 of the Revised Code that is the basis for that violation of division (C) of this section.

(2) An offender is not entitled to request, and the court shall not grant to the offender, limited driving privileges if the offender's license, permit, or privilege has been suspended under division (E)(5)(d) of this section and the offender, within the preceding six years, has been convicted of or pleaded guilty to three or more violations of one or more of the following:

(a) Division (C) of this section;

(b) Any equivalent offense, as defined in section 4511.181 of the Revised Code.

(H)(1) If a person violates division (C) of this section and if, at the time of the violation, there were two or more children under eighteen years of age in the motor vehicle involved in the violation, the offender may be convicted of a violation of division (C) of this section for each of the children, but the court may sentence the offender for only one of the violations.

(2)(a) If a person is convicted of or pleads guilty to a violation of division (C) of this section but the person is not also convicted of and does not also plead guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, both of the following apply:

(i) For purposes of the provisions of section 4511.19 of the Revised Code that set forth the penalties and sanctions for a violation of division (A) of section 4511.19 of the Revised Code, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute a violation of division (A) of section 4511.19 of the Revised Code;

(ii) For purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code and that is not described in division (H)(2)(a)(i) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall constitute a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(b) If a person is convicted of or pleads guilty to a violation of division (C) of this section and the person also is convicted of or pleads guilty to a separate charge charging the violation of division (A) of section 4511.19 of the Revised Code that was the basis of the charge of the violation of division (C) of this section, the conviction of or plea of guilty to the violation of division (C) of this section shall not constitute, for purposes of any provision of law that refers to a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code, a conviction of or plea of guilty to a violation of division (A) of section 4511.19 of the Revised Code.

(I) As used in this section:

(1) “Community control sanction” has the same meaning as in section 2929.01 of the Revised Code;

(2) “Limited driving privileges” has the same meaning as in section 4501.01 of the Revised Code;

(3) “Methamphetamine” has the same meaning as in section 2925.01 of the Revised Code.

CREDIT(S)

(2011 H 86, eff. 9-30-11; 2008 H 280, eff. 4-7-09; 2006 S 8, eff. 8-17-06; 2006 S 53, eff. 5-17-06; 2004 S 58, eff. 8-11-04; 2002 H 490, eff. 1-1-04; 2002 S 123, eff. 1-1-04; 2000 S 180, eff. 3-22-01; 1999 S 107, eff. 3-23-00; 1999 H 162, eff. 8-25-99; 1997 S 60, eff. 10-21-97; 1996 S 269, § 8, eff. 5-15-97; 1996 S 269, § 1, eff. 7-1-96; 1996 H 353, § 4, eff. 5-15-97; 1996 H 353, § 1, eff. 9-17-96; 1995 H 167, eff. 5-15-97; 1995 S 2, eff. 7-1-96; 1994 H 236, eff. 9-29-94; 1988 H 51, eff. 3-17-89; 1985 H 349; 1984 S 321, H 44; 1977 S 243; 1972 H 511)

OKLAHOMA

OKLA. STAT. ANN. tit. 21, § 852.1 (2013). Child endangerment-- Knowingly permitting physical or sexual abuse--Good faith reliance on spiritual healing--Penalties

A. A person who is the parent, guardian, or person having custody or control over a child as defined in Section 1-1-105 of Title 10A of the Oklahoma Statutes, commits child endangerment when the person:

1. Knowingly permits physical or sexual abuse of a child;
2. Knowingly permits a child to be present at a location where a controlled dangerous substance is being manufactured or attempted to be manufactured as defined in Section 2-101 of Title 63 of the Oklahoma Statutes;

3. Knowingly permits a child to be present in a vehicle when the person knows or should have known that the operator of the vehicle is impaired by or is under the influence of alcohol or another intoxicating substance; or

4. Is the driver, operator, or person in physical control of a vehicle in violation of Section 11-902 of Title 47 of the Oklahoma Statutes while transporting or having in the vehicle such child or children.

However, it is an affirmative defense to this paragraph if the person had a reasonable apprehension that any action to stop the physical or sexual abuse or deny permission for the child to be in the vehicle with an intoxicated person would result in substantial bodily harm to the person or the child.

Nothing in this subsection shall prohibit the prosecution of a person pursuant to the provisions of Section 11-902 or 11-904 of Title 47 of the Oklahoma Statutes.

B. The provisions of this section shall not apply to any parent, guardian or other person having custody or control of a child for the sole reason that the parent, guardian or other person in good faith selects and depends upon spiritual means or prayer for the treatment or cure of disease or remedial care for such child. This subsection shall in no way limit or modify the protections afforded said child in Section 852 of this title or Section 1-4-904 of Title 10A of the Oklahoma Statutes.

C. Any person convicted of violating any provision of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not more than four (4) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

CREDIT(S)

Laws 1990, c. 165, § 2, eff. July 1, 1990; Laws 1997, c. 133, § 252, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 156, eff. July 1, 1999; Laws 2001, c. 225, § 6, eff. July 1, 2001; Laws 2009, c. 143, § 1, eff. July 1, 2009; Laws 2009, c. 234, § 122, eff. July 1, 2009; Laws 2011, c. 350, § 2, eff. Nov. 1, 2011.

OKLA. STAT. ANN. tit. 21, § 856 (2013). Causing, aiding, abetting or encouraging minor to be delinquent or runaway child, to commit felony or to become involved with criminal street gang

A. 1. Except as otherwise specifically provided by law, every person who shall knowingly or willfully cause, aid, abet or encourage a minor to be, to remain, or to become a delinquent child or a runaway child, upon conviction, shall, for the first offense, be guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed one (1) year, or by a fine not to exceed One Thousand Dollars (\$1,000.00), or by both such fine and imprisonment.

2. For purposes of prosecution under this subsection, a “runaway child” means an unemancipated minor who is voluntarily absent from the home without a compelling reason, without the consent of a custodial parent or other custodial adult and without the parent or other custodial adult's knowledge as to the child's whereabouts. “Compelling reason” means imminent danger from incest, a life-threatening situation, or equally traumatizing circumstance. A person aiding a runaway child pursuant to paragraph (4) of subsection (a) of Section 5 of Title 76 of the Oklahoma Statutes or aiding a child based upon a reasonable belief that the child is in physical, mental or emotional danger and with notice to the Department of Human Services or a local law enforcement agency of the location of the child within twelve (12) hours of aiding the child shall not be subject to prosecution under this section.

B. Every person convicted of a second or any subsequent violation of this section shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections not to exceed three (3) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

C. Every person eighteen (18) years of age or older who shall knowingly or willfully cause, aid, abet, or encourage a minor to commit or participate in committing an act that would be a felony if committed by an adult shall, upon conviction, be guilty of a felony punishable by the maximum penalty allowed for conviction of the offense or offenses which the person caused, aided, abetted, or encouraged the minor to commit or participate in committing.

D. Every person who shall knowingly or willfully cause, aid, abet, encourage, solicit, or recruit a minor to participate, join, or associate with any criminal street gang, as defined by subsection F of this section, or any gang member for the purpose of committing any criminal act shall, upon conviction, be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of not more than five (5) years, or a fine not to exceed Five Thousand Dollars (\$5,000.00), or both such fine and imprisonment.

E. Every person convicted of a second or subsequent violation of subsection D of this section shall be guilty of a felony punishable by imprisonment in the custody of the

Department of Corrections for a term not less than five (5) years nor more than ten (10) years, or by a fine not exceeding Five Thousand Dollars (\$5,000.00), or by both such fine and imprisonment.

F. “Criminal street gang” means any ongoing organization, association, or group of five or more persons that specifically either promotes, sponsors, or assists in, or participates in, and requires as a condition of membership or continued membership, the commission of one or more of the following criminal acts:

1. Assault, battery, or assault and battery with a deadly weapon, as defined in Section 645 of this title;
2. Aggravated assault and battery as defined by Section 646 of this title;
3. Robbery by force or fear, as defined in Sections 791 through 797 of this title;
4. Robbery or attempted robbery with a dangerous weapon or imitation firearm, as defined by Section 801 of this title;
5. Unlawful homicide or manslaughter, as defined in Sections 691 through 722 of this title;
6. The sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled dangerous substances, as defined in Section 2-101 et seq. of Title 63 of the Oklahoma Statutes;
7. Trafficking in illegal drugs, as provided for in the Trafficking in Illegal Drugs Act, Section 2-414 of Title 63 of the Oklahoma Statutes;
8. Arson, as defined in Sections 1401 through 1403 of this title;
9. The influence or intimidation of witnesses and jurors, as defined in Sections 388, 455 and 545 of this title;
10. Theft of any vehicle, as described in Section 1720 of this title;

11. Rape, as defined in Section 1111 of this title;
12. Extortion, as defined in Section 1481 of this title;
13. Transporting a loaded firearm in a motor vehicle, in violation of Section 1289.13 of this title;
14. Possession of a concealed weapon, as defined by Section 1289.8 of this title; or
15. Shooting or discharging a firearm, as defined by Section 652 of this title.

CREDIT(S)

Laws 1939, p. 15, § 1; Laws 1989, c. 157, § 3, emerg. eff. May 8, 1989; Laws 1990, c. 272, § 5, eff. Sept. 1, 1990; Laws 1992, c. 182, § 1, emerg. eff. May 7, 1992; Laws 1993, c. 212, § 1, emerg. eff. May 24, 1993; Laws 1996, c. 196, § 1, eff. July 1, 1996; Laws 1997, c. 133, § 254, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 158, eff. July 1, 1999; Laws 2011, c. 168, § 1, eff. Nov. 1, 2011.

OKLA. STAT. ANN. tit. 21, § 888 (2013). Forcible sodomy

<Text as amended by Laws 2009, c. 234, § 123. See, also, text as amended by Laws 2002, c. 455, § 4.>

A. Any person who forces another person to engage in the detestable and abominable crime against nature, pursuant to Section 886 of this title, upon conviction, is guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a period of not more than twenty (20) years. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment. Any person convicted of a second violation of this section, where the victim of the second offense is a person under sixteen (16) years of age, shall not be eligible for probation, suspended or deferred sentence. Any person convicted of a third or subsequent violation of this section, where the victim of the third or subsequent offense is a person under sixteen (16) years of age, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life

without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, a violation of Section 1123 of this title or sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of said offenses, shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. The crime of forcible sodomy shall include:

1. Sodomy committed by a person over eighteen (18) years of age upon a person under sixteen (16) years of age; or
2. Sodomy committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or
3. Sodomy accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the victim or the person committing the crime; or
4. Sodomy committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state; or
5. Sodomy committed upon a person who is at least sixteen (16) years of age but less than twenty (20) years of age and is a student of any public or private secondary school, junior high or high school, or public vocational school, with a person who is eighteen (18) years of age or older and is employed by the same school system.

CREDIT(S)

Laws 1981, c. 57, § 1; Laws 1982, c. 11, § 1, operative Oct. 1, 1982; Laws 1990, c. 224, § 1, eff. Sept. 1, 1990; Laws 1992, c. 289, § 2, emerg. eff. May 25, 1992; Laws 1997, c. 133, § 264, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 168, eff. July 1, 1999; Laws 2000, c. 175, § 1, eff. Nov. 1, 2000; Laws 2002, c. 460, § 9, eff. Nov. 1, 2002; Laws

2006, c. 62, § 4, emerg. eff. April 17, 2006; Laws 2007, c. 261, § 9, eff. Nov. 1, 2007; Laws 2009, c. 234, § 123, emerg. eff. May 21, 2009.

OKLA. STAT. ANN. tit. 21, § 1021 (2013). Indecent exposure--Indecent exhibitions--Obscene material or child pornography--Solicitation of minors

A. Every person who willfully and knowingly either:

1. Lewdly exposes his or her person or genitals in any public place, or in any place where there are present other persons to be offended or annoyed thereby; provided, however, for purposes of this section, a person alleged to have committed an act of public urination shall be prosecuted pursuant to Section 22 of this title unless such act was accompanied with another act that violates paragraphs 2 through 4 of this subsection and shall not be subject to registration under the Sex Offenders Registration Act;

2. Procures, counsels, or assists any person to expose such person, or to make any other exhibition of such person to public view or to the view of any number of persons, for the purpose of sexual stimulation of the viewer;

3. Writes, composes, stereotypes, prints, photographs, designs, copies, draws, engraves, paints, molds, cuts, or otherwise prepares, publishes, sells, distributes, keeps for sale, knowingly downloads on a computer, or exhibits any obscene material or child pornography; or

4. Makes, prepares, cuts, sells, gives, loans, distributes, keeps for sale, or exhibits any disc record, metal, plastic, or wax, wire or tape recording, or any type of obscene material or child pornography,

shall be guilty, upon conviction, of a felony and shall be punished by the imposition of a fine of not less than Five Hundred Dollars (\$500.00) nor more than Twenty Thousand Dollars (\$20,000.00) or by imprisonment for not less than thirty (30) days nor more than ten (10) years, or by both such fine and imprisonment.

B. Every person who:

1. Willfully solicits or aids a minor child to perform; or

2. Shows, exhibits, loans, or distributes to a minor child any obscene material or child pornography for the purpose of inducing said minor to participate in,

any act specified in paragraphs 1, 2, 3 or 4 of subsection A of this section shall be guilty of a felony, upon conviction, and shall be punished by imprisonment in the custody of the Department of Corrections for not less than ten (10) years nor more than thirty (30) years, except when the minor child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years.

C. Persons convicted under this section shall not be eligible for a deferred sentence.

D. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

E. For purposes of this section, “downloading on a computer” means electronically transferring an electronic file from one computer or electronic media to another computer or electronic media.

CREDIT(S)

R.L.1910, § 2463; Laws 1935, p. 18, § 1; Laws 1951, p. 60, § 1; Laws 1961, p. 230, § 1; Laws 1967, c. 111, § 1, emerg. eff. April 25, 1967; Laws 1978, c. 121, § 1; Laws 1984, c. 91, § 1, eff. Nov. 1, 1984; Laws 1996, c. 37, § 1, eff. Nov. 1, 1996; Laws 1997, c. 133, § 276, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 179, eff. July 1, 1999; Laws 2000, c. 208, § 1, eff. Nov. 1, 2000; Laws 2002, c. 20, § 1, emerg. eff. Feb. 28, 2002; Laws 2003, c. 308, § 1, emerg. eff. May 27, 2003; Laws 2007, c. 261, § 11, eff. Nov. 1, 2007; Laws 2008, c. 3, § 12, emerg. eff. Feb. 28, 2008; Laws 2011, c. 186, § 1, eff. Nov. 1, 2011.

OKLA. STAT. ANN. tit. 21, § 1021.22 (2013). Minors--Procuring for participation in pornography

A. Any person who shall procure or cause the participation of any minor under the age of eighteen (18) years in any child pornography or who knowingly possesses, procures, or

manufactures, or causes to be sold or distributed any child pornography shall be guilty, upon conviction, of a felony and shall be punished by imprisonment for not more than twenty (20) years or by the imposition of a fine of not more than Twenty-five Thousand Dollars (\$25,000.00) or by both said fine and imprisonment. Persons convicted under this section shall not be eligible for a deferred sentence. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this subsection shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

B. The consent of the minor, or of the mother, father, legal guardian, or custodian of the minor to the activity prohibited by this section shall not constitute a defense.

CREDIT(S)

Laws 1978, c. 24, § 1, eff. March 13, 1978; Laws 1984, c. 91, § 2, eff. Nov. 1, 1984; Laws 1986, c. 87, § 2, operative July 1, 1986; Laws 1996, c. 37, § 2, eff. Nov. 1, 1996; Laws 1997, c. 133, § 277, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 180, eff. July 1, 1999; Laws 2000, c. 208, § 3, eff. Nov. 1, 2000; Laws 2007, c. 261, § 12, eff. Nov. 1, 2007.

OKLA. STAT. ANN. tit. 21, § 1111 (2013). Rape defined

A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances:

1. Where the victim is under sixteen (16) years of age;
2. Where the victim is incapable through mental illness or any other unsoundness of mind, whether temporary or permanent, of giving legal consent;
3. Where force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person;
4. Where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit;
5. Where the victim is at the time unconscious of the nature of the act and this fact is known to the accused;

6. Where the victim submits to sexual intercourse under the belief that the person committing the act is a spouse, and this belief is induced by artifice, pretense, or concealment practiced by the accused or by the accused in collusion with the spouse with intent to induce that belief. In all cases of collusion between the accused and the spouse to accomplish such act, both the spouse and the accused, upon conviction, shall be deemed guilty of rape;

7. Where the victim is under the legal custody or supervision of a state agency, a federal agency, a county, a municipality or a political subdivision and engages in sexual intercourse with a state, federal, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim; or

8. Where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in sexual intercourse with a person who is eighteen (18) years of age or older and is an employee of the same school system.

B. Rape is an act of sexual intercourse accomplished with a male or female who is the spouse of the perpetrator if force or violence is used or threatened, accompanied by apparent power of execution to the victim or to another person.

CREDIT(S)

R.L.1910, § 2414; Laws 1981, c. 325, § 1; Laws 1983, c. 41, § 4, eff. Nov. 1, 1983; Laws 1983, c. 41, § 1, eff. Nov. 1, 1983; Laws 1984, c. 134, § 1, eff. Nov. 1, 1984; Laws 1990, c. 224, § 2, eff. Sept. 1, 1990; Laws 1993, c. 62, § 1, eff. Sept. 1, 1993; Laws 1995, c. 22, § 1, eff. Nov. 1, 1995; Laws 1999, c. 309, § 2, eff. Nov. 1, 1999; Laws 2001, c. 184, § 1, eff. Nov. 1, 2001; Laws 2002, c. 22, § 9, emerg. eff. March 8, 2002; Laws 2006, c. 62, § 5, emerg. eff. April 17, 2006.

OKLA. STAT. ANN. tit. 21, § 1111.1 (2013). Rape by Instrumentation

Rape by instrumentation is an act within or without the bonds of matrimony in which any inanimate object or any part of the human body, not amounting to sexual intercourse is used in the carnal knowledge of another person without his or her consent and penetration of the anus or vagina occurs to that person. Provided, further, that at least one of the circumstances specified in Section 1111 of this title has been met; further, where the victim is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or under the legal custody or supervision of any public or private elementary or secondary school, junior high or high school, or public vocational school, and engages in conduct prohibited by this section of law with a person who is eighteen (18) years of age or older and is an employee of the same school system, or where the victim is under the legal custody or supervision of a state or federal agency, county, municipal or a political

subdivision and engages in conduct prohibited by this section of law with a federal, state, county, municipal or political subdivision employee or an employee of a contractor of the state, the federal government, a county, a municipality or a political subdivision that exercises authority over the victim, consent shall not be an element of the crime. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

CREDIT(S)

Laws 1981, c. 325, § 2; Laws 1987, c. 224, § 7, eff. Nov. 1, 1987; Laws 2007, c. 261, § 17, eff. Nov. 1, 2007; Laws 2009, c. 444, § 2, eff. July 1, 2009.

OKLA. STAT. ANN. tit. 21, § 1112 (2013). Age limitations on conviction for rape

No person can be convicted of rape or rape by instrumentation on account of an act of sexual intercourse with anyone over the age of fourteen (14) years, with his or her consent, unless such person was over the age of eighteen (18) years at the time of such act.

CREDIT(S)

R.L.1910, § 2415; Laws 1981, c. 325, § 3.

OKLA. STAT. ANN. tit. 21, § 1114 (2013). Rape in first degree--Second degree

A. Rape in the first degree shall include:

1. rape committed by a person over eighteen (18) years of age upon a person under fourteen (14) years of age; or
2. rape committed upon a person incapable through mental illness or any unsoundness of mind of giving legal consent regardless of the age of the person committing the crime; or

3. rape accomplished where the victim is intoxicated by a narcotic or anesthetic agent, administered by or with the privity of the accused as a means of forcing the victim to submit; or
4. rape accomplished where the victim is at the time unconscious of the nature of the act and this fact is known to the accused; or
5. rape accomplished with any person by means of force, violence, or threats of force or violence accompanied by apparent power of execution regardless of the age of the person committing the crime; or
6. rape by instrumentation resulting in bodily harm is rape by instrumentation in the first degree regardless of the age of the person committing the crime; or
7. rape by instrumentation committed upon a person under fourteen (14) years of age.

B. In all other cases, rape or rape by instrumentation is rape in the second degree.

CREDIT(S)

R.L.1910, § 2417; Laws 1981, c. 325, § 5; Laws 1983, c. 41, § 2, eff. Nov. 1, 1983; Laws 1986, c. 179, § 3, eff. Nov. 1, 1986; Laws 1990, c. 224, § 3, eff. Sept. 1, 1990; Laws 2008, c. 438, § 3, eff. July 1, 2008.

OKLA. STAT. ANN. tit. 21, § 1119 (2013). Abduction of person under fifteen

Every person who takes away or induces to leave any person under the age of fifteen (15) years, from a parent, guardian or other person having the legal charge of the person, without the consent of said parent, guardian, or other person having legal charge, for the purpose of marriage or concubinage, or any crime involving moral turpitude shall be guilty of a felony punishable by imprisonment in the State Penitentiary not exceeding five (5) years, or by imprisonment in the county jail not exceeding one (1) year, or by a fine not exceeding One Thousand Dollars (\$ 1,000.00), or by both such fine and imprisonment.

CREDIT(S)

R.L.1910, § 2422; Laws 1976, c. 155, § 1; Laws 1997, c. 133, § 296, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 197, eff. July 1, 1999.

OKLA. STAT. ANN. tit. 21, § 1123 (2013). Lewd or indecent proposals or acts as to child under 16 or person believed to be under 16--Sexual battery

A. It is a felony for any person to knowingly and intentionally:

1. Make any oral, written or electronically or computer-generated lewd or indecent proposal to any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, for the child to have unlawful sexual relations or sexual intercourse with any person; or
2. Look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any lewd or lascivious manner by any acts against public decency and morality, as defined by law; or
3. Ask, invite, entice, or persuade any child under sixteen (16) years of age, or other individual the person believes to be a child under sixteen (16) years of age, to go alone with any person to a secluded, remote, or secret place, with the unlawful and willful intent and purpose then and there to commit any crime against public decency and morality, as defined by law, with the child; or
4. In any manner lewdly or lasciviously look upon, touch, maul, or feel the body or private parts of any child under sixteen (16) years of age in any indecent manner or in any manner relating to sexual matters or sexual interest; or
5. In a lewd and lascivious manner and for the purpose of sexual gratification:
 - a. urinate or defecate upon a child under sixteen (16) years of age,
 - b. ejaculate upon or in the presence of a child,

c. cause, expose, force or require a child to look upon the body or private parts of another person,

d. force or require any child under sixteen (16) years of age or other individual the person believes to be a child under sixteen (16) years of age, to view any obscene materials, child pornography or materials deemed harmful to minors as such terms are defined by Sections 1024.1 and 1040.75 of this title,

e. cause, expose, force or require a child to look upon sexual acts performed in the presence of the child, or

f. force or require a child to touch or feel the body or private parts of said child or another person.

Any person convicted of any violation of this subsection shall be punished by imprisonment in the custody of the Department of Corrections for not less than three (3) years nor more than twenty (20) years, except when the child is under twelve (12) years of age at the time the offense is committed, and in such case the person shall, upon conviction, be punished by imprisonment in the custody of the Department of Corrections for not less than twenty-five (25) years. The provisions of this subsection shall not apply unless the accused is at least three (3) years older than the victim, except when accomplished by the use of force or fear. Any Except as provided in Section 51.1a of this title, any person convicted of a second or subsequent violation of this subsection shall be guilty of a felony punishable as provided in this subsection and shall not be eligible for probation, suspended or deferred sentence. Any Except as provided in Section 51.1a of this title, any person convicted of a third or subsequent violation of this subsection shall be guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term of life or life without parole, in the discretion of the jury, or in case the jury fails or refuses to fix punishment then the same shall be pronounced by the court. Any person convicted of a violation of this subsection after having been twice convicted of a violation of subsection A of Section 1114 of this title, Section 888 of this title, sexual abuse of a child pursuant to Section 843.5 of this title, or of any attempt to commit any of these offenses or any combination of convictions pursuant to these sections shall be punished by imprisonment in the custody of the Department of Corrections for a term of life or life without parole.

B. No person shall commit sexual battery on any other person. “Sexual battery” shall mean the intentional touching, mauling or feeling of the body or private parts of any person sixteen (16) years of age or older, in a lewd and lascivious manner:

1. Without the consent of that person;
2. When committed by a state, county, municipal or political subdivision employee or a contractor or an employee of a contractor of the state, a county, a municipality or political subdivision of this state upon a person who is under the legal custody, supervision or authority of a state agency, a county, a municipality or a political subdivision of this state; or
3. When committed upon a person who is at least sixteen (16) years of age and is less than twenty (20) years of age and is a student, or in the legal custody or supervision of any public or private elementary or secondary school, or technology center school, by a person who is eighteen (18) years of age or older and is an employee of the same school system that the victim attends.

As used in this subsection, “employee of the same school system” means a teacher, principal or other duly appointed person employed by a school system or an employee of a firm contracting with a school system who exercises authority over the victim.

C. No person shall in any manner lewdly or lasciviously:

1. Look upon, touch, maul, or feel the body or private parts of any human corpse in any indecent manner relating to sexual matters or sexual interest; or
2. Urinate, defecate or ejaculate upon any human corpse.

D. Any person convicted of a violation of subsection B or C of this section shall be deemed guilty of a felony and shall be punished by imprisonment in the custody of the Department of Corrections for not more than ten (10) years.

E. The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense pursuant to this section shall not constitute a defense to a prosecution under this section.

F. Except for persons sentenced to life or life without parole, any person sentenced to imprisonment for two (2) years or more for a violation of this section shall be required to serve a term of post-imprisonment supervision pursuant to subparagraph f of paragraph 1 of subsection A of Section 991a of Title 22 of the Oklahoma Statutes under conditions determined by the Department of Corrections. The jury shall be advised that the mandatory post-imprisonment supervision shall be in addition to the actual imprisonment.

CREDIT(S)

Laws 1945, p. 95, § 1; Laws 1947, p. 232, § 1; Laws 1951, p. 60, § 1; Laws 1955, p. 186, § 1; Laws 1965, c. 97, § 1, emerg. eff. May 12, 1965; Laws 1981, c. 206, § 1, emerg. eff. May 26, 1981; Laws 1983, c. 42, § 1, eff. Nov. 1, 1983; Laws 1985, c. 112, § 4, eff. Nov. 1, 1985; Laws 1989, c. 113, § 1, eff. Nov. 1, 1989; Laws 1990, c. 224, § 4, eff. Sept. 1, 1990; Laws 1992, c. 289, § 3, emerg. eff. May 25, 1992; Laws 1997, c. 133, § 299, eff. July 1, 1999; Laws 1999, 1st Ex.Sess., c. 5, § 200, eff. July 1, 1999; Laws 2000, c. 175, § 2, eff. Nov. 1, 2000; Laws 2000, c. 334, § 1, eff. Nov. 1, 2000; Laws 2002, c. 110, § 2, eff. July 1, 2002; Laws 2002, c. 460, § 11, eff. Nov. 1, 2002; Laws 2003, c. 159, § 1, eff. Nov. 1, 2003; Laws 2006, c. 284, § 2, emerg. eff. June 7, 2006; Laws 2007, c. 261, § 19, eff. Nov. 1, 2007; Laws 2008, c. 3, § 14, emerg. eff. Feb. 28, 2008; Laws 2009, c. 234, § 125, emerg. eff. May 21, 2009; Laws 2010, c. 226, § 5, eff. Nov. 1, 2010; Laws 2013, c. 138, §1, eff. Nov. 1, 2013.

OREGON

OR. REV. STAT. § 163.207 (2013). Female genital mutilation.

(1) A person commits the crime of female genital mutilation if the person:

(a) Knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a child; or

(b) Is the parent, guardian or other person legally responsible for the care or custody of a child and knowingly allows the circumcision, excision or infibulation of the whole or any part of the child's labia majora, labia minora or clitoris.

(2) Female genital mutilation is a Class B felony.

(3)(a) A person who circumcises, excises or infibulates the whole or any part of a child's labia majora, labia minora or clitoris does not violate subsection (1) of this section if:

(A) The person is a physician, licensed to practice in this state; and

(B) The surgery is medically necessary for the physical well-being of the child.

(b) In determining medical necessity for purposes of paragraph (a)(B) of this subsection, a person may not consider the effect on the child of the child's belief that the surgery is required as a matter of custom or ritual.

Note: 163.207 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CREDIT(S)

Laws 1999, c. 737, § 1.

OR. REV. STAT. § 163.355 (2013). Rape in the third degree.

(1) A person commits the crime of rape in the third degree if the person has sexual intercourse with another person under 16 years of age.

(2) Rape in the third degree is a Class C felony.

CREDIT(S)

Laws 1971, c. 743, § 109; Laws 1991, c. 628, § 1.

OR. REV. STAT. § 163.365 (2013). Rape in the second degree.

(1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.

(2) Rape in the second degree is a Class B felony.

CREDIT(S)

Laws 1971, c. 743, § 110; Laws 1989, c. 359, § 1; Laws 1991, c. 628, § 2.

OR. REV. STAT. § 163.375 (2013). Rape in the first degree.

(1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:

- (a) The victim is subjected to forcible compulsion by the person;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or
- (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Rape in the first degree is a Class A felony.

CREDIT(S)

Laws 1971, c. 743, § 111; Laws 1989, c. 359, § 2; Laws 1991, c. 628, § 3.

OR. REV. STAT. § 163.385 (2013). Sodomy in the third degree.

(1) A person commits the crime of sodomy in the third degree if the person engages in deviate sexual intercourse with another person under 16 years of age or causes that person to engage in deviate sexual intercourse.

(2) Sodomy in the third degree is a Class C felony.

CREDIT(S)

Laws 1971, c. 743, § 112.

OR. REV. STAT. § 163.395 (2013). Sodomy in the second degree.

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the second degree if the victim is under 14 years of age.

(2) Sodomy in the second degree is a Class B felony.

CREDIT(S)

Laws 1971, c. 743, § 113; Laws 1989, c. 359, § 3.

OR. REV. STAT. § 163.405 (2013). Sodomy in the first degree.

(1) A person who engages in deviate sexual intercourse with another person or causes another to engage in deviate sexual intercourse commits the crime of sodomy in the first degree if:

- (a) The victim is subjected to forcible compulsion by the actor;
- (b) The victim is under 12 years of age;
- (c) The victim is under 16 years of age and is the actor's brother or sister, of the whole or half blood, the son or daughter of the actor or the son or daughter of the actor's spouse; or
- (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Sodomy in the first degree is a Class A felony.

CREDIT(S)

Laws 1971, c. 743, § 114; Laws 1989, c. 359, § 4.

OR. REV. STAT. § 163.408 (2013). Unlawful sexual penetration in the second degree.

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the second degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and the victim is under 14 years of age.

(2) Unlawful sexual penetration in the second degree is a Class B felony.

CREDIT(S)

Laws 1981, c. 549, § 2; Laws 1989, c. 359, § 5; Laws 1991, c. 386, § 1.

OR. REV. STAT. § 163.411 (2013). Unlawful sexual penetration in the first degree.

(1) Except as permitted under ORS 163.412, a person commits the crime of unlawful sexual penetration in the first degree if the person penetrates the vagina, anus or penis of another with any object other than the penis or mouth of the actor and:

- (a) The victim is subjected to forcible compulsion;

(b) The victim is under 12 years of age; or

(c) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.

(2) Unlawful sexual penetration in the first degree is a Class A felony.

CREDIT(S)

Laws 1981, c. 549, § 3; Laws 1989, c. 359, § 6; Laws 1991, c. 386, § 2.

OR. REV. STAT. § 163.415 (2013). Sexual abuse in the third degree.

(1) A person commits the crime of sexual abuse in the third degree if:

(a) The person subjects another person to sexual contact and:

(A) The victim does not consent to the sexual contact; or

(B) The victim is incapable of consent by reason of being under 18 years of age; or

(b) For the purpose of arousing or gratifying the sexual desire of the person or another person, the person intentionally propels any dangerous substance at a victim without the consent of the victim.

(2) Sexual abuse in the third degree is a Class A misdemeanor.

(3) As used in this section, “dangerous substance” means blood, urine, semen or feces.

CREDIT(S)

Laws 1971, c. 743, § 115; Laws 1979, c. 489, § 1; Laws 1991, c. 830, § 1; Laws 1995, c. 657, § 11; Laws 1995, c. 671, § 9; Laws 2009, c. 616, § 1, eff. Jan. 1, 2010.

OR. REV. STAT. § 163.427 (2013). Sexual abuse in the first degree.

(1) A person commits the crime of sexual abuse in the first degree when that person:

(a) Subjects another person to sexual contact and:

- (A) The victim is less than 14 years of age;
 - (B) The victim is subjected to forcible compulsion by the actor; or
 - (C) The victim is incapable of consent by reason of being mentally defective, mentally incapacitated or physically helpless; or
 - (b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.
- (2) Sexual abuse in the first degree is a Class B felony.

Note: 163.427 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 163 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

CREDIT(S)

Laws 1991, c. 830, § 3; Laws 1995, c. 657, § 12; Laws 1995, c. 671, § 10.

OR. REV. STAT. § 163.435 (2013). Contributing to the sexual delinquency of a minor.

- (1) A person 18 years of age or older commits the crime of contributing to the sexual delinquency of a minor if:
- (a) Being a male, he engages in sexual intercourse with a female under 18 years of age; or
 - (b) Being a female, she engages in sexual intercourse with a male under 18 years of age; or
 - (c) The person engages in deviate sexual intercourse with another person under 18 years of age or causes that person to engage in deviate sexual intercourse.
- (2) Contributing to the sexual delinquency of a minor is a Class A misdemeanor.

CREDIT(S)

Laws 1971, c. 743, § 117.

OR. REV. STAT. § 163.445 (2013). Sexual misconduct.

(1) A person commits the crime of sexual misconduct if the person engages in sexual intercourse or deviate sexual intercourse with an unmarried person under 18 years of age.

(2) Sexual misconduct is a Class C misdemeanor.

CREDIT(S)

Laws 1971, c. 743, § 118.

OR. REV. STAT. § 163.479 (2013). Unlawful contact with a child.

(1) A person commits the crime of unlawful contact with a child if the person:

(a)(A) Has been designated a sexually violent dangerous offender under ORS 137.765;

(B) Has been designated a predatory sex offender under ORS 181.585;

(C) Has been sentenced as a dangerous offender under ORS 161.725 upon conviction of a sex crime; or

(D) Has been given a similar designation or been sentenced under a similar law of another jurisdiction; and

(b) Knowingly contacts a child with the intent to commit a crime or for the purpose of arousing or satisfying the sexual desires of the person or another person.

(2) As used in this section:

(a) Child" means a person under 18 years of age.

(b) Contact" means to communicate in any manner.

(c) Sex crime" has the meaning given that term in ORS 181.594.

(3) Unlawful contact with a child is a Class C felony.

CREDIT(S)

Laws 2005, c. 811, § 2.

OR. REV. STAT. § 163.575 (2013). Endangering the welfare of a minor.

(1) A person commits the crime of endangering the welfare of a minor if the person knowingly:

- (a) Induces, causes or permits an unmarried person under 18 years of age to witness an act of sexual conduct or sadomasochistic abuse as defined by ORS 167.060; or
- (b) Permits a person under 18 years of age to enter or remain in a place where unlawful activity involving controlled substances is maintained or conducted; or
- (c) Induces, causes or permits a person under 18 years of age to participate in gambling as defined by ORS 167.117; or
- (d) Distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years of age; or
- (e) Sells to a person under 18 years of age any device in which tobacco, marijuana, cocaine or any controlled substance, as defined in ORS 475.005, is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke, marijuana smoke, cocaine smoke or smoke from any controlled substance into the human body including but not limited to:
 - (A) Pipes, water pipes, hookahs, wooden pipes, carburetor pipes, electric pipes, air driven pipes, corn cob pipes, meerscham pipes and ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;
 - (B) Carburetion tubes and devices, including carburetion masks;
 - (C) Bongs;
 - (D) Chillums;
 - (E) Ice pipes or chillers;
 - (F) Cigarette rolling papers and rolling machines; and
 - (G) Cocaine free basing kits.

(2) Endangering the welfare of a minor by violation of subsection (1)(a), (b), (c) or (e) of this section, involving other than a device for smoking tobacco, is a Class A misdemeanor.

(3) Endangering the welfare of a minor by violation of subsection (1)(d) of this section or by violation of subsection (1)(e) of this section, involving a device for smoking tobacco, is a Class A violation.

CREDIT(S)

Laws 1971, c. 743, § 177; Laws 1973, c. 827, § 20; Laws 1979, c. 744, § 8; Laws 1981, c. 838, § 1; Laws 1983, c. 740, § 31; Laws 1991, c. 970, § 5; Laws 1995, c. 79, § 52; Laws 1999, c. 1051, § 153; Laws 2011, c. 597, § 79, eff. July 1, 2011, operative Jan. 1, 2012.

OR. REV. STAT. § 163.670 (2013). Using child in display of sexually explicit conduct.

(1) A person commits the crime of using a child in a display of sexually explicit conduct if the person employs, authorizes, permits, compels or induces a child to participate or engage in sexually explicit conduct for any person to observe or to record in a visual recording.

(2) Using a child in a display of sexually explicit conduct is a Class A felony.

CREDIT(S)

Laws 1985, c. 557, § 3; Laws 1987, c. 864, § 3; Laws 1991, c. 664, § 5; Laws 2011, c. 515, § 2, eff. June 23, 2011.

OR. REV. STAT. § 167.057 (2013). Luring a minor.

<Text subject to final change by the Oregon Office of the Legislative Counsel.>

(1) A person commits the crime of luring a minor if the person furnishes to, or uses with, a minor a visual representation or explicit verbal description or narrative account of sexual conduct for the purpose of inducing the minor to engage in sexual conduct.

(2) A person is not liable to prosecution for violating subsection (1) of this section if the person furnishes or uses a representation, description or account of sexual conduct that

forms merely an incidental part of an otherwise nonoffending whole and serves some purpose other than titillation.

(3) In a prosecution under subsection (1) of this section, it is an affirmative defense:

(a) That the representation, description or account was furnished or used for the purpose of psychological or medical treatment and was furnished by a treatment provider or by another person acting on behalf of the treatment provider;

(b) That the defendant had reasonable cause to believe that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor; or

(c) That the defendant was less than three years older than the minor at the time of the alleged offense.

(4) In a prosecution under subsection (1) of this section, it is not a defense that the person to whom the representation, description or account was furnished or with whom the representation, description or account was used was not a minor but was a law enforcement officer posing as a minor.

(5) Luring a minor is a Class C felony.

(6)(a) The court may designate luring a minor as a sex crime under ORS 181.594 if the court determines that:

(A) The offender reasonably believed the child to be more than five years younger than the offender or under 16 years of age; and

(B) Given the nature of the offense, the age or purported age of the minor and the person's criminal history, designation of the offense as a sex crime is necessary for the safety of the community.

(b) The court shall indicate the designation and the findings supporting the designation in the judgment.

CREDIT(S)

Added by Laws 2007, c. 869, § 3, eff. Jan. 1, 2008. Amended by Laws 2011, c. 681, § 2, eff. Aug. 2, 2011; Laws 2013, c. 293, § 1, eff. June 4, 2013.

PENNSYLVANIA

18 PA. CONS. STAT. ANN. § 3121 (2013). Rape

(a) OFFENSE DEFINED.-- A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant:

- (1) By forcible compulsion.
- (2) By threat of forcible compulsion that would prevent resistance by a person of reasonable resolution.
- (3) Who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring.
- (4) Where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance.
- (5) Who suffers from a mental disability which renders the complainant incapable of consent.
- (6) Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.

(b) ADDITIONAL PENALTIES.-- In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$ 100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

(c) RAPE OF A CHILD.-- A person commits the offense of rape of a child, a felony of the first degree, when the person engages in sexual intercourse with a complainant who is less than 13 years of age.

(d) RAPE OF A CHILD WITH SERIOUS BODILY INJURY.-- A person commits the offense of rape of a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is under 13 years of age and suffers serious bodily injury in the course of the offense.

(e) SENTENCES.-- Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

(1) Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1984, Dec. 21, P.L. 1210, No. 230, § 1, effective in 60 days; 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 3, effective in 60 days; 1997, Dec. 19, P.L. 622, No. 65, § 2, effective in 60 days; 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days; 2002, Dec. 16, P.L. 1953, No. 226, § 1.1, effective in 60 days.

18 PA. CONS. STAT. ANN. § 3122.1 (2013). Statutory sexual assault

(a) Felony of the second degree.--Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant to whom the person is not married who is under the age of 16 years and that person is either:

(1) four years older but less than eight years older than the complainant; or

(2) eight years older but less than 11 years older than the complainant.

(b) Felony of the first degree.--A person commits a felony of the first degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is 11 or more years older than the complainant and the complainant and the person are not married to each other.

CREDIT(S)

1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 5, effective in 60 days. Amended 2011, Dec. 20, P.L. 446, No. 111, § 1, effective in 60 days [Feb. 21, 2012].

18 PA. CONS. STAT. ANN. § 3123 (2013). Involuntary deviate sexual intercourse

(a) OFFENSE DEFINED.-- A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (3) who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- (4) where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (5) who suffers from a mental disability which renders him or her incapable of consent; or
- (6) Deleted by 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days.
- (7) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE WITH A CHILD.-- A person commits involuntary deviate sexual intercourse with a child, a felony of the first degree, when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

(c) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE WITH A CHILD WITH SERIOUS BODILY INJURY.-- A person commits an offense under this section with a child resulting in serious bodily injury, a felony of the first degree, when the person violates this section and the complainant is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.

(d) SENTENCES.-- Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

(1) Subsection (b) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Subsection (c) shall be sentenced up to a maximum term of life imprisonment.

(e) DEFINITION.-- As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 6, effective in 60 days; 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days; 2002, Dec. 16, P.L. 1953, No. 226, § 1.1, effective in 60 days.

18 PA. CONS. STAT. ANN. § 3124.2 (2013). Institutional sexual assault

(a) General rule.--Except as provided under subsection (a.1) and in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident.

(a.1) Institutional sexual assault of a minor.--A person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county juvenile detention facility, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident who is under 18 years of age.

(a.2) Schools.--

(1) Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a school or any other person who has direct contact with a

student at a school commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a student of the school.

(2) As used in this subsection, the following terms shall have the meanings given to them in this paragraph:

(i) “Direct contact.” Care, supervision, guidance or control.

(ii) “Employee.”

(A) Includes:

(I) A teacher, a supervisor, a supervising principal, a principal, an assistant principal, a vice principal, a director of vocational education, a dental hygienist, a visiting teacher, a home and school visitor, a school counselor, a child nutrition program specialist, a school librarian, a school secretary the selection of whom is on the basis of merit as determined by eligibility lists, a school nurse, a substitute teacher, a janitor, a cafeteria worker, a bus driver, a teacher aide and any other employee who has direct contact with school students.

(II) An independent contractor who has a contract with a school for the purpose of performing a service for the school, a coach, an athletic trainer, a coach hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association or an athletic trainer hired as an independent contractor by the Pennsylvania Interscholastic Athletic Association.

(B) The term does not include:

(I) A student employed at the school.

(II) An independent contractor or any employee of an independent contractor who has no direct contact with school students.

(iii) “School.” A public or private school, intermediate unit or area vocational-technical school.

(iv) “Volunteer.” The term does not include a school student.

(a.3) Child care.--Except as provided in sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a volunteer or an employee of a center for children commits a felony of the third degree when he engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is receiving services at the center.

(b) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection unless the context clearly indicates otherwise:

“Agent.” A person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth or mental health or mental retardation facility or institution, who is employed by any State or county agency or any person employed by an entity providing contract services to the agency.

“Center for children.” Includes a child day-care center, group and family day-care home, boarding home for children, a center providing early intervention and drug and alcohol services for children or other facility which provides child-care services which are subject to approval, licensure, registration or certification by the Department of Public Welfare or a county social services agency or which are provided pursuant to a contract with the department or a county social services agency. The term does not include a youth development center, youth forestry camp, State or county juvenile detention facility and other licensed residential facility serving children and youth.

CREDIT(S)

1998, Dec. 21, P.L. 1240, No. 157, § 1, effective in 60 days. Amended 2000, May 10, P.L. 38, No. 12, § 1, effective in 60 days; 2011, Dec. 20, P.L. 446, No. 111, § 1, effective in 60 days [Feb. 21, 2012].

18 PA. CONS. STAT. ANN. § 3125 (2013). Aggravated indecent assault

(a) OFFENSES DEFINED.-- Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault if:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders him or her incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) AGGRAVATED INDECENT ASSAULT OF A CHILD.-- A person commits aggravated indecent assault of a child when the person violates subsection (a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

(c) GRADING AND SENTENCES.--

- (1) An offense under subsection (a) is a felony of the second degree.
- (2) An offense under subsection (b) is a felony of the first degree.

CREDIT(S)

1990, Feb. 2, P.L. 6, No. 4, § 5, effective in 60 days. Amended 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 9, effective in 60 days; 2002, Dec. 9, P.L. 1350, No. 162, § 2, effective in 60 days; 2002, Dec. 16, P.L. 1953, No. 226, § 1.1, effective in 60 days.

18 PA. CONS. STAT. ANN. § 3126 (2013). Indecent assault

(a) OFFENSE DEFINED.-- A person is guilty of indecent assault if the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal

fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:

- (1) the person does so without the complainant's consent;
- (2) the person does so by forcible compulsion;
- (3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- (4) the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- (5) the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- (6) the complainant suffers from a mental disability which renders the complainant incapable of consent;
- (7) the complainant is less than 13 years of age; or
- (8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) GRADING.-- Indecent assault shall be graded as follows:

- (1) An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.
- (2) An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.
- (3) An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:
 - (i) It is a second or subsequent offense.
 - (ii) There has been a course of conduct of indecent assault by the person.
 - (iii) The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts

of the person.

(iv) The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1976, May 18, P.L. 120, No. 53, § 1, effective in 30 days; 1990, Feb. 2, P.L. 6, No. 4, § 6, effective in 60 days; 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 9, effective in 60 days; 2005, Nov. 23, P.L. 412, No. 76, § 1, effective in 60 days [Jan. 23, 2006].

18 PA. CONS. STAT. ANN. § 3127 (2013). Indecent exposure

(a) OFFENSE DEFINED.-- A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

(b) GRADING.-- If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the second degree.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 9, effective in 60 days.

18 PA. CONS. STAT. ANN. § 4304 (2013). Endangering welfare of children

(a) OFFENSE DEFINED.--

(1) A parent, guardian or other person supervising the welfare of a child under 18 years of age, or a person that employs or supervises such a person, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

(2) A person commits an offense if the person, in an official capacity, prevents or interferes with the making of a report of suspected child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services).

(3) As used in this subsection, the term "person supervising the welfare of a child" means a person other than a parent or guardian that

provides care, education, training or control of a child.

(b) GRADING.-- An offense under this section constitutes a misdemeanor of the first degree. However, where there is a course of conduct of endangering the welfare of a child, the offense constitutes a felony of the third degree.

CREDIT(S)

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1988, Dec. 19, P.L. 1275, No. 158, § 1, effective in 60 days; 1995, July 6, P.L. 251, No. 31, § 1, effective in 60 days; 2006, Nov. 29, P.L. 1581, No. 179, § 1, effective in 60 days [Jan. 29, 2007].

18 PA. CONS. STAT. ANN. § 6301 (2013). Corruption of minors

(a) Offense defined.--

(1) (i) Except as provided in subparagraph (ii), whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.

(ii) Whoever, being of the age of 18 years and upwards, by any course of conduct in violation of Chapter 31 (relating to sexual offenses) corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of an offense under Chapter 31 commits a felony of the third degree.

(2) Any person who knowingly aids, abets, entices or encourages a minor younger than 18 years of age to commit truancy commits a summary offense. Any person who violates this paragraph within one year of the date of a first conviction under this section commits a misdemeanor of the third degree. A conviction under this paragraph shall not, however, constitute a prohibition under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(b) Adjudication of delinquency unnecessary.--A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such minor or whether or not such minor has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

(c) Presumptions.--In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.

(d) Mistake as to age.--

(1) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is under 16 years, it is no defense that the actor did not know the age of the minor or reasonably believed the minor to be older than 18 years.

(2) Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is 16 years or more but less than 18 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the minor to be 18 years or older.

CREDIT(S)

1978, July 1, P.L. 573, No. 104, § 1, effective in 60 days. Amended 1996, July 11, P.L. 552, No. 98, § 4, effective in 60 days; 2010, Oct. 7, P.L. 482, No. 69, § 1, effective in 60 days [Dec. 6, 2010].

18 PA. CONS. STAT. ANN. § 6312 (2013). Sexual abuse of children.

(a) Deleted by 2009, July 14, P.L. 63, No. 15, § 1, effective in 60 days [Sept. 14, 2009].

(b) Photographing, videotaping, depicting on computer or filming sexual acts.--Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed. Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs, videotapes, computer depictions and films.--

(1) Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine,

pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(d) Child pornography.--

(1) Any person who intentionally views or knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act commits an offense.

(2) A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.

(e) Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of 18 years, competent expert testimony shall be sufficient to establish the age of said person.

(e.1) Mistake as to age.--Under subsection (b) only, it is no defense that the defendant did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any of the following:

(1) Any material that is viewed, possessed, controlled, brought or caused to be brought into this Commonwealth, or presented, for a bona fide educational, scientific, governmental or judicial purpose.

(2) Conduct prohibited under section 6321 (relating to transmission of sexually explicit images by minor), unless the conduct is specifically excluded by section 6321(d).

(3) An individual under 18 years of age who knowingly views, photographs, videotapes, depicts on a computer or films or possesses or intentionally views a visual depiction as defined in section 6321 of himself alone in a state of nudity as defined in section 6321.

(f.1) Criminal action.--

(1) A district attorney shall have the authority to investigate and to institute criminal proceedings for any violation of this section.

(2) In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L. 950, No. 164), [FN1] known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations of this section involving more than one county of this Commonwealth or involving any county of this Commonwealth and another state. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to investigate or prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(g) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Intentionally views.” The deliberate, purposeful, voluntary viewing of material depicting a child under 18 years of age engaging in a prohibited sexual act or in the simulation of such act. The term shall not include the accidental or inadvertent viewing of such material.

“Prohibited sexual act.” Sexual intercourse as defined in section 3101 (relating to definitions), masturbation, sadism, masochism, bestiality, fellatio, cunnilingus, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

CREDIT(S)

1977, Oct. 26, P.L. 212, No. 62, § 1, effective in 60 days. Amended 1988, Dec. 19, P.L. 1275, No. 158, § 3, effective in 60 days; 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 11, effective in 60 days; 2002, Nov. 20, P.L. 1104, No. 134, § 1, effective in 60 days; 2009, July 14, P.L. 63, No. 15, § 1, effective in 60 days [Sept. 14, 2009]; 2010, Oct.

7, P.L. 482, No. 69, § 2, effective in 60 days [Dec. 6, 2010]; 2012, Oct. 25, P.L. 1623, No. 198, § 1, effective in 60 days [Dec. 24, 2012].

18 PA. CONS. STAT. ANN. § 6318 (2013). Unlawful contact with minor.

(a) Offense defined.--A person commits an offense if he is intentionally in contact with a minor, or a law enforcement officer acting in the performance of his duties who has assumed the identity of a minor, for the purpose of engaging in an activity prohibited under any of the following, and either the person initiating the contact or the person being contacted is within this Commonwealth:

- (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).
- (2) Open lewdness as defined in section 5901 (relating to open lewdness).
- (3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).
- (4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).
- (5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).
- (6) Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).

(b) Grading.--A violation of subsection (a) is:

- (1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or
- (2) a felony of the third degree;

whichever is greater.

(b.1) Concurrent jurisdiction to prosecute.--The Attorney General shall have concurrent prosecutorial jurisdiction with the district attorney for violations under this section and any crime arising out of the activity prohibited by this section when the person charged with a violation of this section contacts a minor through the use of a computer, computer system or computer network. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Computer.” An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a computer system or computer network.

“Computer network.” The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.

“Computer system.” A set of related, connected or unconnected computer equipment, devices and software.

“Contacts.” Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

“Minor.” An individual under 18 years of age.

CREDIT(S)

1997, Dec. 19, P.L. 616, No. 62, § 1, imd. effective. Amended 2002, Nov. 20, P.L. 1104, No. 134, § 1, effective in 60 days; 2002, Dec. 9, P.L. 1391, No. 172, § 3, effective in 60 days; 2006, Nov. 29, P.L. 1567, No. 178, § 3, effective Jan. 1, 2007.

18 PA. CONS. STAT. ANN. § 6320 (2013). Sexual exploitation of children.

(a) Offense defined.--A person commits the offense of sexual exploitation of children if he procures for another person a child under 18 years of age for the purpose of sexual exploitation.

(b) Penalty.--An offense under this section is a felony of the second degree.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Procure.” To obtain or make available for sexual exploitation.

“Sexual exploitation.” Actual or simulated sexual activity or nudity arranged for the purpose of sexual stimulation or gratification of any person.

CREDIT(S)

2000, May 10, P.L. 41, No. 14, § 1, effective in 60 days.

RHODE ISLAND

R.I. GEN. LAWS § 11-9-1 (2013). Exploitation for commercial or immoral purposes.

(a) Every person having the custody or control of any child under the age of sixteen (16) years who shall exhibit, use, or employ, or shall in any manner or under pretense sell, give away, let out or otherwise dispose of any child under the age of sixteen (16) years to any person for or in the vocation, occupation, service, or purpose of rope or wire walking, or as a gymnast, wrestler, contortionist, equestrian performer, acrobat, or rider upon any bicycle or mechanical contrivance, or in any dancing, theatrical, or musical exhibition unless it is in connection with churches, school or private instruction in dancing or music, or unless it is under the auspices of a Rhode Island society incorporated, or organized without incorporation for a purpose authorized by § 7-6-4; or for or in gathering or picking rags, or collecting cigar stumps, bones or refuse from markets, or in begging, or in any mendicant or wandering occupation, or in peddling in places injurious to the morals of the child; or for or in the exhibition of any child with a disability, or in any illegal, obscene, indecent, or immoral purpose, exhibition, or vocation, injurious to the health or morals or dangerous to the life or limb of the child, or who shall cause, procure or encourage any child under the age of sixteen (16) years to engage in that activity, or who, after being notified by an officer mentioned in § 11-9-3 to restrain the child from

engaging in that activity, shall neglect or refuse to do so, shall be held guilty of a misdemeanor and shall, for every such offense, be imprisoned not exceeding one year, or be fined not exceeding two hundred fifty dollars (\$250), or both, and shall forfeit any right which he or she may have to the custody of the child; provided, that the provisions of this section shall not apply to any child, not a resident of this state, who is engaged in any dancing, theatrical, or musical performance in this state and is accompanied by a parent, guardian, or tutor, when a permit for the appearance of the child is granted by the mayor of the city or the president of the town council of the town, where the performance is to be given; provided, further, that the provisions of this section shall not apply to any child, a resident of this state, who is engaged in any dancing, theatrical, or musical performance in this state on a day when the public schools are not in session in the town or city where the dancing, theatrical or musical performance shall be given (not however on Sunday) if the child is accompanied by a parent, guardian or tutor, when a permit for the appearance of the child is granted by the mayor of the city or the president of the town council of the town where the performance is to be given.

(b) Any person who shall in any manner or under any pretense sell, distribute, let out or otherwise permit any child under eighteen (18) years of age to be used in any book, magazine, pamphlet, or other publication, or in any motion picture film, photograph or pictorial representation, in a setting which taken as a whole suggests to the average person that the child has engaged in, or is about to engage in any sexual act, which shall include, but not be limited to, sodomy, oral copulation, sexual intercourse, masturbation, or bestiality, shall, upon conviction for the first offense be punished by imprisonment for not more than ten (10) years, or a fine of not more than ten thousand dollars (\$10,000), or both; upon conviction of a subsequent offense, be punished by imprisonment for not more than fifteen (15) years, a fine of not more than fifteen thousand dollars (\$15,000), or both.

(c) Every person who shall exhibit, use, employ or shall in any manner or under pretense so exhibit, use, or employ any child under the age of eighteen (18) years to any person for the purpose of prostitution or for any other lewd or indecent act shall be imprisoned not exceeding twenty (20) years, or be fined not exceeding twenty thousand dollars (\$20,000), or both.

CREDIT(S)

P.L. 1897, ch. 475, § 1; P.L. 1926, ch. 845, § 1; P.L. 1931, ch. 1756, § 1; P.L. 1977, ch. 131, § 1; P.L. 1978, ch. 130, § 1; P.L. 1978, ch. 210, § 1; P.L. 1984, ch. 380, § 3; P.L. 1984, ch. 444, § 1; P.L. 1999, ch. 83, § 12; P.L. 1999, ch. 130, § 12.

R.I. GEN. LAWS § 11-37-6 (2013). Third degree sexual assault

A person is guilty of third degree sexual assault if he or she is over the age of eighteen (18) years and engaged in sexual penetration with another person over the age of fourteen (14) years and under the age of consent, sixteen (16) years of age.

CREDIT(S)

P.L. 1979, ch. 302, § 2; P.L. 1988, ch. 219, § 1.

R.I. GEN. LAWS § 11-37-7 (2013). Penalty for third degree sexual assault

Every person who shall commit sexual assault in the third degree shall be imprisoned for not more than five (5) years.

CREDIT(S)

P.L. 1979, ch. 302, § 2.

R.I. GEN. LAWS § 11-37-8.1 (2013). First degree child molestation sexual assault

A person is guilty of first degree child molestation sexual assault if he or she engages in sexual penetration with a person fourteen (14) years of age or under.

CREDIT(S)

P.L. 1984, ch. 59, § 2; P.L. 1988, ch. 219, § 1.

R.I. GEN. LAWS § 11-37-8.2 (2013). Penalty for first degree child molestation sexual assault

Every person who shall commit first degree child molestation sexual assault shall be imprisoned for a period of not less than twenty-five (25) years and may be imprisoned for life.

CREDIT(S)

P.L. 1984, ch. 59, § 2; P.L. 2006, ch. 206, § 3, eff. June 28, 2006; P.L. 2006, ch. 207, § 3, eff. June 28, 2006.

R.I. GEN. LAWS § 11-37-8.2.1 (2013). Penalty for first degree child molestation sexual assault -- Jessica Lunsford Child Predator Act of 2006

(a) Title and Legislative Intent. The title of this section shall be "The Jessica Lunsford Child Predator Act of 2006". In enacting this section the general assembly intends that in

order to ensure the safety of victims the most dangerous child predators be electronically monitored via an active global positioning system in order to ensure that their whereabouts can be easily ascertained by law enforcement and other responsible authorities at all times while providing treatment to offenders.

(b) Every person who shall violate the provisions of subdivisions 11-37-8.2.1(b)(1) -- 11-37-8.2.1(b)(2) listed herein shall be electronically monitored via an active global positioning system for life and, as a condition of parole and probation, and for the duration of any period of his or her probation following his or her parole shall attend a sex offender treatment program to address his or her criminally offensive behavior, as determined by the department of probation and parole. The persons subject to this condition of parole shall include:

(1) Persons who commit first degree child molestation sexual assault on or after January 1, 2007 and the victim of the sexual assault is twelve (12) years of age or younger; or

(2) Persons who shall violate the conditions of § 11-37-8.1 on or after January 1, 2007 and be determined a high-risk of re-offense (level 3) offender under the conditions of § 11-37.1-12, and the person is deemed a child predator as defined in subsection 11-37-8.2.1(g) or have committed the offense in conjunction with circumstances involving kidnapping, torture or aggravated battery, and provided further that the victim to the offense is fourteen (14) years of age or younger.

(3) Any person who violates the terms of the global position monitoring conditions shall be guilty of a misdemeanor.

(c) Any costs associated with the requirements of this section shall be borne by the offender and the court is hereby authorized and empowered to utilize all resources available to collect the funds for these costs unless the court finds that the defendant is indigent. In such cases costs shall be waived in order to promote this section's legislative intent.

(d) Harboring.

(1) Any person who has reason to know that a person convicted of first degree child molestation as defined by § 11-37-8.1 or 11-37-8.2.1 is not complying or has not complied with the requirements of this section where applicable and who with the intent to assist the child molester in eluding a law enforcement agency that is seeking to find the child molester to question the child molester about or to arrest the child molester for his or her non-compliance with the requirements of this section and who:

(i) knowingly withholds information from or willfully fails to notify the law enforcement agency about the child molester's non-compliance with the requirements of this section; or

(ii) harbors or attempts to harbor or assists another person in harboring or attempting to harbor the child molester; or

(iii) knowingly conceals or attempts to conceal or assists another person in concealing or attempting to conceal the child molester; or

(iv) provides information to the law enforcement agency regarding the child molester that the person knows to be false information commits a felony and shall be subject to imprisonment for a period of five (5) years. Nothing in this subsection shall be construed as limiting the discretion of the judges to impose additional sanctions authorized in sentencing.

(2) Any person who permits a child predator as defined by this section to reside with them knowing that the child predator has failed to comply with the requirements of subsection 11-37-8.2.1(b) commits a felony punishable by up to five (5) years imprisonment and/or a five thousand dollar (\$ 5,000) fine.

(e) Any person who intentionally tampers with damages or destroys any electronic monitoring equipment required by this section pursuant to a court order or parole board order unless such person is the owner of the equipment or an agent of the owner performing ordinary maintenance and repairs commits a felony and shall be imprisoned for not less than one nor more than five (5) years.

(f) The department of corrections, prior to the release from incarceration of any child predator, shall ensure that the child predator's fingerprints are taken and forwarded to the bureau of criminal identification (BCI) division within the department of attorney general within forty-eight (48) hours after release from incarceration. The fingerprint card shall be clearly marked "Child Predator Registration Card".

(g) For the purposes of this section "child predator" shall be defined as any person convicted of any violation of § 11-37-8.1, and who on a prior occasion has been convicted of a violation of § 11-37-8.1 or § 11-37-8.3.

CREDIT(S)

P.L. 2006, ch. 206, § 1, eff. June 28, 2006; P.L. 2006, ch. 207, § 1, eff. June 28, 2006.

R.I. GEN. LAWS § 11-37-8.3 (2013). Second degree child molestation sexual assault

A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact with another person fourteen (14) years of age or under.

CREDIT(S)

P.L. 1984, ch. 59, § 2; P.L. 1988, ch. 219, § 1.

R.I. GEN. LAWS § 11-37-8.4 (2013). Penalty for second degree child molestation sexual assault

A person is guilty of a second degree child molestation sexual assault if he or she engages in sexual contact with another person fourteen (14) years of age or under.

CREDIT(S)

P.L. 1984, ch. 59, § 2.

R.I. GEN. LAWS § 11-37-8.8 (2013). Indecent solicitation of a child

(a) A person is guilty of indecent solicitation of a child if he or she knowingly solicits another person under eighteen (18) years of age or one whom he or she believes is a person under eighteen (18) years of age for the purpose of engaging in an act of prostitution or in any act in violation of chapter 9, 34, or 37 of this title.

(b) As used in this section, the word "solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to perform an act by any means including, but not limited to, in person, over the phone, in writing, by computer, through the Internet, or by advertisement of any kind.

CREDIT(S)

P.L. 2004, ch. 586, § 1; P.L. 2004, ch. 612, § 1.

R.I. GEN. LAWS § 11-37-8.9 (2013). Penalty for indecent solicitation of a child

Every person who shall commit indecent solicitation of a child shall be imprisoned for not less than five (5) years.

CREDIT(S)

P.L. 2004, ch. 586, § 1; P.L. 2004, ch. 612, § 1.

R.I. GEN. LAWS § 11-37-10 (2013). Subsequent offenses

If a person is convicted of a second or subsequent offense under the provisions of §§ 11-37-2, 11-37-4, 11-37-8, 11-37-8.1, and 11-37-8.3, the sentence imposed under these sections for the second or subsequent offenses shall not be less than twice the minimum number of years of sentence for the most recent offense.

CREDIT(S)

SOUTH CAROLINA

S.C. CODE ANN. § 16-3-655 (2013). Criminal sexual conduct with a minor; aggravating and mitigating circumstances; penalties; repeat offenders.

(A) A person is guilty of criminal sexual conduct with a minor in the first degree if:

(1) the actor engages in sexual battery with a victim who is less than eleven years of age;
or

(2) the actor engages in sexual battery with a victim who is less than sixteen years of age and the actor has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for an offense listed in Section 23-3-430(C) or has been ordered to be included in the sex offender registry pursuant to Section 23-3-430(D).

(B) A person is guilty of criminal sexual conduct with a minor in the second degree if:

(1) the actor engages in sexual battery with a victim who is fourteen years of age or less but who is at least eleven years of age; or

(2) the actor engages in sexual battery with a victim who is at least fourteen years of age but who is less than sixteen years of age and the actor is in a position of familial, custodial, or official authority to coerce the victim to submit or is older than the victim. However, a person may not be convicted of a violation of the provisions of this item if he is eighteen years of age or less when he engages in consensual sexual conduct with another person who is at least fourteen years of age.

(C) A person is guilty of criminal sexual conduct with a minor in the third degree if the actor is over fourteen years of age and the actor wilfully and lewdly commits or attempts to commit a lewd or lascivious act upon or with the body, or its parts, of a child under sixteen years of age, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the actor or the child. However, a person may not be convicted of a violation of the provisions of this subsection if the person is eighteen years of age or less when the person engages in consensual lewd or lascivious conduct with another person who is at least fourteen years of age.

(D)(1) A person convicted of a violation of subsection (A)(1) is guilty of a felony and, upon conviction, must be imprisoned for a mandatory minimum of twenty-five years, no part of which may be suspended nor probation granted, or must be imprisoned for life. In the case of a person pleading guilty or nolo contendere to a violation of subsection (A)(1), the judge must make a specific finding on the record regarding whether the type of conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. In the case of a person convicted at trial for a violation of subsection (A)(1), the judge or jury, whichever is applicable, must designate as part of the verdict whether the conduct that constituted the sexual battery involved sexual or anal intercourse by a person or intrusion by an object. If the person has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age, he must be punished by death or by imprisonment for life, as provided in this section. For the purpose of determining a prior conviction under this subsection, the person must have been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent on a separate occasion, prior to the instant adjudication, for first degree criminal sexual conduct with a minor who is less than eleven years of age or a federal or out-of-state offense that would constitute first degree criminal sexual conduct with a minor who is less than eleven years of age. In order to be eligible for the death penalty pursuant to this section, the sexual battery constituting the current offense and any prior offense must have involved sexual or anal intercourse by a person or intrusion by an object. If any prior offense that would make a person eligible for the death penalty pursuant to this section occurred prior to the effective date of this act and no specific finding was made regarding the nature of the conduct or is an out-of-state or federal conviction, the determination of whether the sexual battery constituting the prior offense involved sexual or anal intercourse by a person or intrusion by an object must be made in the separate sentencing proceeding provided in this section and proven beyond a reasonable doubt and designated in writing by the judge or jury, whichever is applicable. If the judge or jury, whichever is applicable, does not find that the prior offense involved sexual or anal intercourse by a person or intrusion by an object, then the person must be sentenced to imprisonment for life. For purposes of this subsection, imprisonment for life means imprisonment until death.

(2) A person convicted of a violation of subsection (A)(2) is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than thirty years, no part of which may be suspended nor probation granted.

(3) A person convicted of a violation of subsection (B) is guilty of a felony and, upon conviction, must be imprisoned for not more than twenty years in the discretion of the court.

(4) A person convicted of a violation of subsection (C) is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than fifteen years, or both.

(E) If the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, a statutory aggravating circumstance is found beyond a reasonable doubt pursuant to items (1) and (2), and a recommendation of death is not made, the trial judge must impose a sentence of life imprisonment. For purposes of this section, “life imprisonment” means until death of the offender without the possibility of parole, and when requested by the State or the defendant, the judge must charge the jury in his instructions that life imprisonment means until the death of the defendant without the possibility of parole. No person sentenced to life imprisonment, pursuant to this subsection, is eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, education credits, good conduct credits, or any other credits that would reduce the mandatory life imprisonment required by this section. Under no circumstances may a female who is pregnant be executed, so long as she is pregnant or for a period of at least nine months after she is no longer pregnant. When the Governor commutes a sentence of death imposed pursuant to this section to life imprisonment pursuant to the provisions of Section 14, Article IV of the Constitution of South Carolina, 1895, the commuttee is not eligible for parole, community supervision, or any early release program, nor is the person eligible to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the mandatory imprisonment required by this subsection.

(1) When the State seeks the death penalty, upon conviction or adjudication of guilt of a defendant pursuant to this section, the court shall conduct a separate sentencing proceeding. In the proceeding, if a statutory aggravating circumstance is found, the defendant must be sentenced to either death or life imprisonment. The proceeding must be conducted by the trial judge before the trial jury as soon as practicable after the lapse of twenty-four hours unless waived by the defendant. If trial by jury has been waived by the defendant and the State, or if the defendant pled guilty, the sentencing proceeding must be conducted before the judge. In the sentencing proceeding, the jury or judge shall hear additional evidence in extenuation, mitigation, or aggravation of the punishment. Only evidence in aggravation as the State has informed the defendant in writing before the trial is admissible. This section must not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States, or the State of South Carolina, or the applicable laws of either. The State, the defendant, and his counsel are permitted to present arguments for or against the sentence to be imposed. The defendant and his counsel shall have the closing argument regarding the sentence to be imposed.

(2) In sentencing a person, upon conviction or adjudication of guilt of a defendant pursuant to this section, the judge shall consider, or he shall include in his instructions to the jury for it to consider, mitigating circumstances otherwise authorized or allowed by law and the following statutory aggravating and mitigating circumstances which may be supported by the evidence:

(a) Statutory aggravating circumstances:

(i) The victim's resistance was overcome by force.

(ii) The victim was prevented from resisting the act because the actor was armed with a dangerous weapon.

(iii) The victim was prevented from resisting the act by threats of great and immediate bodily harm, accompanied by an apparent power to inflict bodily harm.

(iv) The victim is prevented from resisting the act because the victim suffers from a physical or mental infirmity preventing his resistance.

(v) The crime was committed by a person with a prior conviction for murder.

(vi) The offender committed the crime for himself or another for the purpose of receiving money or a thing of monetary value.

(vii) The offender caused or directed another to commit the crime or committed the crime as an agent or employee of another person.

(viii) The crime was committed against two or more persons by the defendant by one act, or pursuant to one scheme, or course of conduct.

(ix) The crime was committed during the commission of burglary in any degree, kidnapping, or trafficking in persons.

(b) Mitigating circumstances:

- (i) The defendant has no significant history of prior criminal convictions involving the use of violence against another person.
- (ii) The crime was committed while the defendant was under the influence of mental or emotional disturbance.
- (iii) The defendant was an accomplice in the crime committed by another person and his participation was relatively minor.
- (iv) The defendant acted under duress or under the domination of another person.
- (v) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.
- (vi) The age or mentality of the defendant at the time of the crime.
- (vii) The defendant was below the age of eighteen at the time of the crime.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances, which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases, the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

When a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. When a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in this subsection. Before dismissing the jury,

the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. When a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to life imprisonment. No person sentenced to life imprisonment pursuant to this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for the death penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant upon conviction or adjudication of guilt of a defendant pursuant to this section, the trial judge shall dismiss the jury and shall sentence the defendant to life imprisonment, as provided in this subsection.

(3) Notwithstanding the provisions of Section 14-7-1020, in cases involving capital punishment a person called as a juror must be examined by the attorney for the defense.

(4) In a criminal action pursuant to this section, which may be punishable by death, a person may not be disqualified, excused, or excluded from service as a juror by reason of his beliefs or attitudes against capital punishment unless those beliefs or attitudes would render him unable to return a verdict according to law.

(F)(1) In all cases in which an individual is sentenced to death pursuant to this section, the trial judge, before the dismissal of the jury, shall verbally instruct the jury concerning the discussion of its verdict. A standard written instruction must be promulgated by the Supreme Court for use in capital cases brought pursuant to this section.

(2) The verbal instruction must include:

(a) the right of the juror to refuse to discuss the verdict;

(b) the right of the juror to discuss the verdict to the extent that the juror so chooses;

(c) the right of the juror to terminate any discussion pertaining to the verdict at any time the juror so chooses;

(d) the right of the juror to report any person who continues to pursue a discussion of the verdict or who continues to harass the juror after the juror has refused to discuss the verdict or communicated a desire to terminate discussion of the verdict; and

(e) the name, address, and phone number of the person or persons to whom the juror should report any harassment concerning the refusal to discuss the verdict or the juror's decision to terminate discussion of the verdict.

(3) In addition to the verbal instruction of the trial judge, each juror, upon dismissal from jury service, shall receive a copy of the written jury instruction as provided in item (1).

(G)(1) Whenever the death penalty is imposed pursuant to this section, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of South Carolina. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of South Carolina together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of South Carolina.

(2) The Supreme Court of South Carolina shall consider the punishment as well as any errors by way of appeal.

(3) With regard to the sentence, the court shall determine whether the:

(a) sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(b) evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in subsection (E)(2)(a); and

(c) sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

(4) Both the defendant and the State shall have the right to submit briefs within the time provided by the court and to present oral arguments to the court.

(5) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, is authorized to:

(a) affirm the sentence of death; or

(b) set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of South Carolina in its decision, and the extracts prepared as provided for, must be provided to the resentencing judge for his consideration. If the court finds error prejudicial to the defendant in the sentencing proceeding conducted by the trial judge before the trial jury as outlined in subsection (E)(1), the court may set the sentence aside and remand the case for a resentencing proceeding to be conducted by the same or a different trial judge and by a new jury impaneled for this purpose. In the resentencing proceeding, the new jury, if the defendant does not waive the right of a trial jury for the resentencing proceeding, shall hear evidence in extenuation, mitigation, or aggravation of the punishment in addition to any evidence admitted in the defendant's first trial relating to guilt for the particular crime for which the defendant has been found guilty.

(6) The sentence review is in addition to direct appeal, if taken, and the review and appeal must be consolidated for consideration. The court shall render its decision on all legal errors, the factual substantiation of the verdict, and the validity of the sentence.

(H)(1) Whenever the solicitor seeks the death penalty pursuant to this section, he shall notify the defense attorney of his intention to seek the death penalty at least thirty days prior to the trial of the case. At the request of the defense attorney, the defense attorney must be excused from all other trial duties ten days prior to the term of court in which the trial is to be held.

(2)(a) Whenever any person is charged with first degree criminal sexual conduct with a minor who is less than eleven years and the death penalty is sought, the court, upon determining that the person is unable financially to retain adequate legal counsel, shall appoint two attorneys to defend the person in the trial of the action. One of the attorneys so appointed shall have at least five years' experience as a licensed attorney and at least three years' experience in the actual trial of felony cases, and only one of the attorneys so appointed may be the public defender or a member of his staff. In all cases when no conflict exists, the public defender or member of his staff must be appointed if qualified.

If a conflict exists, the court then shall turn first to the contract public defender attorneys, if qualified, before turning to the Office of Indigent Defense.

(b) Notwithstanding another provision of law, the court shall order payment of all fees and costs from funds available to the Office of Indigent Defense for the defense of the indigent. Any attorney appointed must be compensated at a rate not to exceed fifty dollars per hour for time expended out of court and seventy-five dollars per hour for time expended in court. Compensation may not exceed twenty-five thousand dollars and must be paid from funds available to the Office of Indigent Defense for the defense of indigent represented by court-appointed, private counsel.

(3)(a) Upon a finding in ex parte proceedings that investigative, expert, or other services are reasonably necessary for the representation of the defendant, whether in connection with issues relating to guilt or sentence, the court shall authorize the defendant's attorneys to obtain services on behalf of the defendant and shall order the payment, from funds available to the Office of Indigent Defense, of fees and expenses not to exceed twenty thousand dollars as the court deems appropriate. Payment of these fees and expenses may be ordered in cases where the defendant is an indigent represented by either court-appointed, private counsel, or the public defender.

(b) Court-appointed counsel seeking payment for fees and expenses shall request these payments from the Office of Indigent Defense within thirty days after the completion of the case. For the purposes of this statute, exhaustion of the funds shall occur if the funds administered by the Office of Indigent Defense and reserved for death penalty fees and expenses have been reduced to zero. If either the Death Penalty Trial Fund or the Conflict Fund has been exhausted in a month and the other fund contains money not scheduled to be disbursed in that month, then the Indigent Defense Commission must transfer a sufficient amount from the fund with the positive fund balance to the fund with no balance and pay the obligation to the extent possible.

(4) Payment in excess of the hourly rates and limit in item (2) or (3) is authorized only if the court certifies, in a written order with specific findings of fact, that payment in excess of the rates is necessary to provide compensation adequate to ensure effective assistance of counsel and payment in excess of the limit is appropriate because the services provided were reasonably and necessarily incurred. Upon a finding that timely procurement of services cannot await prior authorization, the court may authorize the provision of and payment for services nunc pro tunc.

(5) After completion of the trial, the court shall conduct a hearing to review and validate the fees, costs, and other expenditures on behalf of the defendant.

(6) The Supreme Court shall promulgate guidelines on the expertise and qualifications necessary for attorneys to be certified as competent to handle death penalty cases brought pursuant to this section.

(7) The Office of Indigent Defense shall maintain a list of death penalty qualified attorneys who have applied for and received certification by the Supreme Court as provided for in this subsection. In the event the court-appointed counsel notifies the chief administrative judge in writing that he or she does not wish to provide representation in a death penalty case, the chief administrative judge shall advise the Office of Indigent Defense which shall forward a name or names to the chief administrative judge for consideration. The appointment power is vested in the chief administrative judge. The Office of Indigent Defense shall establish guidelines as are necessary to ensure that attorneys' names are presented to the judges on a fair and equitable basis, taking into account geography and previous assignments from the list. Efforts must be made to present an attorney from the area or region where the action is initiated.

(8) The payment schedule provided in this subsection, as amended by Act 164 of 1993, shall apply to any case for which trial occurs on or after July 1, 1993.

(9) Notwithstanding another provision of law, only attorneys who are licensed to practice in this State and residents of this State may be appointed by the court and compensated with funds appropriated to the Death Penalty Trial Fund in the Office of Indigent Defense. This item shall not pertain to any case in which counsel has been appointed on the effective date of this act.

(10) The judicial department biennially shall develop and make available to the public a list of standard fees and expenses associated with the defense of an indigent person in a death penalty case.

(I) Notwithstanding another provision of law, in any trial pursuant to this section when the maximum penalty is death or in a separate sentencing proceeding following the trial, the defendant and his counsel shall have the right to make the last argument.

CREDIT(S)

HISTORY: 1977 Act No. 157 § 5; 1978 Act No. 639 § 1; 1984 Act No. 509; 2005 Act No. 94, § 1, eff June 1, 2005; 2006 Act No. 342, § 3, eff July 1, 2006; 2006 Act No. 346, § 1, eff July 1, 2006; 2008 Act No. 335, § 18, eff June 16, 2008; 2010 Act No. 289, § 6, eff June 11, 2010; 2012 Act No. 255, § 1, eff June 18, 2012.

S.C. CODE ANN. § 16-3-656 (2013). Criminal sexual conduct: assaults with intent to commit.

Assault with intent to commit criminal sexual conduct described in the above sections shall be punishable as if the criminal sexual conduct was committed.

CREDIT(S)

HISTORY: 1977 Act No. 157 § 6; 1978 Act No. 639 § 2.

S.C. CODE ANN. § 16-3-658 (2013). Criminal sexual conduct: where victim is spouse.

A person cannot be guilty of criminal sexual conduct under Sections 16-3-651 through 16-3-659.1 if the victim is the legal spouse unless the couple is living apart and the offending spouse's conduct constitutes criminal sexual conduct in the first degree or second degree as defined by Sections 16-3-652 and 16-3-653.

The offending spouse's conduct must be reported to appropriate law enforcement authorities within thirty days in order for a person to be prosecuted for these offenses.

This section is not applicable to a purported marriage entered into by a male under the age of sixteen or a female under the age of fourteen.

CREDIT(S)

HISTORY: 1977 Act No. 157 § 8; 1991 Act No. 139, § 2; 1997 Act No. 95, § 3.

S.C. CODE ANN. § 16-3-755 (2013). Sexual battery with a student.

(A) For purposes of this section:

(1) “Aggravated coercion” means that the person affiliated with a public or private secondary school in an official capacity threatens to use force or violence of a high and aggravated nature to overcome the student, if the student reasonably believes that the person has the present ability to carry out the threat, or threatens to retaliate in the future by the infliction of physical harm, kidnapping, or extortion, under circumstances of aggravation, against the student.

(2) “Aggravated force” means that the person affiliated with a public or private secondary school in an official capacity uses physical force or physical violence of a high and aggravated nature to overcome the student or includes the threat of the use of a deadly weapon.

(3) “Person affiliated with a public or private secondary school in an official capacity” means an administrator, teacher, substitute teacher, teacher's assistant, student teacher, law enforcement officer, school bus driver, guidance counselor, or coach who is affiliated with a public or private secondary school but is not a student enrolled in the school.

(4) “Secondary school” means either a junior high school or a high school.

(5) “Sexual battery” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, except when such intrusion is accomplished for medically recognized treatment or diagnostic purposes.

(6) “Student” means a person who is enrolled in a school.

(B) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is sixteen or seventeen years of age, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

(C) If a person affiliated with a public or private secondary school in an official capacity engages in sexual battery with a student enrolled in the school who is eighteen years of age or older, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for thirty days, or both.

(D) If a person affiliated with a public or private secondary school in an official capacity has direct supervisory authority over a student enrolled in the school who is eighteen years of age or older, and the person affiliated with the public or private secondary school in an official capacity engages in sexual battery with the student, and aggravated coercion or aggravated force is not used to accomplish the sexual battery, the person affiliated with the public or private secondary school in an official capacity is guilty of a felony and, upon conviction, must be imprisoned for not more than five years.

(E) This section does not apply if the person affiliated with a public or private secondary school in an official capacity is lawfully married to the student at the time of the act.

CREDIT(S)

HISTORY: 2010 Act No. 265, § 1, eff June 24, 2010.

S.C. CODE ANN. § 16-3-810 (2013). Engaging child for sexual performance; penalty.

(a) It is unlawful for any person to employ, authorize, or induce a child younger than eighteen years of age to engage in a sexual performance. It is unlawful for a parent or legal guardian or custodian of a child younger than eighteen years of age to consent to the participation by the child in a sexual performance.

(b) Any person violating the provisions of subsection (a) of this section is guilty of criminal sexual conduct of the second degree and upon conviction shall be punished as provided in § 16-3-653.

CREDIT(S)

HISTORY: 1984 Act No. 267.

S.C. CODE ANN. § 16-15-342 (2013). Criminal solicitation of a minor; defenses; penalties.

(A) A person eighteen years of age or older commits the offense of criminal solicitation of a minor if he knowingly contacts or communicates with, or attempts to contact or communicate with, a person who is under the age of eighteen, or a person reasonably believed to be under the age of eighteen, for the purpose of or with the intent of persuading, inducing, enticing, or coercing the person to engage or participate in a sexual activity as defined in Section 16-15-375(5) or a violent crime as defined in Section 16-1-60, or with the intent to perform a sexual activity in the presence of the person under the age of eighteen, or person reasonably believed to be under the age of eighteen.

(B) Consent is a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is at least sixteen years old.

(C) Consent is not a defense to a prosecution pursuant to this section if the person under the age of eighteen, or the person reasonably believed to be under the age of eighteen, is under the age of sixteen.

(D) It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.

CREDIT(S)

HISTORY: 2004 Act No. 208, § 4, eff April 26, 2004.

SOUTH DAKOTA

S.D. CODIFIED LAWS § 22-22-1 (2013). Rape--Degrees--Felony--Statute of limitations

Rape is an act of sexual penetration accomplished with any person under any of the following circumstances:

- (1) If the victim is less than thirteen years of age; or
- (2) Through the use of force, coercion, or threats of immediate and great bodily harm against the victim or other persons within the victim's presence, accompanied by apparent power of execution; or
- (3) If the victim is incapable, because of physical or mental incapacity, of giving consent to such act; or
- (4) If the victim is incapable of giving consent because of any intoxicating, narcotic, or anesthetic agent or hypnosis; or
- (5) If the victim is thirteen years of age, but less than sixteen years of age, and the perpetrator is at least three years older than the victim.

A violation of subdivision (1) of this section is rape in the first degree, which is a Class C felony. A violation of subdivision (2) of this section is rape in the second degree which is

a Class 1 felony. A violation of subdivision (3) or (4) of this section is rape in the third degree, which is a Class 2 felony. A violation of subdivision (5) of this section is rape in the fourth degree, which is a Class 3 felony. Notwithstanding the provisions of § 23A-42-2, no statute of limitations applies to any charge brought pursuant to subdivisions (1) or (2) of this section. Otherwise a charge brought pursuant to this section may be commenced at any time prior to the time the victim becomes of age twenty-five or within seven years of the commission of the crime, whichever is longer.

CREDIT(S)

Source: SDC 1939, §§ 13.2801, 13.2803; SDCL § 22-22-5; SL 1972, ch 154, § 21; SL 1975, ch 169, §§ 1, 5; SL 1976, ch 158, § 22-1; SL 1977, ch 189, § 51; SL 1978, ch 158, § 10; SL 1980, ch 175; SL 1982, ch 176, § 1; SL 1984, ch 165, § 1; SL 1984, ch 167, § 2; SL 1985, ch 179; SL 1985, ch 181, § 1; SL 1988, ch 187; SL 1989, ch 194, § 2; SL 1990, ch 161, § 2; SL 1990, ch 162, § 1; SL 1991, ch 24, § 8; SL 1994, ch 165, § 2; SL 1994, ch 166, § 2; SL 2000, ch 100, § 1; SL 2005, ch 120, § 390; SL 2012, ch 125, § 1.

S.D. CODIFIED LAWS § 22-22-1.2 (2013). Minimum sentences for rape or sexual contact with child

If any adult is convicted of any of the following violations, the court shall impose the following minimum sentences:

- (1) For a violation of subdivision 22-22-1(1), fifteen years for a first offense; and
- (2) For a violation of § 22-22-7 if the victim is less than thirteen years of age, ten years for a first offense.

CREDIT(S)

Source: SL 1992, ch 164, § 1; SL 2005, ch 120, § 392; SL 2006, ch 121, § 1.

S.D. CODIFIED LAWS § 22-22-1.4 (2013). Exception for mitigating circumstances--Factual basis relied upon in writing

The sentencing court may impose a sentence other than that which is required by § 22-22-1.2 and § 22-6-1.2 if the court finds that mitigating circumstances exist which require a departure from the mandatory sentence imposed by § 22-22-1.2 or § 22-6-1.2. The court's finding of mitigating circumstances and the factual basis relied upon by the court shall be in writing.

CREDIT(S)

Source: SL 1992, ch 164, § 3; SL 2005, ch 120, § 394; SL 2006, ch 121, § 4.

S.D. CODIFIED LAWS § 22-22-7 (2013). Sexual contact with child under sixteen--Felony or misdemeanor

Any person, sixteen years of age or older, who knowingly engages in sexual contact with another person, other than that person's spouse if the other person is under the age of sixteen years is guilty of a Class 3 felony. If the victim is at least thirteen years of age and the actor is less than five years older than the victim, the actor is guilty of a Class 1 misdemeanor. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five or within seven years of the commission of the crime, whichever is longer.

CREDIT(S)

Source: SL 1950 (SS), ch 3, §§ 1, 2; SL 1955, ch 27; SDC Supp 1960, § 13.1727; SDCL § 22-22-8; SL 1976, ch 158, § 22-3; SL 1977, ch 189, § 52; SL 1981, ch 176; SL 1982, ch 176, § 2; SL 1984, ch 165, § 2; SL 1985, ch 181, § 2; SL 1989, ch 194, § 1; SL 1989, ch 195, § 1; SL 1990, ch 162, § 2; SL 1994, ch 166, § 3; SL 2006, ch 121, § 5; SL 2010, ch 115, § 1.

S.D. CODIFIED LAWS § 22-22-7.3 (2013). Sexual contact with child under sixteen years of age--Violation as misdemeanor

Any person, younger than sixteen years of age, who knowingly engages in sexual contact with another person, other than his or her spouse, if such other person is younger than sixteen years of age, is guilty of a Class 1 misdemeanor.

CREDIT(S)

Source: SL 1989, ch 195, § 2; SL 1990, ch 163; SL 2005, ch 120, § 397.

S.D. CODIFIED LAWS § 22-22-7.6 (2013). Sexual acts between jail or juvenile correctional facility employees and detainees--Felony

Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony.

A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1 (16) or a juvenile facility operated by the Department of Corrections under § 1-15-1.4.

CREDIT(S)

Source: SL 2000, ch 103, §§ 1, 2; SL 2013, ch 107, § 1.

S.D. CODIFIED LAWS § 22-22-24.3 (2013). Sexual exploitation of a minor--Felonies—Assessment

A person is guilty of sexual exploitation of a minor if the person causes or knowingly permits a minor to engage in an activity or the simulation of an activity that:

- (1) Is harmful to minors;
- (2) Involves nudity; or
- (3) Is obscene.

Consent to performing these proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 6 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation a Class 5 felony.

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

CREDIT(S)

Source: SL 2002, ch 109, § 8; SL 2005, ch 120, § 401; SL 2006, ch 121, § 7.

S.D. CODIFIED LAWS § 22-24-1.3 (2013). Indecent exposure involving a child--Felony

If any person, eighteen years of age or older, with the intent to arouse or gratify the sexual desire of any person, intentionally exposes his or her genitals to a child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure involving a child. Indecent exposure involving a child is a Class 6 felony. A second or subsequent conviction for indecent exposure involving a child is a Class 5 felony.

CREDIT(S)

Source: SL 2002, ch 111, § 1; SL 2005, ch 120, § 300; SL 2009, ch 116, § 1.

S.D. CODIFIED LAWS § 22-24A-5 (2013). Solicitation of a minor--Felony—Assessment

A person is guilty of solicitation of a minor if the person eighteen years of age or older:

(1) Solicits a minor, or someone the person reasonably believes is a minor, to engage in a prohibited sexual act; or

(2) Knowingly compiles or transmits by means of a computer; or prints, publishes or reproduces by other computerized means; or buys, sells, receives, exchanges or disseminates, any notice, statement or advertisement of any minor's name, telephone number, place of residence, physical characteristics or other descriptive or identifying information for the purpose of soliciting a minor or someone the person reasonably believes is a minor to engage in a prohibited sexual act.

The fact that an undercover operative or law enforcement officer was involved in the detection and investigation of an offense under this section does not constitute a defense to a prosecution under this section.

Consent to performing a prohibited sexual act by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating this section.

A violation of this section is a Class 4 felony.

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.

CREDIT(S)

Source: SL 2002, ch 109, § 10; SDCL § 22-22-24.5; SL 2005, ch 120, §§ 407, 410; SL 2006, ch 121, § 8; SL 2010, ch 116, § 1.

S.D. CODIFIED LAWS § 26-8A-2 (2013). Abused or neglected child defined

In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
- (5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
- (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;
- (9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
- (10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

CREDIT(S)

Source: SDC 1939, § 43.0301 (12) as enacted by SL 1968, ch 164, § 1; SL 1984, ch 192, § 1; SL 1990, ch 170, § 4; SL 1991, ch 217, § 111B; SDCL Supp, § 26-8-6; SL 1998, ch 204, § 2; SL 2004, ch 181, § 1; SL 2005, ch 141, § 1; SL 2008, ch 137, § 1.

S.D. CODIFIED LAWS § 26-9-1 (2013). Contributing to abuse, neglect, or delinquency or causing child to become child in need of supervision as misdemeanor

Any person who, by any act, causes, encourages or contributes to the abuse, the neglect or the delinquency of a child, or any person, other than a parent who, by any act, causes a child to become a child in need of supervision, as such phrases with reference to children

are defined by chapters 26-7A, 26-8A, 26-8B and 26-8C, or who is, in any manner, responsible therefor, is guilty of a Class 1 misdemeanor.

CREDIT(S)

Source: SDC 1939, § 43.9901; SL 1988, ch 214; SL 1993, ch 206, § 1.

S.D. CODIFIED LAWS § 26-10-30 (2013). Permitting physical or sexual abuse of child as felony--Affirmative defense

It is a Class 6 felony for any parent, guardian, or custodian to knowingly permit physical or sexual abuse of a child.

It is an affirmative defense, to be proven by clear and convincing evidence, to prosecution under this section if, at the time of the offense, there was a reasonable belief that acting to stop or to prevent the abuse would result in substantial bodily harm to the defendant or the child in retaliation.

CREDIT(S)

Source: SL 2006, ch 146, § 1.

TENNESSEE

TENN. CODE ANN. § 39-13-110 (2013). Female genital mutilation.

(a) Except as otherwise permitted in subsection (b), whoever knowingly circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of another commits a Class D felony. Consent to the procedure by a minor on whom it is performed or by the minor's parent is not a defense to a violation of this section.

(b) A surgical procedure is not a violation of subsection (a), if the procedure is:

(1) Necessary to the health of the person on whom it is performed and is performed by a licensed physician or physician-in-training under supervision of a licensed physician; or

(2) Performed on a person who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician or a physician-in-training under the supervision of a licensed physician.

CREDIT(S)

1996 Pub.Acts, c. 857, § 2, eff. July 1, 1996.

TENN. CODE ANN. § 39-13-504 (2013). Aggravated sexual battery.

(a) Aggravated sexual battery is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by any of the following circumstances:

(1) Force or coercion is used to accomplish the act and the defendant is armed with a weapon or any article used or fashioned in a manner to lead the victim reasonably to believe it to be a weapon;

(2) The defendant causes bodily injury to the victim;

(3) The defendant is aided or abetted by one (1) or more other persons; and

(A) Force or coercion is used to accomplish the act; or

(B) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(4) The victim is less than thirteen (13) years of age.

(b) Aggravated sexual battery is a Class B felony.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1993 Pub.Acts, c. 289, § 1, eff. May 6, 1993.

TENN. CODE ANN. § 39-13-506 (2013). Mitigated statutory rape; statutory rape; aggravated statutory rape; penalties

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but

less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

(d) (1) Mitigated statutory rape is a Class E felony.

(2) Statutory rape is a Class E felony.

(2) Aggravated statutory rape is a Class D felony.

(a) Mitigated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is at least four (4) but not more than five (5) years older than the victim.

(b) Statutory rape is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than fifteen (15) years of age and the defendant is at least four (4) years but less than ten (10) years older than the victim; or

(2) The victim is at least fifteen (15) but less than eighteen (18) years of age and the defendant is more than five (5) but less than ten (10) years older than the victim.

(c) Aggravated statutory rape is the unlawful sexual penetration of a victim by the defendant, or of the defendant by the victim when the victim is at least thirteen (13) but less than eighteen (18) years of age and the defendant is at least ten (10) years older than the victim.

(d)(1) Mitigated statutory rape is a Class E felony.

(2)(A) Statutory rape is a Class E felony.

(B) In addition to the punishment provided for a person who commits statutory rape for the first time, the trial judge may order, after taking into account the facts and circumstances surrounding the offense, including the offense for which the person was originally charged and whether the conviction was the result of a plea bargain agreement, that the person be required to register as a sexual offender pursuant to title 40, chapter 39, part 2.

(3) Aggravated statutory rape is a Class D felony.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1990 Pub.Acts, c. 980, § 4; 1994 Pub.Acts, c. 719, § 1, eff. July 1, 1994; 2005 Pub.Acts, c. 487, § 4, eff. July 1, 2005; 2006 Pub.Acts, c. 890, § 5, eff. July 1, 2006; 2007 Pub.Acts, c. 594, § 7, eff. June 28, 2007; 2012 Pub.Acts, c. 883, § 1, eff. July 1, 2012.

TENN. CODE ANN. § 39-13-509 (2013). Sexual contact with a minor by an authority figure; penalty

(a) It is an offense for a defendant to engage in unlawful sexual contact with a minor when:

(1) The minor is at least thirteen (13) but less than eighteen (18) years of age;

(2) The defendant is at least four (4) years older than the victim; and

(3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the minor by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual contact; or

(4) The defendant had, at the time of the offense, parental or custodial authority over the minor and used the authority to accomplish the sexual contact.

(b) As used in this section, “sexual contact” means the defendant intentionally touches or kisses the minor's lips with the defendant's lips if such touching can be reasonably construed as being for the purpose of sexual arousal or gratification.

(c) Sexual contact by an authority figure is a Class A misdemeanor with a mandatory minimum fine of one thousand dollars (\$1,000).

(d) Each instance of unlawful sexual contact shall be considered a separate offense.

CREDIT(S)

2011 Pub.Acts, c. 88, § 1, eff. July 1, 2011.

TENN. CODE ANN. § 39-13-511 (2013). Indecent exposure; penalties; exception for breastfeeding

(a)(1) A person commits the offense of indecent exposure who:

(A) In a public place, as defined in § 39-11-106, or on the private premises of another, or so near thereto as to be seen from the private premises:

(i) Intentionally:

(a) Exposes the person's genitals or buttocks to another; or

(b) Engages in sexual contact or sexual penetration as defined in § 39-13-501; and

(ii) Reasonably expects that the acts will be viewed by another and the acts:

(a) Will offend an ordinary viewer; or

(b) Are for the purpose of sexual arousal and gratification of the defendant; or

(B)(i) Knowingly invites, entices or fraudulently induces the child of another into the person's residence for the purpose of attaining sexual arousal or gratification by intentionally engaging in the following conduct in the presence of the child:

(a) Exposure of such person's genitals, buttocks or female breasts; or

(b) Masturbation; or

(ii) Knowingly engages in the person's own residence, in the intended presence of any child, for the defendant's sexual arousal or gratification the following intentional conduct:

(a) Exposure of the person's genitals, buttocks or female breasts; or

(b) Masturbation.

(2) No prosecution shall be commenced for a violation of subdivision (a)(1)(B)(ii)(a) based solely upon the uncorroborated testimony of a witness who shares with the accused any of the relationships described in § 36-3-601(5).

(3) For subdivision (a)(1)(B)(i) or (a)(1)(B)(ii) to apply, the defendant must be eighteen (18) years of age or older and the child victim must be less than thirteen (13) years of age.

(b)(1) “Indecent exposure”, as defined in subsection (a), is a Class B misdemeanor, unless subdivision (b)(2), (b)(3) or (b)(4) applies.

(2) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, indecent exposure is a Class A misdemeanor.

(3) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the defendant has any combination of two (2) or more prior convictions under this section or § 39-13-517, or is a sexual offender, violent sexual offender or violent juvenile sexual offender, as defined in § 40-39-202, the offense is a Class E felony.

(4) If the defendant is eighteen (18) years of age or older and the victim is under thirteen (13) years of age, and the offense occurs on the property of any public school, private or parochial school, licensed day care center or other child care facility during a time at which a child or children are likely to be present on the property, the offense is a Class E felony.

(c)(1) A person confined in a penal institution, as defined in § 39-16-601, commits the offense of indecent exposure who with the intent to abuse, torment, harass or embarrass a guard:

(A) Intentionally exposes the person's genitals or buttocks to the guard; or

(B) Engages in sexual contact as defined in § 39-13-501.

(2) For purposes of this subsection (c), “guard” means any sheriff, jailer, guard, correctional officer or other authorized personnel charged with the custody of the person.

(3) Notwithstanding subsection (b), a violation of this subsection (c) is a Class A misdemeanor.

(d) This section does not apply to a mother who is breastfeeding her child in any location, public or private.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1990 Pub.Acts, c. 980, § 33; 1994 Pub.Acts, c. 542, §§ 1 to 3, eff. July 1, 1994; 1998 Pub.Acts, c. 755, § 1, eff. April 15, 1998; 1999 Pub.Acts, c. 189, § 1, eff. July 1, 1999; 2006 Pub.Acts, c. 617, § 2, eff. May 4, 2006; 2007 Pub.Acts, c. 209, § 1, eff. July 1, 2007; 2009 Pub.Acts, c. 414, §§ 1, 2, eff. July 1, 2009; 2011 Pub.Acts, c. 91, § 2, eff. July 1, 2011; 2012 Pub.Acts, c. 885, § 1, eff. July 1, 2012; 2012 Pub.Acts, c. 1076, § 1, eff. May 21, 2012.

TENN. CODE ANN. § 39-13-522 (2013). Rape of a child.

(a) Rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age.

(b)(1) Rape of a child is a Class A felony.

(2)(A) Notwithstanding title 40, chapter 35, a person convicted of a violation of this section shall be punished as a Range II offender; however, the sentence imposed upon such person may, if appropriate, be within Range III but in no case shall it be lower than Range II.

(B) Section 39-13-525(a) shall not apply to a person sentenced under this subdivision (b)(2).

(C) Notwithstanding any law to the contrary, the board of probation and parole may require, as a mandatory condition of supervision for any person convicted under this section, that the person be enrolled in a satellite-based monitoring program for the full extent of the person's term of supervision consistent with the requirements of § 40-39-302.

CREDIT(S)

1992 Pub.Acts, c. 878, § 1; 1997 Pub.Acts, c. 406, § 2, eff. July 1, 1997; 2005 Pub.Acts, c. 353, § 14, eff. June 7, 2005; 2006 Pub.Acts, c. 890, § 22, eff. July 1, 2006; 2007 Pub.Acts, c. 501, § 1, eff. July 1, 2007; 2011 Pub.Acts, c. 306, § 1, eff. Jan. 1, 2012.

TENN. CODE ANN. § 39-13-523 (2013). Child sexual predators, aggravated rapist, multiple rapists, and child rapists; sentencing

(a) As used in this section, unless the context otherwise requires:

(1) “Aggravated rapist” means a person convicted of violating § 39-13-502;

(2) “Child rapist” means a person convicted one (1) or more times of rape of a child as defined by § 39-13-522;

(3) “Child sexual predator” means a person who:

(A) Is convicted in this state of committing an offense on or after July 1, 2007, that is classified in subdivision (a)(5) as a predatory offense; and

(B) Has one (1) or more prior convictions for an offense classified in subdivision (a)(5) as a predatory offense;

(4) “Multiple rapist” means a person convicted two (2) or more times of violating § 39-13-503, or a person convicted at least one (1) time of violating § 39-13-502 and at least one (1) time of violating § 39-13-503;

(5) “Predatory offenses” means:

- (A) Aggravated sexual battery under § 39-13-504(a)(4);
- (B) Statutory rape by an authority figure under § 39-13-532;
- (C) Sexual battery by an authority figure under § 39-13-527;
- (D) Solicitation of a minor to commit a sex offense under § 39-13-528;
- (E) Solicitation of a minor to perform sex acts under § 39-13-529; and
- (F) Aggravated statutory rape under § 39-13-506(c);

(6)(A) “Prior convictions” means that the person serves and is released or discharged from a separate period of incarceration or supervision for the commission of a predatory offense classified in subdivision (a)(5) prior to committing another predatory offense classified in subdivision (a)(5).

(B) “Prior convictions” includes convictions under the laws of any other state, government or country that, if committed in this state, would constitute a predatory offense as classified in subdivision (a)(5). If a felony from a jurisdiction other than Tennessee is not a named predatory offense as classified in subdivision (a)(5) in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for an offense classified as a predatory offense; and

(7) “Separate period of incarceration or supervision” includes a sentence to any of the sentencing alternatives set out in § 40-35-104(c)(3)-(9). Any offense designated as a predatory offense pursuant to subdivision (a)(5) shall be considered as having been committed after a separate period of incarceration or supervision if the predatory offense was committed while the person was:

- (A) On probation, parole or community correction supervision for a predatory offense;
- (B) Incarcerated for a predatory offense;

(C) Assigned to a program whereby the person enjoys the privilege of supervised release into the community, including, but not limited to, work release, educational release, restitution release or medical furlough for a predatory offense; or

(D) On escape status from any correctional institution when incarcerated for a predatory offense;

(b) Notwithstanding any other law to the contrary, a child sexual predator, aggravated rapist, multiple rapist or a child rapist shall be required to serve the entire sentence imposed by the court undiminished by any sentence reduction credits the person may be eligible for or earn. A child sexual predator, aggravated rapist, multiple rapist or a child rapist shall be permitted to earn any credits for which the person is eligible and the credits may be used for the purpose of increased privileges, reduced security classification, or for any purpose other than the reduction of the sentence imposed by the court.

(c) Title 40, chapter 35, part 5, regarding release eligibility status and parole, shall not apply to or authorize the release of a child sexual predator, aggravated rapist, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.

(d) Nothing in title 41, chapter 1, part 5 shall give either the governor or the board of probation and parole the authority to release or cause the release of a child sexual predator, aggravated rapist, multiple rapist or child rapist prior to service of the entire sentence imposed by the court.

(e)(1) The provisions of this section requiring child sexual predators to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 2007.

(2) The provisions of this section requiring multiple rapists to serve the entire sentence imposed by the court shall only apply if at least one (1) of the required offenses occurs on or after July 1, 1992.

(3) The provisions of this section requiring aggravated rapists to serve the entire sentence imposed by the court shall only apply if the required offense occurs on or after July 1, 2012.

CREDIT(S)

1992 Pub.Acts, c. 878, § 1; 1998 Pub.Acts, c. 1049, § 10, eff. May 18, 1998; 2007 Pub.Acts, c. 525, § 1, eff. July 1, 2007; 2012 Pub.Acts, c. 1073, §§ 2 to 5, eff. July 1, 2012.

TENN. CODE ANN. § 39-13-524 (2013). Community supervision for life

(a) In addition to the punishment authorized by the specific statute prohibiting the conduct, a person shall receive a sentence of community supervision for life who, on or after:

(1) July 1, 1996, commits a violation of § 39-13-502, § 39-13-503, § 39-13-504, or § 39-13-522;

(2) July 1, 2010, commits a violation of § 39-13-531; or

(3) The applicable date as provided in subdivision (a)(1) or (a)(2) attempts to commit a violation of any of the sections enumerated in subdivision (a)(1) or (a)(2).

(b) The judgment of conviction for all persons to whom the provisions of subsection (a) apply shall include that the person is sentenced to community supervision for life.

(c) The sentence of community supervision for life shall commence immediately upon the expiration of the term of imprisonment imposed upon the person by the court or upon the person's release from regular parole supervision, whichever first occurs.

(d)(1) A person on community supervision shall be under the jurisdiction, supervision and control of the department of correction in the same manner as a person under parole supervision. The department is authorized on an individual basis to establish such conditions of community supervision as are necessary to protect the public from the person's committing a new sex offense, as well as promoting the rehabilitation of the person.

(2) The department is authorized to impose and enforce a supervision and rehabilitation fee upon a person on community supervision similar to the fee imposed by § 40-28-201. To the extent possible, the department shall set the fee in an amount that will substantially defray the cost of the community supervision program. The department shall also establish a fee waiver procedure for hardship cases and indigency.

CREDIT(S)

1996 Pub.Acts, c. 972, § 1, eff. July 1, 1996; 1998 Pub.Acts, c. 1049, § 11, eff. May 18, 1998; 2010 Pub.Acts, c. 646, § 1, eff. July 1, 2010; 2012 Pub.Acts, c. 727, § 5, eff. July 1, 2012.

TENN. CODE ANN. § 39-13-527 (2013). Authority figure; sexual battery; penalty

(a) Sexual battery by an authority figure is unlawful sexual contact with a victim by the defendant or the defendant by a victim accompanied by the following circumstances:

(1) The victim was, at the time of the offense, thirteen (13) years of age or older but less than eighteen (18) years of age; or

(2) The victim was, at the time of the offense, mentally defective, mentally incapacitated or physically helpless, regardless of age; and,

(3) (A) The defendant was at the time of the offense in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional or occupational status and used the position of trust or power to accomplish the sexual contact; or

(B) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual contact.

(b) Sexual battery by an authority figure is a Class C felony.

CREDIT(S)

1997 Pub.Acts, c. 256, § 1, eff. July 1, 1997; 1998 Pub.Acts, c. 1034, § 1, eff. May 18, 1998; 2005 Pub.Acts, c. 478, § 1, eff. July 1, 2005; 2006 Pub.Acts, c. 897, § 1, eff. July 1, 2006.

TENN. CODE ANN. § 39-13-528 (2013). Solicitation of person under 18 years of age.

(a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, electronic mail or Internet services, directly or through another, to intentionally command, request, hire, persuade, invite or attempt to induce a person whom the person making the solicitation knows, or should know, is less than eighteen (18) years of age, or solicits a law enforcement officer posing as a minor, and whom the person making the solicitation reasonably believes to be less than eighteen (18) years of age, to engage in conduct that, if completed, would constitute a violation by the soliciting adult of one (1) or more of the following offenses:

- (1) Rape of a child, pursuant to § 39-13-522;
 - (2) Aggravated rape, pursuant to § 39-13-502;
 - (3) Rape, pursuant to § 39-13-503;
 - (4) Aggravated sexual battery, pursuant to § 39-13-504;
 - (5) Sexual battery by an authority figure, pursuant to § 39-13-527;
 - (6) Sexual battery, pursuant to § 39-13-505;
 - (7) Statutory rape, pursuant to § 39-13-506;
 - (8) Especially aggravated sexual exploitation of a minor, pursuant to § 39-17-1005; or
 - (9) Sexual activity involving a minor, pursuant to § 39-13-529.
 - (10) Trafficking for commercial sex acts, pursuant to § 39-13-309;
 - (11) Patronizing prostitution, pursuant to § 39-13-514;
 - (12) Promoting prostitution, pursuant to § 39-13-515;
 - (13) Aggravated sexual exploitation of a minor, pursuant to § 39-17-1004;
- (b) It is no defense that the solicitation was unsuccessful, that the conduct solicited was not engaged in, or that the law enforcement officer could not engage in the solicited offense. It is no defense that the minor solicited was unaware of the criminal nature of the conduct solicited.
- (c) A violation of this section shall constitute an offense one (1) classification lower than the most serious crime solicited, unless the offense solicited was a Class E felony, in which case the offense shall be a Class A misdemeanor.
- (d) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person solicited the conduct of a minor located in this state, or solicited a law enforcement officer posing as a minor located within this state.

CREDIT(S)

1998 Pub.Acts, c. 1007, § 1, eff. July 1, 1998; 2000 Pub.Acts, c. 944, § 1, eff. July 1, 2000; 2005 Pub.Acts, c. 496, § 5, eff. July 1, 2005; 2013 Pub. Acts, c. 436, § 1, eff. July 1, 2013.

TENN. CODE ANN. § 39-13-531 (2013). Aggravated rape of a child.

(a) Aggravated rape of a child is the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is three (3) years of age or less.

(b) Aggravated rape of a child is a Class A felony and shall be sentenced within Range III, as set forth in title 40, chapter 35.

CREDIT(S)

2006 Pub.Acts, c. 890, § 23, eff. July 1, 2006.

TENN. CODE ANN. § 39-13-532 (2013). Statutory rape by an authority figure; penalty

(a) Statutory rape by an authority figure is the unlawful sexual penetration of a victim by the defendant or of the defendant by the victim when:

(1) The victim is at least thirteen (13) but less than eighteen (18) years of age;

(2) The defendant is at least four (4) years older than the victim; and

(3) The defendant was, at the time of the offense, in a position of trust, or had supervisory or disciplinary power over the victim by virtue of the defendant's legal, professional, or occupational status and used the position of trust or power to accomplish the sexual penetration; or

(4) The defendant had, at the time of the offense, parental or custodial authority over the victim and used the authority to accomplish the sexual penetration.

(b) Statutory rape by an authority figure is a Class C felony and no person who is found guilty of or pleads guilty to the offense shall be eligible for probation pursuant to § 40-35-303 or judicial diversion pursuant to § 40-35-313.

CREDIT(S)

2006 Pub.Acts, c. 973, § 1, eff. July 1, 2006.

TENN. CODE ANN. § 39-13-605 (2013). Photographs; dissemination

(a) It is an offense for a person to knowingly photograph, or cause to be photographed an individual, when the individual has a reasonable expectation of privacy, without the prior effective consent of the individual, or in the case of a minor, without the prior effective consent of the minor's parent or guardian, if the photograph:

(1) Would offend or embarrass an ordinary person if such person appeared in the photograph; and

(2) Was taken for the purpose of sexual arousal or gratification of the defendant.

(b) As used in this section, unless the context otherwise requires, “photograph” means any photograph or photographic reproduction, still or moving, or any videotape or live television transmission of any individual.

(c) All photographs taken in violation of this section shall be confiscated and, after their use as evidence, destroyed.

(d)(1) A violation of this section is a Class A misdemeanor.

(2) If the defendant disseminates or permits the dissemination of the photograph to any other person, a violation of this section is a Class E felony.

CREDIT(S)

1994 Pub.Acts, c. 970, § 2, eff. July 1, 1994; 1997 Pub.Acts, c. 469, §§ 1, 2, eff. July 1, 1997; 2000 Pub.Acts, c. 667, § 2, eff. July 1, 2000; 2010 Pub.Acts, c. 1124, §§ 1, 2, eff. Jan. 1, 2011.

TENN. CODE ANN. § 39-13-607 (2013). Observation without consent; violation

(a) It is an offense for a person to knowingly spy upon, observe or otherwise view an individual, when the individual is in a place where there is a reasonable expectation of privacy, without the prior effective consent of the individual, if the viewing:

(1) Would offend or embarrass an ordinary person if the person knew the person was being viewed; and

(2) Was for the purpose of sexual arousal or gratification of the defendant.

(b) It is not a defense to a violation of this section that the defendant was lawfully on the premises where the offense occurred.

(c) If the person being viewed is a minor, this section is violated regardless of whether the minor or the minor's parent or guardian consented to the viewing.

(d) A violation of this section is a Class A misdemeanor.

CREDIT(S)

2000 Pub.Acts, c. 667, § 1, eff. July 1, 2000.

TENN. CODE ANN. § 39-15-401 (2013). Abuse or neglect

(a) Any person who knowingly, other than by accidental means, treats a child under eighteen (18) years of age in such a manner as to inflict injury commits a Class A misdemeanor; provided, however, that, if the abused child is eight (8) years of age or less, the penalty is a Class D felony.

(b) Any person who knowingly abuses or neglects a child under eighteen (18) years of age, so as to adversely affect the child's health and welfare, commits a Class A misdemeanor; provided, that, if the abused or neglected child is eight (8) years of age or less, the penalty is a Class E felony.

(c)(1) A parent or custodian of a child eight (8) years of age or less commits child endangerment who knowingly exposes such child to or knowingly fails to protect such child from abuse or neglect resulting in physical injury to the child.

(2) For purposes of this subsection (c):

(A) “Knowingly” means the person knew, or should have known upon a reasonable inquiry, that abuse to or neglect of the child would occur which would result in physical injury to the child. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary parent or legal custodian of a child eight (8) years of age or less would exercise under all the circumstances as viewed from the defendant's standpoint; and

(B) “Parent or custodian” means the biological or adoptive parent or any person who has legal custody of the child.

(3) A violation of this subsection (c) is a Class A misdemeanor.

(d)(1) Any court having reasonable cause to believe that a person is guilty of violating this section shall have the person brought before the court, either by summons or warrant. No arrest warrant or summons shall be issued by any person authorized to issue the warrant or summons, nor shall criminal charges be instituted against a child's parent, guardian or custodian for a violation of subsection (a), based upon the allegation that unreasonable corporal punishment was administered to the child, unless the affidavit of complaint also contains a copy of the report prepared by the law enforcement official who investigated the allegation, or independent medical verification of injury to the child.

(2)(A) As provided in this subdivision (d)(2), juvenile courts, courts of general session, and circuit and criminal courts, shall have concurrent jurisdiction to hear violations of this section.

(B) If the person pleads not guilty, the juvenile judge or general sessions judge shall have the power to bind the person over to the grand jury, as in cases of misdemeanors under the criminal laws of this state. Upon being bound over to the grand jury, the person may be prosecuted on an indictment filed by the district attorney general and, notwithstanding § 40-13-103, a prosecutor need not be named on the indictment.

(C) On a plea of not guilty, the juvenile court judge or general sessions judge shall have the power to proceed to hear the case on its merits, without the intervention of a jury, if the person requests a hearing in juvenile court or general sessions court and expressly waives, in writing, indictment, presentment, grand jury investigation and a jury trial.

(D) If the person enters a plea of guilty, the juvenile court or general sessions court judge shall sentence the person under this section.

(E) Regardless of whether the person pleads guilty or not guilty, the circuit court or criminal court shall have the power to proceed to hear the case on its merits, and, if found guilty, to sentence the person under this section.

(e) Except as expressly provided, the provisions of this section shall not be construed as repealing any provision of any other statute, but shall be supplementary to any other provision and cumulative of any other provision.

(f) A violation of this section may be a lesser included offense of any kind of homicide, statutory assault, or sexual offense, if the victim is a child and the evidence supports a charge under this section. In any case in which conduct violating this section also

constitutes assault, the conduct may be prosecuted under this section or under § 39-13-101 or § 39-13-102, or both.

(g) For purposes of this section, “adversely affect the child's health and welfare” may include, but not be limited to, the natural effects of starvation or dehydration.

(h) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through Internet services or social networking web sites; provided, that the person has no parental rights to such victim at the time of the court's order.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1994 Pub.Acts, c. 978, § 1, eff. July 1, 1994; 1996 Pub.Acts, c. 962, § 1, eff. July 1, 1996; 1998 Pub.Acts, c. 1040, § 2, eff. May 18, 1998; 2005 Pub.Acts, c. 487, § 1, eff. July 1, 2005; 2006 Pub.Acts, c. 939, § 1, eff. June 20, 2006; 2008 Pub.Acts, c. 1024, § 1, eff. July 1, 2008; 2009 Pub.Acts, c. 335, § 2, eff. July 1, 2009; 2009 Pub.Acts, c. 418, § 1, eff. July 1, 2009; 2009 Pub.Acts, c. 585, § 1; 2011 Pub.Acts, c. 313, § 1, eff. July 1, 2011.

TENN. CODE ANN. § 39-15-402 (2013). Aggravated child abuse and neglect; aggravated child endangerment

(a) A person commits the offense of aggravated child abuse, aggravated child neglect or aggravated child endangerment, who commits child abuse, as defined in § 39-15-401(a); child neglect, as defined in § 39-15-401(b); or child endangerment, as defined in § 39-15-401(c) and:

(1) The act of abuse, neglect or endangerment results in serious bodily injury to the child;

(2) A deadly weapon, dangerous instrumentality, controlled substance or controlled substance analogue is used to accomplish the act of abuse, neglect or endangerment;

(3) The act of abuse, neglect or endangerment was especially heinous, atrocious or cruel, or involved the infliction of torture to the victim; or

(4) The act of abuse, neglect or endangerment results from the knowing exposure of a child to the initiation of a process intended to result in the manufacture of methamphetamine as described in § 39-17-435.

(b) A violation of this section is a Class B felony; provided, however, that, if the abused, neglected or endangered child is eight (8) years of age or less, or is vulnerable because the victim is mentally defective, mentally incapacitated or suffers from a physical disability, the penalty is a Class A felony.

(c) Nothing in this part shall be construed to mean a child is abused, neglected, or endangered, or abused, neglected or endangered in an aggravated manner, for the sole reason the child is being provided treatment by spiritual means through prayer alone, in accordance with the tenets or practices of a recognized church or religious denomination by a duly accredited practitioner of the recognized church or religious denomination, in lieu of medical or surgical treatment.

(d) “Serious bodily injury to the child” includes, but is not limited to, second- or third-degree burns, a fracture of any bone, a concussion, subdural or subarachnoid bleeding, retinal hemorrhage, cerebral edema, brain contusion, injuries to the skin that involve severe bruising or the likelihood of permanent or protracted disfigurement, including those sustained by whipping children with objects.

(e) A “dangerous instrumentality” is any item that, in the manner of its use or intended use as applied to a child, is capable of producing serious bodily injury to a child, as serious bodily injury to a child is defined in this section.

(f) This section shall be known and may be cited as “Haley's Law”.

(g) The court may, in addition to any other punishment otherwise authorized by law, order a person convicted of aggravated child abuse to refrain from having any contact with the victim of the offense, including, but not limited to, attempted contact through Internet services or social networking web sites; provided, that the person has no parental rights to such victim at the time of the court's order.

CREDIT(S)

1989 Pub.Acts, c. 591, § 1; 1994 Pub.Acts, c. 978, §§ 2, 8, eff. July 1, 1994; 1996 Pub.Acts, c. 1069, § 1, eff. May 15, 1996; 1998 Pub.Acts, c. 1040, § 1, eff. May 18, 1998; 2005 Pub.Acts, c. 487, § 2, eff. July 1, 2005; 2009 Pub.Acts, c. 88, § 1, eff. July 1,

2009; 2009 Pub.Acts, c. 89, § 1, eff. July 1, 2009; 2009 Pub.Acts, c. 418, § 2, eff. July 1, 2009; 2011 Pub.Acts, c. 292, §§ 5 to 7, eff. July 1, 2011; 2011 Pub.Acts, c. 313, § 2, eff. July 1, 2011; 2012 Pub.Acts, c. 848, § 14, eff. May 15, 2012.

TENN. CODE ANN. § 39-15-402 (2013). Especially aggravated sexual exploitation

(a) It is unlawful for a person to knowingly promote, employ, use, assist, transport or permit a minor to participate in the performance of, or in the production of, acts or material that includes the minor engaging in:

(1) Sexual activity; or

(2) Simulated sexual activity that is patently offensive.

(b) A person violating subsection (a) may be charged in a separate count for each individual performance, image, picture, drawing, photograph, motion picture film, videocassette tape, or other pictorial representation.

(c) In a prosecution under this section, the trier of fact may consider the title, text, visual representation, Internet history, physical development of the person depicted, expert medical testimony, expert computer forensic testimony, and any other relevant evidence, in determining whether a person knowingly promoted, employed, used, assisted, transported or permitted a minor to participate in the performance of or in the production of acts or material for these purposes, or in determining whether the material or image otherwise represents or depicts that a participant is a minor.

(d) A violation of this section is a Class B felony. Nothing in this section shall be construed as limiting prosecution for any other sexual offense under this chapter, nor shall a joint conviction under this section and any other related sexual offense, even if arising out of the same conduct, be construed as limiting any applicable punishment, including consecutive sentencing under § 40-35-115, or the enhancement of sentence under § 40-35-114.

(e) In a prosecution under this section, the state is not required to prove the actual identity or age of the minor.

(f) A person is subject to prosecution in this state under this section for any conduct that originates in this state, or for any conduct that originates by a person located outside this state, where the person promoted, employed, assisted, transported or permitted a minor to engage in the performance of, or production of, acts or material within this state.

() It shall not be a defense to a violation of subsection (a) that the minor victim of the offense consented to the conduct that constituted the offense.

CREDIT(S)

1990 Pub.Acts, c. 1092, § 7; 2005 Pub.Acts, c. 496, § 4, eff. July 1, 2005; 2013 Pub.Acts, c. 350, §1, eff. July 1, 2013.

TEXAS

TEX. PENAL CODE ANN. § 21.02 (2013). Continuous Sexual Abuse of Young Child or Children

(a) In this section, “child” has the meaning assigned by Section 22.011(c).

(b) A person commits an offense if:

(1) during a period that is 30 or more days in duration, the person commits two or more acts of sexual abuse, regardless of whether the acts of sexual abuse are committed against one or more victims; and

(2) at the time of the commission of each of the acts of sexual abuse, the actor is 17 years of age or older and the victim is a child younger than 14 years of age.

(c) For purposes of this section, “act of sexual abuse” means any act that is a violation of one or more of the following penal laws:

(1) aggravated kidnapping under Section 20.04(a)(4), if the actor committed the offense with the intent to violate or abuse the victim sexually;

(2) indecency with a child under Section 21.11(a)(1), if the actor committed the offense in a manner other than by touching, including touching through clothing, the breast of a child;

(3) sexual assault under Section 22.011;

(4) aggravated sexual assault under Section 22.021;

(5) burglary under Section 30.02, if the offense is punishable under Subsection (d) of that section and the actor committed the offense with the intent to commit an offense listed in Subdivisions (1)-(4);

(6) sexual performance by a child under Section 43.25;

(7) trafficking of persons under Section 20A.02(a)(7) or (8); and

(8) compelling prostitution under Section 43.05(a)(2).

(d) If a jury is the trier of fact, members of the jury are not required to agree unanimously on which specific acts of sexual abuse were committed by the defendant or the exact date when those acts were committed. The jury must agree unanimously that the defendant, during a period that is 30 or more days in duration, committed two or more acts of sexual abuse.

(e) A defendant may not be convicted in the same criminal action of an offense listed under Subsection (c) the victim of which is the same victim as a victim of the offense alleged under Subsection (b) unless the offense listed in Subsection (c):

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (b) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (b).

(f) A defendant may not be charged with more than one count under Subsection (b) if all of the specific acts of sexual abuse that are alleged to have been committed are alleged to have been committed against a single victim.

(g) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than five years older than:

(A) the victim of the offense, if the offense is alleged to have been committed against only one victim; or

(B) the youngest victim of the offense, if the offense is alleged to have been committed against more than one victim;

(2) did not use duress, force, or a threat against a victim at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense; and

(3) at the time of the commission of any of the acts of sexual abuse alleged as an element of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section or an act of sexual abuse as described by Subsection (c).

(h) An offense under this section is a felony of the first degree, punishable by imprisonment in the Texas Department of Criminal Justice for life, or for any term of not more than 99 years or less than 25 years.

CREDIT(S)

Added by Acts 2007, 80th Leg., ch. 593, § 1.17, eff. Sept. 1, 2007. Amended by Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 6.04, eff. Sept. 1, 2011.

TEX. PENAL CODE ANN. § 21.11 (2013). Indecency with a Child

(a) A person commits an offense if, with a child younger than 17 years of age, whether the child is of the same or opposite sex, the person:

(1) engages in sexual contact with the child or causes the child to engage in sexual contact; or

(2) with intent to arouse or gratify the sexual desire of any person:

(A) exposes the person's anus or any part of the person's genitals, knowing the child is present; or

(B) causes the child to expose the child's anus or any part of the child's genitals.

(b) It is an affirmative defense to prosecution under this section that the actor:

(1) was not more than three years older than the victim and of the opposite sex;

(2) did not use duress, force, or a threat against the victim at the time of the offense; and

(3) at the time of the offense:

(A) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(B) was not a person who under Chapter 62 had a reportable conviction or adjudication for an offense under this section.

(b-1) It is an affirmative defense to prosecution under this section that the actor was the spouse of the child at the time of the offense.

(c) In this section, "sexual contact" means the following acts, if committed with the intent to arouse or gratify the sexual desire of any person:

(1) any touching by a person, including touching through clothing, of the anus, breast, or any part of the genitals of a child; or

(2) any touching of any part of the body of a child, including touching through clothing, with the anus, breast, or any part of the genitals of a person.

(d) An offense under Subsection (a)(1) is a felony of the second degree and an offense under Subsection (a)(2) is a felony of the third degree.

CREDIT(S)

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1981, 67th Leg., p. 472, ch. 202, § 3, eff. Sept. 1, 1981; Acts 1987, 70th Leg., ch. 1028, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1999, 76th

Leg., ch. 1415, § 23, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 739, § 2, eff. Sept. 1, 2001; Acts 2009, 81st Leg., ch. 260, § 1, eff. Sept. 1, 2009.

TEX. PENAL CODE ANN. § 21.12 (2013). Improper Relationship Between Educator and Student

(a) An employee of a public or private primary or secondary school commits an offense if the employee:

(1) engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person who is enrolled in a public or private primary or secondary school at which the employee works;

(2) holds a certificate or permit issued as provided by Subchapter B, Chapter 21, Education Code, or is a person who is required to be licensed by a state agency as provided by Section 21.003(b), Education Code, and engages in sexual contact, sexual intercourse, or deviate sexual intercourse with a person the employee knows is:

(A) enrolled in a public primary or secondary school in the same school district as the school at which the employee works; or

(B) a student participant in an educational activity that is sponsored by a school district or a public or private primary or secondary school, if:

(i) students enrolled in a public or private primary or secondary school are the primary participants in the activity; and

(ii) the employee provides education services to those participants; or

(3) engages in conduct described by Section 33.021, with a person described by Subdivision (1), or a person the employee knows is a person described by Subdivision (2)(A) or (B), regardless of the age of that person.

(b) An offense under this section is a felony of the second degree.

(b-1) It is an affirmative defense to prosecution under this section that:

- (1) the actor was the spouse of the enrolled person at the time of the offense; or
- (2) the actor was not more than three years older than the enrolled person and, at the time of the offense, the actor and the enrolled person were in a relationship that began before the actor's employment at a public or private primary or secondary school.
- (c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or both sections.
- (d) The name of a person who is enrolled in a public or private primary or secondary school and involved in an improper relationship with an educator as provided by Subsection (a) may not be released to the public and is not public information under Chapter 552, Government Code.

CREDIT(S)

Added by Acts 2003, 78th Leg., ch. 224, § 1, eff. Sept. 1, 2003. Amended by Acts 2007, 80th Leg., ch. 610, § 1, eff. Sept. 1, 2007; Acts 2007, 80th Leg., ch. 772, § 1, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 260, § 2, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 761 (H.B. 1610), § 3, eff. Sept. 1, 2011.

TEX. PENAL CODE ANN. § 22.011 (2013). Sexual Assault

(a) A person commits an offense if the person:

(1) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(B) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(C) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(2) intentionally or knowingly:

(A) causes the penetration of the anus or sexual organ of a child by any means;

(B) causes the penetration of the mouth of a child by the sexual organ of the actor;

(C) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(D) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(E) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(1) the actor compels the other person to submit or participate by the use of physical force or violence;

(2) the actor compels the other person to submit or participate by threatening to use force or violence against the other person, and the other person believes that the actor has the present ability to execute the threat;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that the sexual assault is occurring;

(6) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge;

(7) the actor compels the other person to submit or participate by threatening to use force or violence against any person, and the other person believes that the actor has the ability to execute the threat;

(8) the actor is a public servant who coerces the other person to submit or participate;

(9) the actor is a mental health services provider or a health care services provider who causes the other person, who is a patient or former patient of the actor, to submit or participate by exploiting the other person's emotional dependency on the actor;

(10) the actor is a clergyman who causes the other person to submit or participate by exploiting the other person's emotional dependency on the clergyman in the clergyman's professional character as spiritual adviser; or

(11) the actor is an employee of a facility where the other person is a resident, unless the employee and resident are formally or informally married to each other under Chapter 2, Family Code.

(c) In this section:

(1) "Child" means a person younger than 17 years of age.

(2) "Spouse" means a person who is legally married to another.

(3) "Health care services provider" means:

(A) a physician licensed under Subtitle B, Title 3, Occupations Code;

(B) a chiropractor licensed under Chapter 201, Occupations Code;

(C) a physical therapist licensed under Chapter 453, Occupations Code;

(D) a physician assistant licensed under Chapter 204, Occupations Code; or

(E) a registered nurse, a vocational nurse, or an advanced practice nurse licensed under Chapter 301, Occupations Code.

(4) "Mental health services provider" means an individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 505.002, Occupations Code;

(B) chemical dependency counselor as defined by Section 504.001, Occupations Code;

(C) licensed professional counselor as defined by Section 503.002, Occupations Code;

(D) licensed marriage and family therapist as defined by Section 502.002, Occupations Code;

(E) member of the clergy;

(F) psychologist offering psychological services as defined by Section 501.003, Occupations Code; or

(G) special officer for mental health assignment certified under Section 1701.404, Occupations Code.

(5) "Employee of a facility" means a person who is an employee of a facility defined by Section 250.001, Health and Safety Code, or any other person who provides services for a facility for compensation, including a contract laborer.

(d) It is a defense to prosecution under Subsection (a)(2) that the conduct consisted of medical care for the child and did not include any contact between the anus or sexual organ of the child and the mouth, anus, or sexual organ of the actor or a third party.

(e) It is an affirmative defense to prosecution under Subsection (a)(2):

(1) that the actor was the spouse of the child at the time of the offense; or

(2) that:

(A) the actor was not more than three years older than the victim and at the time of the offense:

(i) was not required under Chapter 62, Code of Criminal Procedure, to register for life as a sex offender; or

(ii) was not a person who under Chapter 62, Code of Criminal Procedure, had a reportable conviction or adjudication for an offense under this section; and

(B) the victim:

(i) was a child of 14 years of age or older; and

(ii) was not a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

(f) An offense under this section is a felony of the second degree, except that an offense under this section is a felony of the first degree if the victim was a person whom the actor was prohibited from marrying or purporting to marry or with whom the actor was prohibited from living under the appearance of being married under Section 25.01.

CREDIT(S)

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 557, § 1, eff. Sept. 1, 1985; Acts 1987, 70th Leg., ch. 1029, § 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 662, § 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 273, § 1, eff. Sept. 1,

1995; Acts 1995, 74th Leg., ch. 318, § 6, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1031, §§ 1, 2, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1286, § 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1102, § 3, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1415, § 24, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1420, § 14.829, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 155, §§ 1, 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 528, § 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 553, § 2.017, eff. Feb. 1, 2004; Acts 2005, 79th Leg., ch. 268, § 4.02, eff. Sept. 1, 2005; Acts 2009, 81st Leg., ch. 260, §§ 3, 4, eff. Sept. 1, 2009.

TEX. PENAL CODE ANN. § 22.021 (2013). Aggravated Sexual Assault

(a) A person commits an offense:

(1) if the person:

(A) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent;

(ii) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; or

(iii) causes the sexual organ of another person, without that person's consent, to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor; or

(B) intentionally or knowingly:

(i) causes the penetration of the anus or sexual organ of a child by any means;

(ii) causes the penetration of the mouth of a child by the sexual organ of the actor;

(iii) causes the sexual organ of a child to contact or penetrate the mouth, anus, or sexual organ of another person, including the actor;

(iv) causes the anus of a child to contact the mouth, anus, or sexual organ of another person, including the actor; or

(v) causes the mouth of a child to contact the anus or sexual organ of another person, including the actor; and

(2) if:

(A) the person:

(i) causes serious bodily injury or attempts to cause the death of the victim or another person in the course of the same criminal episode;

(ii) by acts or words places the victim in fear that death, serious bodily injury, or kidnapping will be imminently inflicted on any person;

(iii) by acts or words occurring in the presence of the victim threatens to cause the death, serious bodily injury, or kidnapping of any person;

(iv) uses or exhibits a deadly weapon in the course of the same criminal episode;

(v) acts in concert with another who engages in conduct described by Subdivision (1) directed toward the same victim and occurring during the course of the same criminal episode; or

(vi) administers or provides flunitrazepam, otherwise known as rohypnol, gamma hydroxybutyrate, or ketamine to the victim of the offense with the intent of facilitating the commission of the offense;

(B) the victim is younger than 14 years of age; or

(C) the victim is an elderly individual or a disabled individual.

(b) In this section:

(1) "Child" has the meaning assigned by Section 22.011(c).

(2) "Elderly individual" and "disabled individual" have the meanings assigned by Section 22.04(c).

(c) An aggravated sexual assault under this section is without the consent of the other person if the aggravated sexual assault occurs under the same circumstances listed in Section 22.011(b).

(d) The defense provided by Section 22.011(d) applies to this section.

(e) An offense under this section is a felony of the first degree.

(f) The minimum term of imprisonment for an offense under this section is increased to 25 years if:

(1) the victim of the offense is younger than six years of age at the time the offense is committed; or

(2) the victim of the offense is younger than 14 years of age at the time the offense is committed and the actor commits the offense in a manner described by Subsection (a)(2)(A).

CREDIT(S)

Added by Acts 1983, 68th Leg., p. 5312, ch. 977, § 3, eff. Sept. 1, 1983. Amended by Acts 1987, 70th Leg., ch. 573, § 1, eff. Sept. 1, 1987; Acts 1987, 70th Leg., 2nd C.S., ch. 16, § 1, eff. Sept. 1, 1987; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 318, § 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1286, § 2, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 417, § 1, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 459, § 5, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 528, § 2, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 896, § 1, eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 593, § 1.18, eff. Sept. 1, 2007; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 6.05, eff. Sept. 1, 2011.

TEX. PENAL CODE ANN. § 43.25 (2013). Sexual Performance by a Child

(a) In this section:

(1) "Sexual performance" means any performance or part thereof that includes sexual conduct by a child younger than 18 years of age.

(2) "Sexual conduct" means sexual contact, actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, sado-masochistic abuse, or lewd exhibition of the genitals, the anus, or any portion of the female breast below the top of the areola.

(3) "Performance" means any play, motion picture, photograph, dance, or other visual representation that can be exhibited before an audience of one or more persons.

(4) "Produce" with respect to a sexual performance includes any conduct that directly contributes to the creation or manufacture of the sexual performance.

(5) "Promote" means to procure, manufacture, issue, sell, give, provide, lend, mail, deliver, transfer, transmit, publish, distribute, circulate, disseminate, present, exhibit, or advertise or to offer or agree to do any of the above.

(6) "Simulated" means the explicit depiction of sexual conduct that creates the appearance of actual sexual conduct and during which a person engaging in the conduct exhibits any uncovered portion of the breasts, genitals, or buttocks.

(7) "Deviate sexual intercourse" and "sexual contact" have the meanings assigned by Section 43.01.

(b) A person commits an offense if, knowing the character and content thereof, he employs, authorizes, or induces a child younger than 18 years of age to engage in sexual

conduct or a sexual performance. A parent or legal guardian or custodian of a child younger than 18 years of age commits an offense if he consents to the participation by the child in a sexual performance.

(c) An offense under Subsection (b) is a felony of the second degree, except that the offense is a felony of the first degree if the victim is younger than 14 years of age at the time the offense is committed.

(d) A person commits an offense if, knowing the character and content of the material, he produces, directs, or promotes a performance that includes sexual conduct by a child younger than 18 years of age.

(e) An offense under Subsection (d) is a felony of the third degree, except that the offense is a felony of the second degree if the victim is younger than 14 years of age at the time the offense is committed.

(f) It is an affirmative defense to a prosecution under this section that:

(1) the defendant was the spouse of the child at the time of the offense;

(2) the conduct was for a bona fide educational, medical, psychological, psychiatric, judicial, law enforcement, or legislative purpose; or

(3) the defendant is not more than two years older than the child.

(g) When it becomes necessary for the purposes of this section or Section 43.26 to determine whether a child who participated in sexual conduct was younger than 18 years of age, the court or jury may make this determination by any of the following methods:

(1) personal inspection of the child;

(2) inspection of the photograph or motion picture that shows the child engaging in the sexual performance;

(3) oral testimony by a witness to the sexual performance as to the age of the child based on the child's appearance at the time;

(4) expert medical testimony based on the appearance of the child engaging in the sexual performance; or

(5) any other method authorized by law or by the rules of evidence at common law.

CREDIT(S)

Added by Acts 1977, 65th Leg., p. 1035, ch. 381, § 1, eff. June 10, 1977. Amended by Acts 1979, 66th Leg., p. 1976, ch. 779, § 1, eff. Sept. 1, 1979; Acts 1985, 69th Leg., ch.

530, § 1, eff. Sept. 1, 1985; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994; Acts 1999, 76th Leg., ch. 1415, § 22(b), eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 1005, §§ 4, 5 eff. Sept. 1, 2003; Acts 2007, 80th Leg., ch. 593, § 1.20, eff. Sept. 1, 2007.

UTAH

UTAH CODE ANN. § 76-5-401 (2013). Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) A violation of Subsection (2) is a third degree felony unless the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.

CREDIT(S)

Laws 1998 c. 82, § 1, eff. May 4, 1998.

UTAH CODE ANN. § 76-5-401.1 (2013). Sexual abuse of a minor

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits sexual abuse of a minor if the person is seven years or more older

than the minor and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) A violation of this section is a class A misdemeanor.

CREDIT(S)

Laws 1998, c. 82, § 2, eff. May 4, 1998.

UTAH CODE ANN. § 76-5-401.2 (2013). Unlawful sexual conduct with a 16 or 17 year old

(1) As used in this section, “minor” means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct described in Subsection (2) occurred.

(2)(a) A person commits unlawful sexual conduct with a minor if, under circumstances not amounting to an offense listed under Subsection (3), a person who is :

(i) seven or more years older but less than 10 years older than the minor at the time of the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or reasonably should have known the age of the minor; or

(ii) 10 or more years older than the minor at the time of the sexual conduct and engages in any conduct listed in Subsection (2)(b).

(b) As used in Subsection (2)(a), “sexual conduct” refers to when the person:

(i) has sexual intercourse with the minor;

(ii) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;

(iii) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant; or

(iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) The offenses referred to in Subsection (2) are:

(a)(i) rape, in violation of Section 76-5-402;

(ii) object rape, in violation of Section 76-5-402.2;

(iii) forcible sodomy, in violation of Section 76-5-403;

(iv) forcible sexual abuse, in violation of Section 76-5-404; or

(v) aggravated sexual assault, in violation of Section 76-5-405; or

(b) an attempt to commit any offense under Subsection (3)(a).

(4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

(5) A violation of Subsection (2)(b)(iv) is a class A misdemeanor.

CREDIT(S)

Laws 1998, c. 183, § 1, eff. May 4, 1998; Laws 2008, c. 275, § 1, eff. May 5, 2008; Laws 2013, c. 34, § 2, eff. March 22, 2013.

UTAH CODE ANN. § 76-5-402.1 (2013). Rape of a child

(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.

(2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1983, c. 88, § 18; Laws 1995, c. 337, § 5, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 6, eff. April 29, 1996; Laws 1996, c. 40, § 7, eff. April 29, 1996; Laws 2007, c. 339, § 13, eff. April 30, 2007; Laws 2008, c. 179, § 3, eff. May 5, 2008; Laws 2013, c. 81, § 5, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-402.2 (2013). Object rape

(1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other

than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (1)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the object rape the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the object rape, the defendant was previously convicted of a grievous sexual offense.

(2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser term than the term described in Subsection (1)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(3) The provisions of Subsection (2) do not apply when a person is sentenced under Subsection (1)(a) or (c).

(4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1983, c. 88, § 19; Laws 1984, c. 18, § 8; Laws 2007, c. 339, § 14, eff. April 30, 2007; Laws 2008, c. 340, § 1, eff. May 5, 2008; Laws 2013, c. 81, § 6, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-402.3 (2013). Object rape of a child -- Penalty

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b) not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1983, c. 88, § 20; Laws 1995, c. 337, § 6, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 7, eff. April 29, 1996; Laws 1996, c. 40, § 8, eff. April 29, 1996; Laws 2000, c. 128, § 1, eff. May 1, 2000; Laws 2007, c. 339, § 15, eff. April 30, 2007; Laws 2008, c. 179, § 4, eff. May 5, 2008; Laws 2013, c. 81, § 7, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-403 (2013). Sodomy -- Forcible sodomy

(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

(2) A person commits forcible sodomy when the actor commits sodomy upon another without the other's consent.

(3) Sodomy is a class B misdemeanor.

(4) Forcible sodomy is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (4)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.

(5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser term than the term described in Subsection (4)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(6) The provisions of Subsection (5) do not apply when a person is sentenced under Subsection (4)(a) or (c).

(7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1973, c. 196, § 76-5-403; Laws 1977, c. 86, § 2; Laws 1979, c. 73, § 3; Laws 1983, c. 88, § 21; Laws 2007, c. 339, § 16, eff. April 30, 2007; Laws 2013, c. 81, § 8, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-403.1 (2013). Sodomy on a child

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1983, c. 88, § 22; Laws 1988, c. 156, § 1; Laws 1995, c. 337, § 7, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 8, eff. April 29, 1996; Laws 1996, c. 40, § 9, eff. April 29, 1996; Laws 2007, c. 339, § 17, eff. April 30, 2007; Laws 2008, c. 179, § 5, eff. May 5, 2008; Laws 2013, c. 81, § 9, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-404 (2013). Forcible sexual abuse

(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.

(2) Forcible sexual abuse is:

(a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or

(b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.

(3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1973, c. 196, § 76-5-404; Laws 1977, c. 86, § 3; Laws 1979, c. 73, § 4; Laws 1983, c. 88, § 23; Laws 1984, c. 18, § 9; Laws 2007, c. 339, § 18, eff. April 30, 2007; Laws 2010, c. 218, § 37, eff. May 11, 2010.

UTAH CODE ANN. § 76-5-404.1 (2013). Sexual abuse of a child -- Aggravated sexual abuse of a child

(1) As used in this section, “child” means a person under the age of 14.

(2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) Sexual abuse of a child is punishable as a second degree felony.

(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any felony, or of a misdemeanor involving a sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by a person who occupied a position of special trust in relation to the victim; “position of special trust” means that position occupied by a person in a position of authority, who, by reason of that position is able to exercise undue influence over the victim, and includes, but is not limited to, a youth leader or recreational leader who is an adult, adult athletic manager, adult coach, teacher, counselor, religious leader, doctor, employer, foster parent, babysitter, adult scout leader,

natural parent, stepparent, adoptive parent, legal guardian, grandparent, aunt, uncle, or adult cohabitant of a parent;

(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;

(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.

(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (5)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c).

(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

CREDIT(S)

Laws 1983, c. 88, § 24; Laws 1984, c. 18, § 10; Laws 1989, c. 170, § 4; Laws 1995, c. 337, § 8, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 9, eff. April 29, 1996; Laws 1996, c. 40, § 10, eff. April 29, 1996; Laws 1998, c. 131, § 1, eff. May 4, 1998; Laws 2003, c. 149, § 3, eff. May 5, 2003; Laws 2007, c. 339, § 19, eff. April 30, 2007; Laws 2013, c. 81, § 10, eff. May 14, 2013; Laws 2013, c. 196, § 8, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-406 (2013). Sexual offenses against the victim without consent of victim -- Circumstances

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

(1) the victim expresses lack of consent through words or conduct;

(2) the actor overcomes the victim through the actual application of physical force or violence;

(3) the actor is able to overcome the victim through concealment or by the element of surprise;

(4)(a)(i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or

(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;

(b) as used in this Subsection (4), “to retaliate” includes threats of physical force, kidnapping, or extortion;

(5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;

(6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;

(7) the actor knows that the victim submits or participates because the victim erroneously believes that the actor is the victim's spouse;

(8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;

(9) the victim is younger than 14 years of age;

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Subsection 76-5-404.1(4)(h);

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) “health professional” means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) “religious counselor” means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

CREDIT(S)

Laws 1973, c. 196, § 76-5-406; Laws 1983, c. 88, § 26; Laws 1988, c. 156, § 2; Laws 1989, c. 259, § 1; Laws 1992, c. 64, § 1; Laws 1996, c. 137, § 4, eff. April 29, 1996; Laws 1998, c. 252, § 1, eff. May 4, 1998; Laws 2000, c. 129, § 1, eff. May 1, 2000; Laws 2003, c. 149, § 4, eff. May 5, 2003; Laws 2013, c. 196, § 9, eff. May 14, 2013.

UTAH CODE ANN. § 76-5-406.3 (2013). Applicability of sentencing provisions

A person convicted of a violation of Section 76-5-301.1, child kidnaping; Section 76-5-302, aggravated kidnaping; Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; Section 76-5-404.1, aggravated sexual abuse of a child; or Section 76-5-405, aggravated sexual assault shall be sentenced as follows:

(1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in accordance with the statutory provisions in effect prior to that date.

(2) If the person commits the crime and is sentenced on or after April 29, 1996, he shall be punished in accordance with the statutory provisions in effect after April 29, 1996.

(3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after April 29, 1996, he shall be given the option prior to sentencing to proceed either under the law which was in effect at the time the offense was committed or the law which was

in effect at the time of sentencing. If the person refuses to select, the court shall sentence the person in accordance with the law in effect at the time of sentencing. The provisions of Subsections 77-27-9(2)(a) and (b) apply to the sentence of any person who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

CREDIT(S)

Laws 1996, c. 40, § 12, eff. April 29, 1996.

UTAH CODE ANN. § 76-5-406.5 (2013). Circumstances required for probation or suspension of sentence for certain sex offenses against a child

(1) In a case involving a conviction for a violation of [Section 76-5-402.1](#), rape of a child; [Section 76-5-402.3](#), object rape of a child; [Section 76-5-403.1](#), sodomy on a child; or any attempt to commit a felony under those sections or a conviction for a violation of [Subsections 76-5-404.1\(4\)](#) and (5), aggravated sexual abuse of a child, the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:

(a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;

(b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;

(c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;

(d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;

(e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;

(f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;

(g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child victim before any other person;

(h) the defendant admits the offense of which he has been convicted and has been accepted for mental health treatment in a residential sexual abuse treatment center that has been approved by the Department of Corrections under Subsection (3);

(i) rehabilitation of the defendant through treatment is probable, based upon evidence provided by a treatment professional who has been approved by the Department of Corrections under Subsection (3) and who has accepted the defendant for treatment;

(j) prior to being sentenced, the defendant has undergone a complete psychological evaluation conducted by a professional approved by the Department of Corrections and:

(i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an immediate and present danger to the community if released on probation and placed in a residential sexual abuse treatment center; and

(ii) the court accepts the opinion of the professional;

(k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian of the child victim, the defendant shall, in addition to establishing all other conditions of this section, establish it is in the child victim's best interest that the defendant not be imprisoned, by presenting evidence provided by a treatment professional who:

(i) is treating the child victim and understands he will be treating the family as a whole; or

(ii) has assessed the child victim for purposes of treatment as ordered by the court based on a showing of good cause; and

(l) if probation is imposed, the defendant, as a condition of probation, may not reside in a home where children younger than 18 years of age reside for at least one year beginning with the commencement of treatment, and may not again take up residency in a home where children younger than 18 years of age reside during the period of probation until allowed to do so by order of the court.

(2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of ten years.

(3) (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria

shall include the screening criteria employed by the department for sexual offenders.

(b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.

(4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by [Section 76-3-406](#) regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:

(a) the nature, frequency, and duration of the conduct;

(b) the effects of the conduct on any child victim involved;

(c) the best interest of the public and any child victim; and

(d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.

(5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.

(6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.

(7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.

(8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

CREDIT(S)

Laws 1983, c. 88, § 27; Laws 1984, c. 18, § 11; Laws 1986, c. 41, § 2; Laws 1991, c. 62, § 1; Laws 1994, c. 64, § 2; Laws 1995, c. 337, § 10, eff. May 1, 1995; Laws 1995, 1st Sp.Sess., c. 10, § 11, eff. April 29, 1996; Laws 1996, c. 40, § 13, eff. April 29, 1996; Laws 1998, c. 31, § 1, eff. May 4, 1998; Laws 2003, c. 149, § 5, eff. May 5, 2003; Laws 2004, c. 213, § 1, eff. May 3, 2004.

**UTAH CODE ANN. § 76-5-412 (2013). Custodial sexual relations --
Custodial sexual misconduct -- Definitions -- Penalties -- Defenses**

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in [Section 53-13-104](#);

(ii) a law enforcement officer, as defined in [Section 53-13-103](#); or

(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in [Section 76-5-101](#), and includes a prisoner who is in the custody of the Department of Corrections created under [Section 64-13-2](#), but who is being housed at the Utah State Hospital established under [Section 62A-15-601](#) or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

- (c) otherwise taking indecent liberties with a person in custody; or
 - (d) causing a person in custody to take indecent liberties with the actor or another person.
- (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:
- (a) [Section 76-5-401](#), unlawful sexual activity with a minor;
 - (b) [Section 76-5-402](#), rape;
 - (c) [Section 76-5-402.1](#), rape of a child;
 - (d) [Section 76-5-402.2](#), object rape;
 - (e) [Section 76-5-402.3](#), object rape of a child;
 - (f) [Section 76-5-403](#), forcible sodomy;
 - (g) [Section 76-5-403.1](#), sodomy on a child;
 - (h) [Section 76-5-404](#), forcible sexual abuse;
 - (i) [Section 76-5-404.1](#), sexual abuse of a child or aggravated sexual abuse of a child; or
 - (j) [Section 76-5-405](#), aggravated sexual assault.
- (7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:
- (i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the person in custody.
- (b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).
- (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in [Subsection 76-2-302\(1\)](#).

CREDIT(S)

Laws 2001, c. 35, § 1, eff. July 1, 2001; Laws 2002, 5th Sp.Sess., c. 8, § 128, eff. Sept. 8, 2002.

UTAH CODE ANN. § 76-5-413 (2013). Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses

(1) As used in this section:

(a) "Actor" means:

(i) a person employed by the Department of Human Services, as created in [Section 62A-1-102](#), or an employee of a private provider or contractor; or

(ii) a person employed by the juvenile court of the state, or an employee of a private provider or contractor.

(b) "Department" means the Department of Human Services created in [Section 62A-1-102](#).

(c) "Juvenile court" means the juvenile court of the state created in [Section 78A-6-102](#).

(d) "Private provider or contractor" means any person or entity that contracts with the:

(i) department to provide services or functions that are part of the operation of the department; or

(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(e) "Youth receiving state services" means a person:

(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

(A) in the custody of the department under [Subsection 78A-6-117\(2\)\(c\)\(ii\)](#); or

(B) receiving services from any division of the department if any portion of the costs of these services is covered by public monies as defined in [Section 76-8-401](#); or

(ii) younger than 21 years of age who is:

(A) in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or

(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) [Section 76-5-401](#), unlawful sexual activity with a minor;

(b) [Section 76-5-402](#), rape;

(c) [Section 76-5-402.1](#), rape of a child;

(d) [Section 76-5-402.2](#), object rape;

(e) [Section 76-5-402.3](#), object rape of a child;

(f) [Section 76-5-403](#), forcible sodomy;

(g) [Section 76-5-403.1](#), sodomy on a child;

(h) [Section 76-5-404](#), forcible sexual abuse;

(i) [Section 76-5-404.1](#), sexual abuse of a child or aggravated sexual abuse of a child; or

(j) [Section 76-5-405](#), aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in [Subsection 76-2-302\(1\)](#).

CREDIT(S)

Laws 2002, c. 280, § 1, eff. July 1, 2002; Laws 2003, c. 171, § 35, eff. July 1, 2004; Laws 2008, c. 3, § 236, eff. Feb. 7, 2008.

UTAH CODE ANN. § 76-9-702 (2013). Lewdness

(1) A person is guilty of lewdness if the person under circumstances not amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2)(a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7;

(ii) the person has been previously convicted two or more times of violating Subsection (1); or

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(c)(i) For purposes of this Subsection (2) and Subsection 77-41-102(16), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

CREDIT(S)

Laws 1973, c. 196, § 76-9-702; Laws 1983, c. 88, § 32; Laws 1989, c. 52, § 1; Laws 1994, c. 131, § 1; Laws 1995, c. 131, § 4, eff. May 1, 1995; Laws 1996, c. 137, § 6, eff. April 29, 1996; Laws 1999, c. 302, § 6, eff. May 3, 1999; Laws 2000, c. 128, § 4, eff. May 1, 2000; Laws 2003, c. 325, § 2, eff. May 5, 2003; Laws 2007, c. 350, § 1, eff. April 30, 2007; Laws 2009, c. 354, § 1, eff. May 12, 2009; Laws 2009, c. 366, § 1, eff. May 12, 2009; Laws 2012, c. 303, § 3, eff. May 8, 2012; Laws 2013, c. 278, § 67, eff. May 14, 2013.

UTAH CODE ANN. § 76-9-702.1 (2013). Sexual battery

(1) A person is guilty of sexual battery if the person, under circumstances not amounting to an offense under Subsection (2), intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female person, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.

(2) Offenses referred to in Subsection (1) are:

(a) rape, Section 76-5-402;

(b) rape of a child, Section 76-5-402.1;

(c) object rape, Section 76-5-402.2;

(d) object rape of a child, Section 76-5-402.3;

(e) forcible sodomy, Subsection 76-5-403(2);

(f) sodomy on a child, Section 76-5-403.1;

(g) forcible sexual abuse, Section 76-5-404;

(h) sexual abuse of a child, Subsection 76-5-404.1(2);

(i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

(j) aggravated sexual assault, Section 76-5-405; and

(k) an attempt to commit any offense under this Subsection (2).

(3) Sexual battery is a class A misdemeanor.

(4) For purposes of Subsection 77-41-102(16) only, a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge under this section has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

CREDIT(S)

Laws 2012, c. 303, § 4, eff. May 8, 2012; Laws 2013, c. 278, § 68, eff. May 14, 2013.

UTAH CODE ANN. § 76-9-702.5 (2013). Lewdness involving a child

(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of, a child who is under 14 years of age:

(a) performs an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area:

(i) in a public place; or

(ii) in a private place:

(A) under circumstances the person should know will likely cause affront or alarm; or

(B) with the intent to arouse or gratify the sexual desire of the actor or the child;

(c) masturbates;

(d) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or

(e) performs any other act of lewdness.

(2)(a) Lewdness involving a child is a class A misdemeanor, except under Subsection (2)(b).

(b) Lewdness involving a child is a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7; or

(ii) the person has previously been convicted of a violation of this section.

CREDIT(S)

Laws 1983, c. 88, § 33; Laws 1994, c. 131, § 2; Laws 1996, c. 107, § 1, eff. April 29, 1996; Laws 1999, c. 302, § 7, eff. May 3, 1999; Laws 2003, c. 325, § 3, eff. May 5, 2003; Laws 2007, c. 350, § 2, eff. April 30, 2007; Laws 2009, c. 354, § 2, eff. May 12, 2009; Laws 2009, c. 366, § 2, eff. May 12, 2009; Laws 2011, c. 320, § 20, eff. May 10, 2011; Laws 2013, c. 278, § 69, eff. May 14, 2013.

UTAH CODE ANN. § 76-9-702.7 (2013). Voyeurism offenses -- Penalties

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital

format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

CREDIT(S)

Laws 2003, c. 325, § 4, eff. May 5, 2003; Laws 2004, c. 52, § 1, eff. March 15, 2004.

VERMONT

VT. STAT. ANN. tit. 13, § 2602 (2013). Lewd or lascivious conduct with child

(a) (1) No person shall willfully and lewdly commit any lewd or lascivious act upon or with the body, or any part or member thereof, of a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of such person or of such child.

(2) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

(b) A person who violates subsection (a) of this section shall be:

(1) For a first offense, imprisoned not less than two years and not more than 15 years, and, in addition, may be fined not more than \$ 5,000.00, or both.

(2) For a second offense, imprisoned not less than five years and a maximum term of life, and, in addition, may be fined not more than \$ 25,000.00, or both.

(3) For a third or subsequent offense, imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$ 25,000.00, or both.

(c) (1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subdivision (b)(2) of this section shall include at least a five-year term of imprisonment and a sentence ordered pursuant to subdivision (b)(3) of this section shall include at least a ten-year term of imprisonment. The five-year and ten-year terms of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

(2) The court may depart downwardly from the five-year and ten-year terms of imprisonment required by subdivisions (b)(2) and (3) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety.

(d) A person convicted of violating subdivision (b)(2) or (3) of this section shall be sentenced under section 3271 of this title.

(e) Any prior conviction for sexual assault or aggravated sexual assault shall be considered a prior offense for purposes of sentencing enhancement. This section shall not apply to a person who was convicted of sexual assault committed when the person was younger than 19 years of age and which involved consensual sex with a child at least 15 years of age.

CREDIT(S)

1971, Adj. Sess., No. 199, § 15; 1995, No. 50, § 4; 2005, No. 79, § 9; 2005, Adj. Sess., No. 192, § 8; 2007, Adj. Sess., No. 174, § 9, eff. July 1, 2008.

VT. STAT. ANN. tit. 13, § 2822 (2013). Use of a child in a sexual performance

(a) No person shall, with knowledge of the character and content, promote a sexual performance by a child or a performance which contains a lewd exhibition of the genitals, anus or breasts of a child, or hire, employ, procure, use, cause or induce a child to engage in such a performance.

(b) In any prosecution arising under this section, the defendant may raise as an affirmative defense that before the child participated in the sexual performance, the defendant, in good faith, had a reasonable and factual basis to conclude that the child had in fact attained the age of 16; and the defendant did not rely solely upon the oral allegations or representations of the child as to his or her age.

CREDIT(S)

1983, No. 92; 1999, Adj. Sess., No. 122, § 2.

VT. STAT. ANN. tit. 13, § 2828 (2013). Luring a child

(a) No person shall knowingly solicit, lure, or entice, or to attempt to solicit, lure, or entice, a child under the age of 16 or another person believed by the person to be a child under the age of 16, to engage in a sexual act as defined in section 3251 of this title or engage in lewd and lascivious conduct as defined in section 2602 of this title.

(b) This section applies to solicitation, luring, or enticement by any means, including in person, through written or telephonic correspondence or electronic communication.

(c) This section shall not apply if the person is less than 19 years old, the child is at least 15 years old, and the conduct is consensual.

CREDIT(S)

1999, Adj. Sess., No. 122, § 6; 2005, Adj. Sess., No. 192, § 9.

VT. STAT. ANN. tit. 13, § 3252 (2013). Sexual assault

(a) No person shall engage in a sexual act with another person and compel the other person to participate in a sexual act:

(1) without the consent of the other person; or

(2) by threatening or coercing the other person; or

(3) by placing the other person in fear that any person will suffer imminent bodily injury.

(b) No person shall engage in a sexual act with another person and impair substantially the ability of the other person to appraise or control conduct by administering or employing drugs or intoxicants without the knowledge or against the will of the other person.

(c) No person shall engage in a sexual act with a child who is under the age of 16, except:

(1) where the persons are married to each other and the sexual act is consensual; or

(2) where the person is less than 19 years old, the child is at least 15 years old, and the sexual act is consensual.

(d) No person shall engage in a sexual act with a child who is under the age of 18 and is

entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild.

(e) No person shall engage in a sexual act with a child under the age of 16 if:

(1) the victim is entrusted to the actor's care by authority of law or is the actor's child, grandchild, foster child, adopted child, or stepchild; or

(2) the actor is at least 18 years of age, resides in the victim's household, and serves in a parental role with respect to the victim.

(f) (1) A person who violates subsection (a), (b), (d), or (e) of this section shall be imprisoned not less than three years and for a maximum term of life, and, in addition, may be fined not more than \$ 25,000.00.

(2) A person who violates subsection (c) of this section shall be imprisoned for not more than 20 years, and, in addition, may be fined not more than \$ 10,000.00.

(g) A person convicted of violating subsection (a), (b), (d), or (e) of this section shall be sentenced under section 3271 of this title.

CREDIT(S)

1977, No. 51, § 1; 1985, No. 83, § 2; 1989, Adj. Sess., No. 293, § 5; 2005, Adj. Sess., No. 192, § 10.

VT. STAT. ANN. tit. 13, § 3253 (2013). Aggravated sexual assault

(a) A person commits the crime of aggravated sexual assault if the person commits sexual assault under any one of the following circumstances:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title or aggravated sexual assault if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is under the age of 13 and the actor is at least 18 years of age.

(9) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault shall be imprisoned not less than ten years and a maximum term of life, and, in addition, may be fined not more than \$ 50,000.00.

(c) (1) Except as provided in subdivision (2) of this subsection, a sentence ordered pursuant to subsection (b) of this section shall include at least a ten-year term of imprisonment. The ten-year term of imprisonment required by this subdivision shall be served and may not be suspended, deferred, or served as a supervised sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the five-year or ten-year term of imprisonment.

(2) The court may depart downwardly from the ten-year term of imprisonment required by subsection (b) of this section and impose a lesser term of incarceration if the court makes written findings on the record that the downward departure will serve the interests of justice and public safety, provided that in no event may the court impose a term of incarceration of less than five years.

(d) A person convicted of violating this section shall be sentenced under section 3271 of this title.

CREDIT(S)

1977, No. 51, § 1; 1989, Adj. Sess., No. 293, § 6; 2005, No. 79, § 10; 2005, Adj. Sess., No. 192, § 10.

VT. STAT. ANN. tit. 13, § 3253a (2013). Aggravated sexual assault of a child

(a) A person commits the crime of aggravated sexual assault of a child if the actor is at least 18 years of age and commits sexual assault against a child under the age of 16 in

violation of section 3252 of this title and at least one of the following circumstances exists:

(1) At the time of the sexual assault, the actor causes serious bodily injury to the victim or to another.

(2) The actor is joined or assisted by one or more persons in physically restraining, assaulting, or sexually assaulting the victim.

(3) The actor commits the sexual act under circumstances which constitute the crime of kidnapping.

(4) The actor has previously been convicted in this state of sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section, or has been convicted in any jurisdiction in the United States or territories of an offense which would constitute sexual assault under subsection 3252(a) or (b) of this title, aggravated sexual assault under section 3253 of this title, or aggravated sexual assault of a child under this section if committed in this state.

(5) At the time of the sexual assault, the actor is armed with a deadly weapon and uses or threatens to use the deadly weapon on the victim or on another.

(6) At the time of the sexual assault, the actor threatens to cause imminent serious bodily injury to the victim or to another, and the victim reasonably believes that the actor has the present ability to carry out the threat.

(7) At the time of the sexual assault, the actor applies deadly force to the victim.

(8) The victim is subjected by the actor to repeated nonconsensual sexual acts as part of the same occurrence or the victim is subjected to repeated nonconsensual sexual acts as part of the actor's common scheme and plan.

(b) A person who commits the crime of aggravated sexual assault of a child shall be imprisoned for not less than 25 years with a maximum term of life, and, in addition, may be fined not more than \$50,000.00. The 25-year term of imprisonment required by this subsection shall be served and may not be suspended, deferred, or served as a supervised

sentence. The defendant shall not be eligible for probation, parole, furlough, or any other type of early release until the expiration of the 25-year term of imprisonment.

CREDIT(S)

2009, No. 1, § 30, eff. March 4, 2009.

VT. STAT. ANN. tit. 13, § 3258 (2013). Sexual exploitation of a minor

(a) No person shall engage in a sexual act with a minor if:

(1) the actor is at least 48 months older than the minor; and

(2) the actor is in a position of power, authority, or supervision over the minor by virtue of the actor's undertaking the responsibility, professionally or voluntarily, to provide for the health or welfare of minors, or guidance, leadership, instruction, or organized recreational activities for minors.

(b) A person who violates subsection (a) of this section shall be imprisoned for not more than one year or fined not more than \$2,000.00, or both.

(c) A person who violates subsection (a) of this section and who abuses his or her position of power, authority, or supervision over the minor in order to engage in a sexual act shall be imprisoned for not more than five years or fined not more than \$10,000.00, or both.

CREDIT(S)

2009, Sp. Sess., No. 1, § 13, eff. March 4, 2009.

VT. STAT. ANN. tit. 13, § 3271 (2013). Indeterminate life sentence

(a) A person who commits one of the following offenses shall be sentenced under this section:

(1) Lewd and lascivious conduct with a child, second or subsequent offense, in violation of subdivision 2602(b)(2) of this title.

(2) Sexual assault in violation of subsection 3252(a), (b), (d), or (e) of this title.

(3) Aggravated sexual assault in violation of section 3253 of this title.

(4) Violation of sex offender registry requirements by noncompliant high-risk sex offenders, in violation of subsection 5411d(g) of this title.

(b) If a person is sentenced under this section, the person's maximum sentence shall be imprisonment for life.

(c) If a person sentenced under this section receives a sentence that is wholly or partially suspended, sex offender conditions and treatment shall be a condition of the person's probation agreement.

(d) If a person sentenced under this section receives a sentence for an unsuspended term of incarceration, the person shall not be released until the person successfully completes all sex offender treatment and programming required by the department of corrections, unless the department determines that the person poses a sufficiently low risk of reoffense to protect the community or that a program can be implemented which adequately supervises the person and addresses any risk the person may pose to the community.

CREDIT(S)

2005, Adj. Sess., No. 192, § 10; 2007, No. 77, § 11, eff. June 7, 2007.

VIRGINIA

VA. CODE ANN. § 18.2-61 (2013). Rape

A. If any person has sexual intercourse with a complaining witness, whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in sexual intercourse with any other person and such act is accomplished (i) against the complaining witness's will, by force, threat or intimidation of or against the complaining witness or another person; or (ii) through the use of the complaining witness's mental incapacity or physical helplessness; or (iii) with a child under age 13 as the victim, he or she shall be guilty of rape.

B. A violation of this section shall be punishable, in the discretion of the court or jury, by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of clause (iii) of subsection A where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of §

18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of clause (iii) of subsection A where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of clause (iii) of subsection A, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

There shall be a rebuttable presumption that a juvenile over the age of 10 but less than 12, does not possess the physical capacity to commit a violation of this section. In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1975, c. 606; Acts 1981, c. 397; Acts 1982, c. 506; Acts 1986, c. 516; Acts 1994, c. 339; Acts 1994, c. 772; Acts 1994, c. 794; Acts 1997, c. 330; Acts 1999, c. 367; Acts 2002, c. 810; Acts 2002, c. 818; Acts 2005, c. 631; Acts 2006, c. 853; Acts 2006, c. 914. Amended by Acts 2012, c. 575; Acts 2012, c. 605; Acts 2013, c. 761; Acts 2013, c. 774.

VA. CODE ANN. § 18.2-63 (2013). Carnal knowledge of child between thirteen and fifteen years of age

A. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age, such person shall be guilty of a Class 4 felony.

B. If any person carnally knows, without the use of force, a child thirteen years of age or older but under fifteen years of age who consents to sexual intercourse and the accused is a minor and such consenting child is three years or more the accused's junior, the accused shall be guilty of a Class 6 felony. If such consenting child is less than three years the accused's junior, the accused shall be guilty of a Class 4 misdemeanor.

In calculating whether such child is three years or more a junior of the accused minor, the actual dates of birth of the child and the accused, respectively, shall be used.

C. For the purposes of this section, (i) a child under the age of thirteen years shall not be considered a consenting child and (ii) "carnal knowledge" includes the acts of sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, and animate and inanimate object sexual penetration.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1975, c. 606; Acts 1981, c. 397; Acts 1993, c. 852; Acts 2007, c. 718.

VA. CODE ANN. § 18.2-64.1 (2013). Carnal knowledge of certain minors

If any person providing services, paid or unpaid, to juveniles under the purview of the Juvenile and Domestic Relations District Court Law, or to juveniles who have been committed to the custody of the State Department of Juvenile Justice, carnally knows, without the use of force, any minor fifteen years of age or older, when such minor is confined or detained in jail, is detained in any facility mentioned in [§ 16.1-249](#), or has been committed to the custody of the Department of Juvenile Justice pursuant to [§ 16.1-278.8](#), knowing or having good reason to believe that (i) such minor is in such confinement or detention status, (ii) such minor is a ward of the Department of Juvenile Justice, or (iii) such minor is on probation, furlough, or leave from or has escaped or absconded from such confinement, detention, or custody, he shall be guilty of a Class 6 felony.

For the purposes of this section, "carnal knowledge" includes the acts of sexual

intercourse, cunnilingus, fellatio, anallingus, anal intercourse, and animate and inanimate object sexual penetration.

CREDIT(S)

Acts 1977, c. 304; Acts 1981, c. 397; Acts 1989, c. 733; Acts 1993, c. 852.

VA. CODE ANN. § 18.2-64.2 (2013). Carnal knowledge of an inmate, parolee, probationer, detainee or pretrial or posttrial offender; penalty

An accused is guilty of carnal knowledge of an inmate, parolee, probationer, detainee, or pretrial defendant or posttrial offender if he is an employee or contractual employee of, or a volunteer with, a state or local correctional facility or regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency or a pretrial services agency; is in a position of authority over the inmate, probationer, parolee, detainee, or a pretrial defendant or posttrial offender; knows that the inmate, probationer, parolee, detainee, or pretrial defendant or posttrial offender is under the jurisdiction of the state or local correctional facility, a regional jail, the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, or a pretrial services agency; and carnally knows, without the use of force, threat or intimidation (i) an inmate who has been committed to jail or convicted and sentenced to confinement in a state or local correctional facility or regional jail or (ii) a probationer, parolee, detainee, or a pretrial defendant or posttrial offender under the jurisdiction of the Department of Corrections, the Department of Juvenile Justice, a secure facility or detention home, as defined in § 16.1-228, a state or local court services unit, as defined in § 16.1-235, a local community-based probation services agency, a pretrial services agency, a local or regional jail for the purposes of imprisonment, a work program or any other parole/probationary or pretrial services program or agency. Such offense is a Class 6 felony.

An accused is guilty of carnal knowledge of a pretrial defendant or posttrial offender if he (a) is an owner or employee of the bail bond company that posted the pretrial defendant's or posttrial offender's bond, (b) has the authority to revoke the pretrial defendant's or posttrial offender's bond, and (c) carnally knows, without use of force, threat, or intimidation, a pretrial defendant or posttrial offender. Such offense is a Class 1 misdemeanor.

For the purposes of this section, “carnal knowledge” includes the acts of sexual intercourse, cunnilingus, fellatio, anallingus, anal intercourse and animate or inanimate object sexual penetration.

CREDIT(S)

Acts 1999, c. 294; Acts 2000, c. 1040; Acts 2001, c. 385; Acts 2007, c. 133. Amended by Acts 2013, c. 602.

VA. CODE ANN. § 18.2-67.1 (2013). Forcible sodomy

A. An accused shall be guilty of forcible sodomy if he or she engages in cunnilingus, fellatio, anilingus, or anal intercourse with a complaining witness whether or not his or her spouse, or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person, and

1. The complaining witness is less than 13 years of age; or
2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Forcible sodomy is a felony punishable by confinement in a state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in

addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

Acts 1981, c. 397; Acts 1986, c. 516; Acts 1994, c. 772; Acts 1994, c. 794; Acts 1999, c. 367; Acts 2005, c. 631; Acts 2006, c. 853; Acts 2006, c. 914. Amended by Acts 2012, c. 575; Acts 2012, c. 605; Acts 2013, c. 761; Acts 2013, c. 774.

VA. CODE ANN. § 18.2-67.2 (2013). Object sexual penetration; penalty

A. An accused shall be guilty of inanimate or animate object sexual penetration if he or she penetrates the labia majora or anus of a complaining witness, whether or not his or her spouse, other than for a bona fide medical purpose, or causes such complaining witness to so penetrate his or her own body with an object or causes a complaining witness, whether or not his or her spouse, to engage in such acts with any other person or to penetrate, or to be penetrated by, an animal, and

1. The complaining witness is less than 13 years of age; or

2. The act is accomplished against the will of the complaining witness, by force, threat or intimidation of or against the complaining witness or another person, or through the use of the complaining witness's mental incapacity or physical helplessness.

B. Inanimate or animate object sexual penetration is a felony punishable by confinement in the state correctional facility for life or for any term not less than five years; and in addition:

1. For a violation of subdivision A 1, where the offender is more than three years older than the victim, if done in the commission of, or as part of the same course of conduct as, or as part of a common scheme or plan as a violation of (i) subsection A of § 18.2-47 or § 18.2-48, (ii) § 18.2-89, 18.2-90, or 18.2-91, or (iii) § 18.2-51.2, the punishment shall include a mandatory minimum term of confinement of 25 years; or

2. For a violation of subdivision A 1 where it is alleged in the indictment that the offender was 18 years of age or older at the time of the offense, the punishment shall include a mandatory minimum term of confinement for life.

The mandatory minimum terms of confinement prescribed for violations of this section shall be served consecutively with any other sentence. If the term of confinement imposed for any violation of subdivision A 1, where the offender is more than three years older than the victim, is for a term less than life imprisonment, the judge shall impose, in addition to any active sentence, a suspended sentence of no less than 40 years. This suspended sentence shall be suspended for the remainder of the defendant's life, subject to revocation by the court.

In any case deemed appropriate by the court, all or part of any sentence imposed for a violation under this section against a spouse may be suspended upon the defendant's completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1 if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and will be in the best interest of the complaining witness.

C. Upon a finding of guilt under this section, when a spouse is the complaining witness in any case tried by the court without a jury, the court, without entering a judgment of guilt, upon motion of the defendant who has not previously had a proceeding against him for violation of this section dismissed pursuant to this subsection and with the consent of the complaining witness and the attorney for the Commonwealth, may defer further

proceedings and place the defendant on probation pending completion of counseling or therapy, if not already provided, in the manner prescribed under § 19.2-218.1. If the defendant fails to so complete such counseling or therapy, the court may make final disposition of the case and proceed as otherwise provided. If such counseling is completed as prescribed under § 19.2-218.1, the court may discharge the defendant and dismiss the proceedings against him if, after consideration of the views of the complaining witness and such other evidence as may be relevant, the court finds such action will promote maintenance of the family unit and be in the best interest of the complaining witness.

CREDIT(S)

Acts 1981, c. 397; Acts 1982, c. 508; Acts 1986, c. 516; Acts 1988, c. 437; Acts 1993, c. 549; Acts 1994, c. 772; Acts 1994, c. 794; Acts 1999, c. 367; Acts 2005, c. 631; Acts 2006, c. 853; Acts 2006, c. 914. Amended by Acts 2012, c. 575; Acts 2012, c. 605; Acts 2013, c. 761; Acts 2013, c. 774.

VA. CODE ANN. § 18.2-67.3 (2013). Aggravated sexual battery; penalty

A. An accused shall be guilty of aggravated sexual battery if he or she sexually abuses the complaining witness, and

1. The complaining witness is less than 13 years of age, or
2. The act is accomplished through the use of the complaining witness's mental incapacity or physical helplessness, or
3. The offense is committed by a parent, step-parent, grandparent, or step-grandparent and the complaining witness is at least 13 but less than 18 years of age, or
4. The act is accomplished against the will of the complaining witness by force, threat or intimidation, and
 - a. The complaining witness is at least 13 but less than 15 years of age, or
 - b. The accused causes serious bodily or mental injury to the complaining witness, or
 - c. The accused uses or threatens to use a dangerous weapon.

B. Aggravated sexual battery is a felony punishable by confinement in a state correctional facility for a term of not less than one nor more than 20 years and by a fine of not more than \$ 100,000.

CREDIT(S)

Acts 1993, c. 590; Acts 2004, c. 843; Acts 2005, c. 185; Acts 2005, c. 406.

VA. CODE ANN. § 18.2-67.4:2 (2013). Sexual abuse of a child under 15 years of age; penalty

Any adult who, with lascivious intent, commits an act of sexual abuse, as defined in [§ 18.2-67.10](#), with any child 13 years of age or older but under 15 years of age is guilty of a Class 1 misdemeanor.

CREDIT(S)

Acts 2007, c. 463.

VA. CODE ANN. § 18.2-67.5 (2013). Attempted rape, forcible sodomy, object sexual penetration, aggravated sexual battery, and sexual battery

A. An attempt to commit rape, forcible sodomy, or inanimate or animate object sexual penetration shall be punishable as a Class 4 felony.

B. An attempt to commit aggravated sexual battery shall be a felony punishable as a Class 6 felony.

C. An attempt to commit sexual battery is a Class 1 misdemeanor.

CREDIT(S)

Acts 1981, c. 397; Acts 1993, c. 549.

VA. CODE ANN. § 18.2-67.5:1 (2013). Punishment upon conviction of third misdemeanor offense

When a person is convicted of sexual battery in violation of [§ 18.2-67.4](#), attempted sexual battery in violation of subsection C of [§ 18.2-67.5](#), a violation of [§ 18.2-371](#) involving consensual intercourse with a child, indecent exposure of himself or procuring another to expose himself in violation of [§ 18.2-387](#), or a violation of [§ 18.2-130](#), and it is alleged in the warrant, information or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the ten-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, he shall be guilty of a Class 6 felony.

CREDIT(S)

Acts 1994, c. 468; Acts 2006, c. 875.

VA. CODE ANN. § 18.2-67.5:2 (2013). Punishment upon conviction of certain subsequent felony sexual assault

A. Any person convicted of (i) more than one offense specified in subsection B or (ii) one of the offenses specified in subsection B of this section and one of the offenses specified in subsection B of [§ 18.2-67.5:3](#) when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in [§ 53.1-151](#) between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to the maximum term authorized by statute for such offense, and shall not have all or any part of such sentence suspended, provided it is admitted, or found by the jury or judge before whom the person is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to felony convictions for:

1. Carnal knowledge of a child between thirteen and fifteen years of age in violation of [§ 18.2-63](#) when the offense is committed by a person over the age of eighteen;
2. Carnal knowledge of certain minors in violation of [§ 18.2-64.1](#);
3. Aggravated sexual battery in violation of [§ 18.2-67.3](#);
4. Crimes against nature in violation of subsection B of [§ 18.2-361](#);
5. Adultery or fornication with one's own child or grandchild in violation of [§ 18.2-366](#);
6. Taking indecent liberties with a child in violation of [§ 18.2-370](#) or [§ 18.2-370.1](#); or
7. Conspiracy to commit any offense listed in subdivisions 1 through 6 pursuant to [§ 18.2-22](#).

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in writing, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

CREDIT(S)

Acts 1995, c. 834; Acts 2000, c. 333.

VA. CODE ANN. § 18.2-67.5:3 (2013). Punishment upon conviction of certain subsequent violent felony sexual assault

A. Any person convicted of more than one offense specified in subsection B, when such offenses were not part of a common act, transaction or scheme, and who has been at liberty as defined in [§ 53.1-151](#) between each conviction shall, upon conviction of the second or subsequent such offense, be sentenced to life imprisonment and shall not have all or any portion of the sentence suspended, provided it is admitted, or found by the jury or judge before whom he is tried, that he has been previously convicted of at least one of the specified offenses.

B. The provisions of subsection A shall apply to convictions for:

1. Rape in violation of [§ 18.2-61](#);
2. Forcible sodomy in violation of [§ 18.2-67.1](#);
3. Object sexual penetration in violation of [§ 18.2-67.2](#);
4. Abduction with intent to defile in violation of [§ 18.2-48](#); or
5. Conspiracy to commit any offense listed in subdivisions 1 through 4 pursuant to [§ 18.2-22](#).

C. For purposes of this section, prior convictions shall include (i) adult convictions for felonies under the laws of any state or the United States that are substantially similar to those listed in subsection B and (ii) findings of not innocent, adjudications or convictions in the case of a juvenile if the juvenile offense is substantially similar to those listed in subsection B, the offense would be a felony if committed by an adult in the Commonwealth and the offense was committed less than twenty years before the second offense.

The Commonwealth shall notify the defendant in the indictment, information, or warrant, at least thirty days prior to trial, of its intention to seek punishment pursuant to this section.

CREDIT(S)

Acts 1995, c. 834; Acts 2007, c. 506.

VA. CODE ANN. § 18.2-361 (2013). Crimes against nature; penalty

A. If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a Class 6 felony, except as provided in subsection B.

B. Any person who performs or causes to be performed cunnilingus, fellatio, anilingus or anal intercourse upon or by his daughter or granddaughter, son or grandson, brother or sister, or father or mother is guilty of a Class 5 felony. However, if a parent or grandparent commits any such act with his child or grandchild and such child or grandchild is at least 13 but less than 18 years of age at the time of the offense, such parent or grandparent is guilty of a Class 3 felony.

C. For the purposes of this section, parent includes step-parent, grandparent includes step-grandparent, child includes step-child and grandchild includes step-grandchild.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1977, c. 285; Acts 1981, c. 397; Acts 1993, c. 450; Acts 2005, c. 185.

VALIDITY

<For validity of this section, see MacDonald v. Moose, 2013 WL 935778 (C.A.4 (Va.)).>

VA. CODE ANN. § 18.2-370 (2013). Taking indecent liberties with children; penalties

A. Any person 18 years of age or over, who, with lascivious intent, knowingly and intentionally commits any of the following acts with any child under the age of 15 years is guilty of a Class 5 felony:

(1) Expose his or her sexual or genital parts to any child to whom such person is not legally married or propose that any such child expose his or her sexual or genital parts to such person; or

(2) Repealed.

(3) Propose that any such child feel or fondle his own sexual or genital parts or the sexual or genital parts of such person or propose that such person feel or fondle the sexual or genital parts of any such child; or

(4) Propose to such child the performance of an act of sexual intercourse or any act constituting an offense under § 18.2-361; or

(5) Entice, allure, persuade, or invite any such child to enter any vehicle, room, house, or other place, for any of the purposes set forth in the preceding subdivisions of this section.

B. Any person 18 years of age or over who, with lascivious intent, knowingly and intentionally receives money, property, or any other remuneration for allowing, encouraging, or enticing any person under the age of 18 years to perform in or be a subject of sexually explicit visual material as defined in § 18.2-374.1 or who knowingly encourages such person to perform in or be a subject of sexually explicit material; shall be guilty of a Class 5 felony.

C. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 4 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in § 53.1-151 between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

D. Any parent, step-parent, grandparent, or step-grandparent who commits a violation of either this section or clause (v) or (vi) of subsection A of § 18.2-370.1 (i) upon his child, step-child, grandchild, or step-grandchild who is at least 15 but less than 18 years of age is guilty of a Class 5 felony or (ii) upon his child, step-child, grandchild, or step-grandchild less than 15 years of age is guilty of a Class 4 felony.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1979, c. 348; Acts 1981, c. 397; Acts 1986, c. 503; Acts 2000, c. 333; Acts 2001, c. 776; Acts 2001, c. 840; Acts 2005, c. 185; Acts 2005, c. 762. Amended by Acts 2013, c. 423; Acts 2013, c. 470.

VA. CODE ANN. § 18.2-370.01 (2013). Indecent liberties by children; penalty

Any child over the age of thirteen years but under the age of eighteen who, with lascivious intent, knowingly and intentionally exposes his or her sexual or genital parts to any other child under the age of fourteen years who, measured by actual dates of birth, is five or more years the accused's junior, or proposes that any such child expose his or her sexual or genital parts to such person, shall be guilty of a Class 1 misdemeanor.

CREDIT(S)

Acts 1998, c. 825.

VA. CODE ANN. § 18.2-370.1 (2013). Taking indecent liberties with child by person in custodial or supervisory relationship; penalties

A. Any person 18 years of age or older who, except as provided in [§ 18.2-370](#), maintains a custodial or supervisory relationship over a child under the age of 18 and is not legally married to such child and such child is not emancipated who, with lascivious intent, knowingly and intentionally (i) proposes that any such child feel or fondle the sexual or genital parts of such person or that such person feel or handle the sexual or genital parts of the child; or (ii) proposes to such child the performance of an act of sexual intercourse or any act constituting an offense under [§ 18.2-361](#); or (iii) exposes his or her sexual or genital parts to such child; or (iv) proposes that any such child expose his or her sexual or genital parts to such person; or (v) proposes to the child that the child engage in sexual intercourse, sodomy or fondling of sexual or genital parts with another person; or (vi) sexually abuses the child as defined in [§ 18.2-67.10 \(6\)](#), shall be guilty of a Class 6 felony.

B. Any person who is convicted of a second or subsequent violation of this section shall be guilty of a Class 5 felony; provided that (i) the offenses were not part of a common act, transaction or scheme; (ii) the accused was at liberty as defined in [§ 53.1-151](#) between each conviction; and (iii) it is admitted, or found by the jury or judge before whom the person is tried, that the accused was previously convicted of a violation of this section.

CREDIT(S)

Acts 1982, c. 521; Acts 1986, c. 503; Acts 1991, c. 517; Acts 2001, c. 840; Acts 2005, c. 185.

VA. CODE ANN. § 18.2-370.6 (2013). Penetration of mouth of child with lascivious intent; penalty

Any person 18 years of age or older who, with lascivious intent, kisses a child under the age of 13 on the mouth while knowingly and intentionally penetrating the mouth of such child with his tongue is guilty of a Class 1 misdemeanor.

CREDIT(S)

Acts 2008, c. 772.

VA. CODE ANN. § 18.2-371 (2013). Causing or encouraging acts rendering children delinquent, abused, etc.; penalty; abandoned infant

Any person 18 years of age or older, including the parent of any child, who (i) willfully

contributes to, encourages, or causes any act, omission, or condition which renders a child delinquent, in need of services, in need of supervision, or abused or neglected as defined in [§ 16.1-228](#), or (ii) engages in consensual sexual intercourse with a child 15 or older not his spouse, child, or grandchild, shall be guilty of a Class 1 misdemeanor. This section shall not be construed as repealing, modifying, or in any way affecting [§§ 18.2-18](#), [18.2-19](#), [18.2-61](#), [18.2-63](#), and [18.2-347](#).

If the prosecution under this section is based solely on the accused parent having left the child at a hospital or rescue squad, it shall be an affirmative defense to prosecution of a parent under this section that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within the first 14 days of the child's life. In order for the affirmative defense to apply, the child shall be delivered in a manner reasonably calculated to ensure the child's safety.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1981, c. 397; Acts 1981, c. 568; Acts 1990, c. 797; Acts 1991, c. 295; Acts 1993, c. 411; Acts 2003, c. 816; Acts 2003, c. 822; Acts 2006, c. 935; Acts 2008, c. 174; Acts 2008, c. 206.

VA. CODE ANN. § 18.2-374.1 (2013). Production, publication, sale, financing, etc., of child pornography; presumption as to age; severability

A. For purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, “child pornography” means sexually explicit visual material which utilizes or has as a subject an identifiable minor. An identifiable minor is a person who was a minor at the time the visual depiction was created, adapted, or modified; or whose image as a minor was used in creating, adapting or modifying the visual depiction; and who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and shall not be construed to require proof of the actual identity of the identifiable minor.

For the purposes of this article and Article 4 (§ 18.2-362 et seq.) of this chapter, the term “sexually explicit visual material” means a picture, photograph, drawing, sculpture, motion picture film, digital image, including such material stored in a computer's temporary Internet cache when three or more images or streaming videos are present, or similar visual representation which depicts sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, or sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, or a book, magazine or pamphlet which contains such a visual representation. An undeveloped photograph or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent.

B. A person shall be guilty of production of child pornography who:

1. Accosts, entices or solicits a person less than 18 years of age with intent to induce or force such person to perform in or be a subject of child pornography; or
2. Produces or makes or attempts or prepares to produce or make child pornography; or
3. Who knowingly takes part in or participates in the filming, photographing, or other production of child pornography by any means; or
4. Knowingly finances or attempts or prepares to finance child pornography.
5. Repealed.

B1. Repealed.

C1. Any person who violates this section, when the subject of the child pornography is a child less than 15 years of age, shall be punished by not less than five years nor more than 30 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by a term of imprisonment of not less than five years nor more than 30 years in a state correctional facility, five years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section where the person is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 15 years nor more than 40 years, 15 years of which shall be a mandatory minimum term of imprisonment.

C2. Any person who violates this section, when the subject of the child pornography is a person at least 15 but less than 18 years of age, shall be punished by not less than one year nor more than 20 years in a state correctional facility. However, if the person is at least seven years older than the subject of the child pornography the person shall be punished by term of imprisonment of not less than three years nor more than 30 years in a state correctional facility, three years of which shall be a mandatory minimum term of imprisonment. Any person who commits a second or subsequent violation of this section when he is at least seven years older than the subject shall be punished by a term of imprisonment of not less than 10 years nor more than 30 years, 10 years of which shall be a mandatory minimum term of imprisonment.

C3. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

D. For the purposes of this section it may be inferred by text, title or appearance that a person who is depicted as or presents the appearance of being less than 18 years of age in sexually explicit visual material is less than 18 years of age.

E. Venue for a prosecution under this section may lie in the jurisdiction where the unlawful act occurs or where any sexually explicit visual material associated with a violation of this section is produced, reproduced, found, stored, or possessed.

F. The provisions of this section shall be severable and, if any of its provisions shall be held unconstitutional by a court of competent jurisdiction, then the decision of such court shall not affect or impair any of the remaining provisions.

CREDIT(S)

Acts 1979, c. 348; Acts 1983, c. 524; Acts 1986, c. 585; Acts 1992, c. 234; Acts 1995, c. 839; Acts 2007, c. 418; Acts 2007, c. 759; Acts 2007, c. 823. Amended by Acts 2013, c. 761; Acts 2013, c. 774.

VA. CODE ANN. § 18.2-374.4 (2013). Display of child pornography or grooming video or materials to a child unlawful; penalty

A. Any person 18 years of age or older who displays child pornography or a grooming video or materials to a child under 13 years of age with the intent to entice, solicit, or encourage the child to engage in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts by another, sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or object sexual penetration is guilty of a Class 6 felony.

B. “Grooming video or materials” means a cartoon, animation, image, or series of images depicting a child engaged in the fondling of the sexual or genital parts of another or the fondling of his sexual or genital parts by another, masturbation, sexual intercourse, cunnilingus, fellatio, anilingus, anal intercourse, or object sexual penetration.

CREDIT(S)

Added by Acts 2012, c. 624.

VA. CODE ANN. § 18.2-379 (2013). Employing or permitting minor to assist in offense under article

It shall be unlawful for any person knowingly to hire, employ, use or permit any minor to do or assist in doing any act or thing constituting an offense under this article.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15.

VA. CODE ANN. § 18.2-380 (2013). Punishment for first offense

Any person, firm, association or corporation convicted for the first time of an offense under §§ 18.2-374, 18.2-375, 18.2-376, 18.2-377, 18.2-378 or § 18.2-379, shall be guilty of a Class 1 misdemeanor.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1983, c. 412; Acts 1985, c. 279.

VA. CODE ANN. § 18.2-381 (2013). Punishment for subsequent offenses; additional penalty for owner

Any person, firm, association or corporation convicted of a second or other subsequent offense under §§ 18.2-374 through 18.2-379 shall be guilty of a Class 6 felony. However, if the person, firm, association or corporation convicted of such subsequent offense is the owner of the business establishment where each of the offenses occurred, a fine of not more than \$10,000 shall be imposed in addition to the penalties otherwise prescribed by this section.

CREDIT(S)

Acts 1975, c. 14; Acts 1975, c. 15; Acts 1983, c. 412.

VA. CODE ANN. § 18.2-386.1 (2013). Unlawful filming, videotaping or photographing of another; penalty

A. It shall be unlawful for any person to knowingly and intentionally videotape, photograph, or film any nonconsenting person or create any videographic or still image record by any means whatsoever of the nonconsenting person if (i) that person is totally nude, clad in undergarments, or in a state of undress so as to expose the genitals, pubic area, buttocks or female breast in a restroom, dressing room, locker room, hotel room, motel room, tanning bed, tanning booth, bedroom or other location; or (ii) the videotape, photograph, film or videographic or still image record is created by placing the lens or image-gathering component of the recording device in a position directly beneath or between a person's legs for the purpose of capturing an image of the person's intimate parts or undergarments covering those intimate parts when the intimate parts or undergarments would not otherwise be visible to the general public; and when the circumstances set forth in clause (i) or (ii) are otherwise such that the person being videotaped, photographed, filmed or otherwise recorded would have a reasonable expectation of privacy.

B. The provisions of this section shall not apply to filming, videotaping or photographing or other still image or videographic recording by (i) law-enforcement officers pursuant to a criminal investigation which is otherwise lawful or (ii) correctional officials and local or regional jail officials for security purposes or for investigations of alleged misconduct involving a person committed to the Department of Corrections or to a local or regional jail, or to any sound recording of an oral conversation made as a result of any videotaping or filming pursuant to Chapter 6 (§ 19.2-61 et seq.) of Title 19.2.

C. A violation of subsection A shall be punishable as a Class 1 misdemeanor.

D. A violation of subsection A involving a nonconsenting person under the age of 18 shall be punishable as a Class 6 felony.

E. Where it is alleged in the warrant, information, or indictment on which the person is convicted and found by the court or jury trying the case that the person has previously been convicted within the 10-year period immediately preceding the offense charged of two or more of the offenses specified in this section, each such offense occurring on a different date, and when such offenses were not part of a common act, transaction, or scheme, and such person has been at liberty as defined in § 53.1-151 between each conviction, he shall be guilty of a Class 6 felony.

CREDIT(S)

Acts 1994, c. 640; Acts 2004, c. 844; Acts 2005, c. 375; Acts 2008, c. 732.

WASHINGTON

WASH. REV. CODE ANN. § 9A.44.073 (2013). Rape of a child in the first degree

(1) A person is guilty of rape of a child in the first degree when the person has sexual intercourse with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least twenty-four months older than the victim.

(2) Rape of a child in the first degree is a class A felony.

CREDIT(S)

[1988 c 145 § 2.]

WASH. REV. CODE ANN. § 9A.44.076 (2013). Rape of a child in the second degree

(1) A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Rape of a child in the second degree is a class A felony.

CREDIT(S)

[1990 c 3 § 903; 1988 c 145 § 3.]

WASH. REV. CODE ANN. § 9A.44.079 (2013). Rape of a child in the third degree

(1) A person is guilty of rape of a child in the third degree when the person has sexual intercourse with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Rape of a child in the third degree is a class C felony.

CREDIT(S)

[1988 c 145 § 4.]

WASH. REV. CODE ANN. § 9A.44.083 (2013). Child molestation in the first degree

(1) A person is guilty of child molestation in the first degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is less than twelve years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the first degree is a class A felony.

CREDIT(S)

[1994 c 271 § 303; 1990 c 3 § 902; 1988 c 145 § 5.]

WASH. REV. CODE ANN. § 9A.44.086 (2013). Child molestation in the second degree

(1) A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.

(2) Child molestation in the second degree is a class B felony.

CREDIT(S)

[1994 c 271 § 304; 1988 c 145 § 6.]

WASH. REV. CODE ANN. § 9A.44.089 (2013). Child molestation in the third degree

(1) A person is guilty of child molestation in the third degree when the person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another who is at least fourteen years old but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

(2) Child molestation in the third degree is a class C felony.

CREDIT(S)

[1994 c 271 § 305; 1988 c 145 § 7.]

WASH. REV. CODE ANN. § 9A.44.093 (2013). Sexual misconduct with a minor in the first degree

(1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section:

(a) “Enrolled student” means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) “School employee” means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

CREDIT(S)

[2009 c 324 § 1, eff. July 26, 2009; 2005 c 262 § 2, eff. July 24, 2005; 2001 2nd sp.s. c 12 § 357; 1994 c 271 § 306; 1988 c 145 § 8.]

WASH. REV. CODE ANN. § 9A.44.096 (2013). Sexual misconduct with a minor in the second degree

(1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a

supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section:

(a) “Enrolled student” means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) “School employee” means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school.

CREDIT(S)

[2009 c 324 § 2, eff. July 26, 2009; 2005 c 262 § 3, eff. July 24, 2005; 2001 2nd sp.s. c 12 § 358; 1994 c 271 § 307; 1988 c 145 § 9.]

WASH. REV. CODE ANN. § 9A.88.010 (2013). Indecent exposure.

(1) A person is guilty of indecent exposure if he or she intentionally makes any open and obscene exposure of his or her person or the person of another knowing that such conduct is likely to cause reasonable affront or alarm. The act of breastfeeding or expressing breast milk is not indecent exposure.

(2) (a) Except as provided in (b) and (c) of this subsection, indecent exposure is a misdemeanor.

(b) Indecent exposure is a gross misdemeanor on the first offense if the person exposes himself or herself to a person under the age of fourteen years.

(c) Indecent exposure is a class C felony if the person has previously been convicted under this section or of a sex offense as defined in [RCW 9.94A.030](#).

CREDIT(S)

[2003 c 53 § 92, eff. July 1, 2004; 2001 c 88 § 2; 1990 c 3 § 904; 1987 c 277 § 1; 1975 1st ex.s. c 260 § 9A.88.010.]

WEST VIRGINIA

W. VA. CODE ANN. § 61-8A-4 (2013). Use of obscene matter with intent to seduce minor

Any adult, having knowledge of the character of the matter, who knows that a person is a minor and distributes, offers to distribute or displays by any means any obscene matter to the minor, and such distribution, offer to distribute, or display is undertaken with the intent or for the purpose of facilitating the sexual seduction or abuse of the minor, is guilty of a felony and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars, or confined in a state correctional facility for not more than five years, or both. For a second and each subsequent commission of such offense, such person is guilty of a felony and, upon conviction, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

CREDIT(S)

Acts 2000, c. 193, eff. 90 days after March 10, 2000.

W. VA. CODE ANN. § 61-8A-5 (2013). Employment or use of minor to produce obscene matter or assist in doing sexually explicit conduct; penalties

Any adult who, with knowledge that a person is a minor or who fails to exercise reasonable care in ascertaining the age of a minor, hires, employs or uses such minor to produce obscene matter or to do or assist in doing any sexually explicit conduct, is guilty of a felony and, upon conviction thereof, shall be fined not more than fifty thousand dollars or confined in a state correctional facility for not more than ten years, or both.

CREDIT(S)

Acts 2000, c. 193, eff. 90 days after March 10, 2000.

W. VA. CODE ANN. § 61-8B-2 (2013). Lack of consent

(a) Whether or not specifically stated, it is an element of every offense defined in this article that the sexual act was committed without the consent of the victim.

(b) Lack of consent results from:

(1) Forcible compulsion;

(2) Incapacity to consent; or

(3) If the offense charged is sexual abuse, any circumstances in addition to the forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.

(c) A person is deemed incapable of consent when such person is:

(1) Less than sixteen years old;

(2) Mentally defective;

(3) Mentally incapacitated;

(4) Physically helpless; or

(5) Subject to confinement or supervision by a state or local government entity, when the actor is a person prohibited from having sexual intercourse, or causing sexual intrusion or sexual contact pursuant to subsections (a) and (b) of section ten of this article.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56; Acts 2012, c. 44, eff. May 6, 2012.

W. VA. CODE ANN. § 61-8B-3 (2013). Sexual assault in the first degree.

(a) A person is guilty of sexual assault in the first degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person and, in so doing:

(i) Inflicts serious bodily injury upon anyone; or

(ii) Employs a deadly weapon in the commission of the act; or

(2) The person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years, or fined not less than one thousand dollars nor more than ten thousand dollars and imprisoned in a state correctional facility not less than fifteen nor more than thirty-five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment in a state correctional facility for not less than twenty-five nor more than one hundred years and a fine of not less than five thousand dollars nor more than twenty-five thousand dollars.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56; Acts 1991, c. 41; Acts 2000, c. 85, eff. 90 days after March 9, 2000; Acts 2006, 1st Ex. Sess., c. 15, eff. Oct. 1, 2006.

W. VA. CODE ANN. § 61-8B-5 (2013). Sexual assault in the third degree.

(a) A person is guilty of sexual assault in the third degree when:

(1) The person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or

(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.

(b) Any person violating the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56; Acts 2000, c. 85, eff. 90 days after March 9, 2000.

W. VA. CODE ANN. § 61-8B-7 (2013). Sexual abuse in the first degree.

(a) A person is guilty of sexual abuse in the first degree when:

(1) Such person subjects another person to sexual contact without their consent, and the lack of consent results from forcible compulsion; or

(2) Such person subjects another person to sexual contact who is physically helpless; or

(3) Such person, being fourteen years old or more, subjects another person to sexual contact who is younger than twelve years old.

(b) Any person who violates the provisions of this section shall be guilty of a felony, and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one year nor more than five years, or fined not more than ten thousand dollars and imprisoned in a state correctional facility not less than one year nor more than five years.

(c) Notwithstanding the provisions of subsection (b) of this section, the penalty for any person violating the provisions of subsection (a) of this section who is eighteen years of age or older and whose victim is younger than twelve years of age, shall be imprisonment for not less than five nor more than twenty-five years and fined not less than one thousand dollars nor more than five thousand dollars.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56; Acts 2006, 1st Ex. Sess., c. 15, eff. Oct. 1, 2006.

W. VA. CODE ANN. § 61-8B-9 (2013). Sexual abuse in the third degree.

(a) A person is guilty of sexual abuse in the third degree when he subjects another person to sexual contact without the latter's consent, when such lack of consent is due to the victim's incapacity to consent by reason of being less than sixteen years old.

(b) In any prosecution under this section it is a defense that:

(1) The defendant was less than sixteen years old; or

(2) The defendant was less than four years older than the victim.

(c) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not more

than ninety days, or fined not more than five hundred dollars and confined in the county jail not more than ninety days.

CREDIT(S)

Acts 1976, c. 43; Acts 1984, c. 56.

W. VA. CODE ANN. § 61-8B-9a (2013). Mandatory sentence for person committing certain sex offenses against children.

(a) Notwithstanding the provisions of section one-a [[§ 62-11A-1a](#)], article eleven-a, section four [[§ 62-11B-4](#)], article eleven-b and section two [[§ 62-12-2](#)], article twelve of chapter sixty-two of this code, a person shall not be eligible for probation, home incarceration or an alternative sentence provided under this code if they are convicted of an offense under section three [[§ 61-8B-3](#)], four [[§ 61-8B-4](#)], five [[§ 61-8B-5](#)], seven [[§ 61-8B-7](#)], eight [[§ 61-8B-8](#)] or nine [[§ 61-8B-9](#)], article eight-b, chapter sixty-one of this code, are eighteen years of age or older, the victim is younger than twelve years of age and the finder of fact determines that one of the following aggravating circumstances exists:

- (1) The person employed forcible compulsion in commission of the offense;
 - (2) The offense constituted, resulted from or involved a predatory act as defined in subsection (m), section two [[§ 15-12-2](#)], article twelve, chapter fifteen of this code;
 - (3) The person was armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the victim to submit; or
 - (4) The person removed the victim from one place to another and did not release the victim in a safe place. For the purposes of this section, "release the victim in a safe place" means release of a victim in a place and manner which realistically conveys to the victim that he or she is free from captivity in circumstances and surroundings wherein aid is readily available.
- (b) (1) The existence of any fact which would make any person ineligible for probation under subsection (a) of this section because of the existence of an aggravating circumstance shall not be applicable unless such fact is clearly stated and included in the indictment or presentment by which such person is charged and is either: (i) Found by the court upon a plea of guilty or nolo contendere; or (ii) found by the jury, if the matter be tried before a jury, upon submitting to such jury a special interrogatory for such purpose; or (iii) found by the court, if the matter be tried by the court, without a jury.

(2) Insofar as the provisions of this section relate to mandatory sentences without probation, home incarceration or alternative sentences, all such matters requiring such

sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

CREDIT(S)

Acts 2006, 1st Ex. Sess., c. 15, eff. Oct. 1, 2006.

W. VA. CODE ANN. § 61-8B-9b (2013). Enhanced penalties for subsequent offenses committed by those previously convicted of sexually violent offenses against children.

(a) Notwithstanding any provision of this article to the contrary, any person who has been convicted of a sexually violent offense, as defined in section two [§ 15-12-2], article twelve, chapter fifteen of this code, against a victim under the age of twelve years old and thereafter commits and thereafter is convicted of one of the following offenses shall be subject to the following penalties unless another provision of this code authorizes a longer sentence:

(1) For a violation of section three [§ 61-8B-3] of this article, the penalty shall be imprisonment in a state correctional facility for not less than fifty nor more than one hundred fifty years;

(2) For a violation of section four [§ 61-8B-4] of this article, the penalty shall be imprisonment in a state correctional facility for not less than thirty nor more than one hundred years;

(3) For a violation of section five [§ 61-8B-5] of this article, the penalty shall be imprisonment in a state correctional facility for not less than five nor more than twenty-five years;

(4) For a violation of section seven [§ 61-8B-7] of this article, the penalty shall be imprisonment in a state correctional facility for not less than ten nor more than thirty-five years; and

(5) Notwithstanding the penalty provisions of section eight [§ 61-8B-8] of this article, a violation of its provisions by a person previously convicted of a sexually violent offense, as defined in section two [§ 15-12-2], article twelve, chapter fifteen of this code, shall be a felony and the penalty therefor shall be imprisonment in a state correctional facility for not less than three nor more than fifteen years.

(b) Notwithstanding the provisions of section two [§ 62-12-2], article twelve, chapter sixty-two of this code, any person sentenced pursuant to this section shall not be eligible for probation.

(c) Notwithstanding the provisions of section one-a [§ 62-11A-1a], article eleven-a and section four [§ 62-11B-4], article eleven-b of chapter sixty-two of this code, a person

sentenced under this section shall not be eligible for home incarceration or an alternative sentence.

CREDIT(S)

Acts 2006, 1st Ex. Sess., c. 15, eff. Oct. 1, 2006.

W. VA. CODE ANN. § 61-8B-10 (2013). Imposition of sexual intercourse or sexual intrusion on incarcerated persons; penalties.

(a) Any person employed by the Division of Corrections, any person working at a correctional facility managed by the Commissioner of Corrections pursuant to contract or as an employee of a state agency, any person working at a correctional facility managed by the Division of Juvenile Services pursuant to contract or as an employee of a state agency, any person employed by a jail or by the Regional Jail and Correctional Facility Authority, any person working at a facility managed by the Regional Jail and Correctional Facility Authority or a jail or any person employed by, or acting pursuant to, the authority of any sheriff, county commission or court to ensure compliance with the provisions of article eleven-b, chapter sixty-two of this code who engages in sexual intercourse, sexual intrusion or sexual contact with a person who is incarcerated in this state is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than \$5,000.

(b) Any person employed by the Division of Corrections as a parole officer or by the West Virginia Supreme Court of Appeals as an adult or juvenile probation officer who engages in sexual intercourse, sexual intrusion or sexual contact with a person said parole officer or probation officer is charged as part of his or her employment with supervising, is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility under the control of the Commissioner of Corrections for not less than one nor more than five years or fined not more than \$5,000, or both.

(c) The term “incarcerated in this state” for purposes of this section includes in addition to its usual meaning, offenders serving a sentence under the provisions of article eleven-b, chapter sixty-two of this code.

(d) Authorized pat-down, strip search or other security related tasks does not constitute sexual contact pursuant to this section.

CREDIT(S)

Acts 2000, c. 86, eff. 90 days after March 10, 2000; Acts 2007, c. 66, eff. June 7, 2007; Acts 2012, c. 44, eff. May 6, 2012.

W. VA. CODE ANN. § 61-8C-2 (2013). Use of minors in filming sexually explicit conduct prohibited; penalty

(a) Any person who causes or knowingly permits, uses, persuades, induces, entices or coerces such minor to engage in or uses such minor to do or assist in any sexually explicit conduct shall be guilty of a felony when such person has knowledge that any such act is being photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

(b) Any person who photographs or films such minor engaging in any sexually explicit conduct shall be guilty of a felony, and, upon conviction thereof, shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

(c) Any parent, legal guardian or person having custody and control of a minor, who photographs or films such minor in any sexually explicit conduct or causes or knowingly permits, uses, persuades, induces, entices or coerces such minor child to engage in or assist in any sexually explicit act shall be guilty of a felony when such person has knowledge that any such act may be photographed or filmed. Upon conviction thereof, such person shall be fined not more than ten thousand dollars, or imprisoned in the penitentiary not more than ten years, or both fined and imprisoned.

CREDIT(S)

Acts 1979, c. 31; Acts 1986, 1st Ex. Sess., c. 11.

W. VA. CODE ANN. § 61-8D-3a (2013). Female genital mutilation; penalties; definitions.

(a) Except as otherwise provided in subsection (b) of this section, any person who circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of a female under the age of eighteen, or any parent, guardian or custodian of a female under the age of eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such female's labia majora, labia minora or clitoris, shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than ten years and fined not less than one thousand dollars nor more than five thousand dollars.

(b) A surgical procedure is not a violation of this section if the procedure:

(1) Is necessary to preserve the health of the child on whom it is performed and is performed by a licensed medical professional authorized to practice medicine in this state; or

(2) The procedure is performed on a child who is in labor or has just given birth and is performed for legitimate medical purposes connected with that labor or birth by a licensed medical professional authorized to practice medicine in this state.

(c) A person's belief that the conduct described in subsection (a) of this section: (i) Is required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female on which the circumcision, excision or infibulation was performed shall not constitute a defense to criminal prosecution under subsection (a) of this section.

CREDIT(S)

Acts 1999, c. 78, eff. 90 days after Feb. 23, 1999.

W. VA. CODE ANN. § 61-8D-5 (2013). Sexual abuse by a parent, guardian custodian or person in a position of trust to a child; parent, guardian, custodian or person in a position of trust allowing sexual abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian, or custodian; penalties.

(a) In addition to any other offenses set forth in this code, the Legislature hereby declares a separate and distinct offense under this subsection, as follows: If any parent, guardian or custodian of or other person in a position of trust in relation to a child under his or her care, custody or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse, sexual intrusion or sexual contact with, a child under his or her care, custody or control, notwithstanding the fact that the child may have willingly participated in such conduct, or the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than ten nor more than twenty years, or fined not less than \$500 nor more than \$5,000 and imprisoned in a correctional facility not less than ten years nor more than twenty years.

(b) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is less than sixteen years of age, notwithstanding the fact that the child may have willingly participated in such conduct or

the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than five years nor more than fifteen years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility not less than five years nor more than fifteen years.

(c) Any parent, guardian, custodian or other person in a position of trust in relation to the child who knowingly procures, authorizes, or induces another person to engage in or attempt to engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a child under the care, custody or control of such parent, guardian, custodian or person in a position of trust when such child is sixteen years of age or older, notwithstanding the fact that the child may have consented to such conduct or the fact that the child may have suffered no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility not less than one year nor more than five years.

(d) The provisions of this section shall not apply to a custodian or person in a position of trust whose age exceeds the age of the child by less than four years.

CREDIT(S)

Acts 1988, c. 42; Acts 1991, c. 41; Acts 1998, c. 117, eff. 90 days after March 14, 1998; Acts 2005, c. 74, eff. 90 days after April 9, 2005; Acts 2010, c. 48, eff. June 11, 2010.

WISCONSIN

WIS. STAT. ANN. § 948.02 (2013). Sexual assault of a child.

(1) First degree sexual assault. (am) Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 13 years and causes great bodily harm to the person is guilty of a Class A felony.

(b) Whoever has sexual intercourse with a person who has not attained the age of 12 years is guilty of a Class B felony.

(c) Whoever has sexual intercourse with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony.

(d) Whoever has sexual contact with a person who has not attained the age of 16 years by use or threat of force or violence is guilty of a Class B felony if the actor is at least 18 years of age when the sexual contact occurs.

(e) Whoever has sexual contact with a person who has not attained the age of 13 years is guilty of a Class B felony.

(2) Second degree sexual assault. Whoever has sexual contact or sexual intercourse with a person who has not attained the age of 16 years is guilty of a Class C felony.

(3) Failure to act. A person responsible for the welfare of a child who has not attained the age of 16 years is guilty of a Class F felony if that person has knowledge that another person intends to have, is having or has had sexual intercourse or sexual contact with the child, is physically and emotionally capable of taking action which will prevent the intercourse or contact from taking place or being repeated, fails to take that action and the failure to act exposes the child to an unreasonable risk that intercourse or contact may occur between the child and the other person or facilitates the intercourse or contact that does occur between the child and the other person.

(4) Marriage not a bar to prosecution. A defendant shall not be presumed to be incapable of violating this section because of marriage to the complainant.

(5) Death of victim. This section applies whether a victim is dead or alive at the time of the sexual contact or sexual intercourse.

Source:

1987 Act 332, § 55, eff. July 1, 1989; 1989 Act 31, § 2836bc, eff. Aug. 9, 1989; 1995 Act 14, § 1, eff. May 31, 1995; 1995 Act 69, § 12, eff. Dec. 2, 1995; 2001 Act 109, §§ 879 to 881, eff. Feb. 1, 2003; 2005 Act 430, §§ 3, 4, eff. June 6, 2006; 2005 Act 437, §§ 1, 2, eff. June 6, 2006; 2007 Act 80, § 12, eff. March 27, 2008.

WIS. STAT. ANN. § 948.025 (2013). Engaging in repeated acts of sexual assault of the same child.

(1) Whoever commits 3 or more violations under [s. 948.02 \(1\)](#) or (2) within a specified period of time involving the same child is guilty of:

- (a) A Class A felony if at least 3 of the violations were violations of [s. 948.02 \(1\) \(am\)](#)
 - (b) A Class B felony if at least 3 of the violations were violations of [s. 948.02 \(1\) \(am\)](#), (b), or (c)
 - (c) A Class B felony if at least 3 of the violations were violations of [s. 948.02 \(1\) \(am\)](#), (b), (c), or (d)
 - (d) A Class B felony if at least 3 of the violations were violations of [s. 948.02 \(1\)](#)
 - (e) A Class C felony if at least 3 of the violations were violations of [s. 948.02 \(1\)](#) or (2)
- (2)
- (a) If an action under sub. (1) (a) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of [s. 948.02 \(1\) \(am\)](#) occurred within the specified period of time but need not agree on which acts constitute the requisite number.
 - (b) If an action under sub. (1) (b) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of [s. 948.02 \(1\) \(am\)](#), (b), or (c) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of [s. 948.02 \(1\) \(am\)](#), (b), or (c)
 - (c) If an action under sub. (1) (c) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of [s. 948.02 \(1\) \(am\)](#), (b), (c), or (d) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of [s. 948.02 \(1\) \(am\)](#), (b), (c), or (d)
 - (d) If an action under sub. (1) (d) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of [s. 948.02 \(1\)](#) occurred within the specified period of time but need not agree on which acts constitute the requisite number.
 - (e) If an action under sub. (1) (e) is tried to a jury, in order to find the defendant guilty the members of the jury must unanimously agree that at least 3 violations of [s. 948.02 \(1\)](#) or (2) occurred within the specified period of time but need not agree on which acts constitute the requisite number and need not agree on whether a particular violation was a violation of [s. 948.02 \(1\)](#) or (2)
- (3) The state may not charge in the same action a defendant with a violation of this section and with a violation involving the same child under [s. 948.02](#) or [948.10](#), unless the other violation occurred outside of the time period applicable under sub. (1) This

subsection does not prohibit a conviction for an included crime under [s. 939.66](#) when the defendant is charged with a violation of this section.

Source:

1993 Act 227, § 30, eff. April 23, 1994; 1995 Act 14, § 2, eff. May 31, 1995; 2001 Act 109, §§ 882 to 886, eff. Feb. 1, 2003; 2001 Act 109, § 886f, eff. July 30, 2002; 2005 Act 430, §§ 5 to 8, eff. June 6, 2006; 2005 Act 437, §§ 3 to 6, eff. June 6, 2006; 2007 Act 80, §§ 13 to 15, eff. March 27, 2008.

WIS. STAT. ANN. § 948.05 (2013). Sexual exploitation of a child.

(1) Whoever does any of the following with knowledge of the character and content of the sexually explicit conduct involving the child may be penalized under sub. (2p):

(a) Employs, uses, persuades, induces, entices, or coerces any child to engage in sexually explicit conduct for the purpose of recording or displaying in any way the conduct.

(b) Records or displays in any way a child engaged in sexually explicit conduct.

(1m) Whoever produces, performs in, profits from, promotes, imports into the state, reproduces, advertises, sells, distributes, or possesses with intent to sell or distribute, any recording of a child engaging in sexually explicit conduct may be penalized under sub.

(2p) if the person knows the character and content of the sexually explicit conduct involving the child and if the person knows or reasonably should know that the child engaging in the sexually explicit conduct has not attained the age of 18 years.

(2) A person responsible for a child's welfare who knowingly permits, allows or encourages the child to engage in sexually explicit conduct for a purpose proscribed in sub. (1) (a) or (b) or (1m) may be penalized under sub. (2p)

(2p)

(a) Except as provided in par. (b), a person who violates sub. (1), (1m), or (2) is guilty of a Class C felony.

(b) A person who violates sub. (1), (1m), or (2) is guilty of a Class F felony if the person is under 18 years of age when the offense occurs.

(3) It is an affirmative defense to prosecution for violation of sub. (1) (a) or (b) or (2) if the defendant had reasonable cause to believe that the child had attained the age of 18 years. A defendant who raises this affirmative defense has the burden of proving this defense by a preponderance of the evidence.

Source:

1987 Act 332, § 55, eff. July 1, 1989; 1999 Act 3, §§ 2 to 4, eff. May 13, 1999; 2001 Act 16, §§ 3969 to 3971, Sept. 1, 2001; 2001 Act 109, §§ 898 to 900, eff. Feb. 1, 2003; 2005 Act 433, §§ 18 to 21, eff. June 6, 2006.

WIS. STAT. ANN. § 948.055 (2013). Causing a child to view or listen to sexual activity.

(1) Whoever intentionally causes a child who has not attained 18 years of age, or an individual who the actor believes or has reason to believe has not attained 18 years of age, to view or listen to sexually explicit conduct may be penalized as provided in sub. (2) if the viewing or listening is for the purpose of sexually arousing or gratifying the actor or humiliating or degrading the child or individual.

(2) Whoever violates sub. (1) is guilty of:

(a) A Class F felony if any of the following applies:

1. The child has not attained the age of 13 years.
2. The actor believes or has reason to believe that the child has not attained the age of 13 years.

(b) A Class H felony if any of the following applies:

1. The child has attained the age of 13 years but has not attained the age of 18 years.
2. The actor believes or has reason to believe that the child has attained the age of 13 years but has not attained the age of 18 years.

Source:

1987 Act 334, § 2, eff. April 28, 1988; 1989 Act 359, § 416, eff. June 2, 1990; St. 1991, § 940.227; 1993 Act 218, §§ 4 to 7, eff. April 21, 1994; 1995 Act 67, §§ 2, 3, eff. Dec. 2, 1995; 2001 Act 109, §§ 901, 902, eff. Feb. 1, 2003; 2011 Act 284, §§ 2 to 6, eff. April 27, 2012.

WIS. STAT. ANN. § 948.07 (2013). Child enticement.

Whoever, with intent to commit any of the following acts, causes or attempts to cause any child who has not attained the age of 18 years to go into any vehicle, building, room or secluded place is guilty of a Class D felony:

(1) Having sexual contact or sexual intercourse with the child in violation of [s. 948.02](#), [948.085](#), or [948.095](#)

(2) Causing the child to engage in prostitution.

(3) Exposing a sex organ to the child or causing the child to expose a sex organ in violation of [s. 948.10](#)

(4) Recording the child engaging in sexually explicit conduct.

(5) Causing bodily or mental harm to the child.

(6) Giving or selling to the child a controlled substance or controlled substance analog in violation of ch. 961

Source:

1987 Act 332, § 55, eff. July 1, 1989; 1995 Act 67, § 4, eff. Dec. 2, 1995; 1995 Act 69, § 18, eff. Dec. 2, 1995; 1995 Act 448, § 457, eff. July 9, 1996; 1995 Act 456, § 7, eff. July 11, 1996; 2001 Act 16, § 3972, Sept. 1, 2001; 2001 Act 109, § 904, eff. Feb. 1, 2003; 2005 Act 277, § 68, eff. April 20, 2006.

WIS. STAT. ANN. § 948.085 (2013). Sexual assault of a child placed in substitute care.

Whoever does any of the following is guilty of a Class C felony:

(1) Has sexual contact or sexual intercourse with a child for whom the actor is a foster parent .

(2) Has sexual contact or sexual intercourse with a child who is placed in any of the following facilities if the actor works or volunteers at the facility or is directly or indirectly responsible for managing it:

(a) A shelter care facility licensed under s. 48.66(1)(a).

(b) A group home licensed under s. 48.625 or 48.66(1).

(c) A facility described in s. 940.295(2)(m).

Source:

2005 Act 277, § 69, eff. April 20, 2006; 2007 Act 97, § 314, eff. March 28, 2008; 2009 Act 28, § 3353, eff. Jan. 1, 2011.

WIS. STAT. ANN. § 948.09 (2013). Sexual intercourse with a child age 16 or older.

Whoever has sexual intercourse with a child who is not the defendant's spouse and who has attained the age of 16 years is guilty of a Class A misdemeanor.

Source:

1987 Act 332, § 55, eff. July 1, 1989.

WIS. STAT. ANN. § 948.095 (2013). Sexual assault of a child by a school staff person or a person who works or volunteers with children.

(1) In this section:

(a) "School" means a public or private elementary or secondary school, or a tribal school, as defined in s. 115.001(15m).

(b) "School staff" means any person who provides services to a school or a school board, including an employee of a school or a school board and a person who provides services to a school or a school board under a contract.

(2) Whoever has sexual contact or sexual intercourse with a child who has attained the age of 16 years and who is not the defendant's spouse is guilty of a Class H felony if all of the following apply:

(a) The child is enrolled as a student in a school or a school district.

(b) The defendant is a member of the school staff of the school or school district in which the child is enrolled as a student.

(3)(a) A person who has attained the age of 21 years and who engages in an occupation or participates in a volunteer position that requires him or her to work or interact directly with children may not have sexual contact or sexual intercourse with a child who has attained the age of 16 years, who is not the person's spouse, and with whom the person works or interacts through that occupation or volunteer position.

(b) Whoever violates par. (a) is guilty of a Class H felony.

(c) Paragraph (a) does not apply to an offense to which sub. (2) applies.

(d) Evidence that a person engages in an occupation or participates in a volunteer position relating to any of the following is prima facie evidence that the occupation or position requires him or her to work or interact directly with children:

1. Teaching children.
2. Child care.
3. Youth counseling.
4. Youth organization.
5. Coaching children.
6. Parks or playground recreation.
7. School bus driving.

Source:

1995 Act 456, § 7, eff. July 11, 1996; 1999 Act 185, § 193(1), eff. Sept. 1, 2000; 2001 Act 109, § 906, eff. Feb. 1, 2003; 2005 Act 274, §§ 1, 2, eff. April 20, 2006; 2007 Act 97, § 315, eff. March 28, 2008; 2009 Act 302, § 116, eff. May 27, 2010.

WIS. STAT. ANN. § 948.10 (2013). Exposing genitals or pubic area.

(1) Whoever, for purposes of sexual arousal or sexual gratification, causes a child to expose genitals or pubic area or exposes genitals or pubic area to a child is guilty of the following:

(a) Except as provided in par. (b), a Class I felony.

(b) A Class A misdemeanor if any of the following applies:

1. The actor is a child when the violation occurs.

2. At the time of the violation, the actor had not attained the age of 19 years and was not more than 4 years older than the child.

(2) Subsection (1) does not apply under any of the following circumstances:

(a) The child is the defendant's spouse.

(b) A mother's breast-feeding of her child.

Source:

1987 Act 332, § 55, eff. July 1, 1989; 1989 Act 31, § 2836bc, eff. Aug. 9, 1989; 1995 Act 165, §§ 4, 5, eff. April 6, 1996; 2009 Act 202, §§ 1 to 2h, eff. May 6, 2010.

WYOMING

WYO. STAT. ANN. § 6-4-303 (2013). Sexual exploitation of children; penalties; definitions

(a) As used in this section:

(i) “Child” means a person under the age of eighteen (18) years;

(ii) “Child pornography” means any visual depiction, including any photograph, film, video, picture, computer or computer-generated image or picture, whether or not made or produced by electronic, mechanical or other means, of explicit sexual conduct, where:

(A) The production of the visual depiction involves the use of a child engaging in explicit sexual conduct;

(B) The visual depiction is of explicit sexual conduct involving a child or an individual virtually indistinguishable from a child; or

(C) The visual depiction has been created, adapted or modified to depict explicit sexual conduct involving a child or an individual virtually indistinguishable from a child.

(D) Repealed by Laws 2005, ch. 70, § 2.

(iii) “Explicit sexual conduct” means actual or simulated sexual intercourse, including genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex, bestiality, masturbation, sadistic or masochistic abuse or lascivious exhibition of the genitals or pubic area of any person;

(iv) “Visual depiction” means developed and undeveloped film and videotape, and data stored on computer disk or by electronic means which is capable of conversion into a visual image.

(b) A person is guilty of sexual exploitation of a child if, for any purpose, he knowingly:

(i) Causes, induces, entices, coerces or permits a child to engage in, or be used for, the making of child pornography;

(ii) Causes, induces, entices or coerces a child to engage in, or be used for, any explicit sexual conduct;

(iii) Manufactures, generates, creates, receives, distributes, reproduces, delivers or possesses with the intent to deliver, including through digital or electronic means, whether or not by computer, any child pornography;

(iv) Possesses child pornography, except that this paragraph shall not apply to:

(A) Peace officers, court personnel or district attorneys engaged in the lawful performance of their official duties;

(B) Physicians, psychologists, therapists or social workers, provided such persons are duly licensed in Wyoming and the persons possess such materials in the course of a bona fide treatment or evaluation program at the treatment or evaluation site; or

(C) Counsel for a person charged under this section.

(c) The sexual exploitation of a child pursuant to paragraphs (b)(i) through (iii) of this section is a felony punishable by imprisonment for not less than five (5) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(d) The sexual exploitation of a child by possession of sexually exploitive material pursuant to paragraph (b)(iv) of this section is a felony punishable by imprisonment for not more than ten (10) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(e) A second or subsequent conviction pursuant to paragraphs (b)(i) through (iv) of this section, or of a substantially similar law of any other jurisdiction, is a felony punishable by imprisonment for not less than seven (7) years nor more than twelve (12) years, a fine of not more than ten thousand dollars (\$10,000.00), or both.

(f) Any person who is convicted of an offense under this section shall forfeit to the state the person's interest in:

(i) Any visual depiction of a child engaging in explicit sexual conduct in violation of this section, or any book, magazine, periodical, film, videotape or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped, possessed or received in violation of this section;

(ii) Any property, real or personal, constituting or traceable to gross proceeds obtained from such offense;

(iii) Any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

CREDIT(S)

Laws 1999, ch. 180, § 1, eff. July 1, 1999; Laws 2005, ch. 70, §§ 1, 2, eff. July 1, 2005; Laws 2007, ch. 159, § 2, eff. July 1, 2007.

WYO. STAT. ANN. § 6-2-306 (2013). Penalties for sexual assault.

(a) An actor convicted of sexual assault under W.S. 6-2-302 through 6-2-304 who does not qualify under the criteria of subsection (b) or (d) of this section shall be punished as follows:

(i) Sexual assault in the first degree under W.S. 6-2-302 is a felony punishable by imprisonment for not less than five (5) years nor more than fifty (50) years;

(ii) Sexual assault in the second degree under W.S. 6-2-303 is a felony punishable by imprisonment for not less than two (2) years nor more than twenty (20) years;

(iii) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than fifteen (15) years;

(iv) Repealed by Laws 1997, ch. 135, § 2.

(b) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, who has previously been convicted of any crime containing the same or similar elements as the crimes defined in W.S. 6-2-302 through 6-2-304 and who does not qualify under the criteria of subsection (d) of this section shall be punished as follows:

(i), (ii) Repealed by Laws 2007, ch. 159, § 3.

(iii) Sexual assault in the first or second degree under W.S. 6-2-302 or 6-2-303 is a felony punishable by imprisonment for not less than twenty-five (25) years or for life; or

(iv) Sexual assault in the third degree under W.S. 6-2-304 is a felony punishable by imprisonment for not more than twenty (20) years.

(c) Repealed by Laws 2007, ch. 159, § 3.

(i), (ii) Repealed by Laws 2007, ch. 159, § 3.

(iii) Repealed by Laws 1997, ch. 135, § 2.

(d) An actor who is convicted of sexual assault under W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor under W.S. 6-2-316 through 6-2-317, shall be punished by life imprisonment without parole if the actor has two (2) or more previous convictions for any of the following designated offenses, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age:

(i) A crime defined in W.S. 6-2-302 through 6-2-304 or a criminal statute from another jurisdiction containing the same or similar elements as a crime defined by W.S. 6-2-302 through 6-2-304.

(ii) Repealed by Laws 1997, ch. 135, § 2.

(iii) Repealed by Laws 2007, ch. 159, § 3.

(e) An actor who is convicted of sexual abuse of a minor under W.S. 6-2-314 or 6-2-315 shall be punished by life imprisonment without parole if the actor has one (1) or more previous convictions for a violation of W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, or a criminal statute containing the same or similar elements as the crimes defined by W.S. 6-2-302 through 6-2-304, 6-2-314 or 6-2-315, which convictions resulted from charges separately brought and which arose out of separate occurrences in this state or elsewhere and which convictions were for offenses committed after the actor reached the age of eighteen (18) years of age.

CREDIT(S)

Laws 1982, ch. 75, § 3; Laws 1983, ch. 171, § 1; Laws 1996, ch. 73, § 2, eff. March 19, 1996; Laws 1997, ch. 135, §§ 1, 2, eff. July 1, 1997; Laws 2000, ch. 48, § 1, eff. March 13, 2000; Laws 2007, ch. 159, § 2, 3, eff. July 1, 2007; Laws 2013, ch. 18, § 1, eff. July 1, 2013.

WYO. STAT. ANN. § 6-2-314 (2013). Sexual abuse of a minor in the first degree; penalties.

(a) An actor commits the crime of sexual abuse of a minor in the first degree if:

(i) Being sixteen (16) years of age or older, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age;

(ii) Being eighteen (18) years of age or older, the actor inflicts sexual intrusion on a victim who is less than eighteen (18) years of age, and the actor is the victim's legal guardian or an individual specified in W. S. 6-4-402;

(iii) Being eighteen (18) years of age or older, the actor inflicts sexual intrusion on a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim.

(b) Except as provided in subsection (c) of this section, a person convicted under subsection (a) of this section is subject to imprisonment for not more than fifty (50) years, unless the person convicted qualifies under W.S. 6-2-306(e).

(c) A person convicted under paragraph (a)(i) of this section, where the actor is at least twenty-one (21) years of age, is subject to imprisonment for not less than twenty-five (25) years nor more than fifty (50) years, unless the person convicted qualified under W.S. 6-2-306(e).

CREDIT(S)

Laws 2007, ch. 159, § 1, eff. July 1, 2007; Laws 2010, ch. 110, § 1, eff. July 1, 2010.

WYO. STAT. ANN. § 6-2-315 (2013). Sexual abuse of a minor in the second degree; penalties.

(a) Except under circumstance constituting sexual abuse of a minor in the first degree as defined by [W.S. 6-2-314](#), an actor commits the crime of sexual abuse of a minor in the second degree if:

(i) Being seventeen (17) years of age or older, the actor inflicts sexual intrusion on a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;

(ii) Being sixteen (16) years of age or older, the actor engages in sexual contact of a victim who is less than thirteen (13) years of age;

(iii) Being eighteen (18) years of age or older, the actor engages in sexual contact with a victim who is less than eighteen (18) years of age and the actor is the victim's legal guardian or an individual specified in [W.S. 6-4-402](#); or

(iv) Being eighteen (18) years of age or older, the actor engages in sexual contact with a victim who is less than sixteen (16) years of age and the actor occupies a position of authority in relation to the victim.

(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than twenty (20) years, unless the person convicted qualifies under [W.S. 6-2-306\(e\)](#).

CREDIT(S)

Laws 2007, ch. 159, § 1, eff. July 1, 2007.

WYO. STAT. ANN. § 6-2-316 (2013). Sexual abuse of a minor in the third degree.

(a) Except under circumstance constituting sexual abuse of a minor in the first or second degree as defined by [W.S. 6-2-314](#) and [6-2-315](#), an actor commits the crime of sexual abuse of a minor in the third degree if:

(i) Being seventeen (17) years of age or older, the actor engages in sexual contact with a victim who is thirteen (13) through fifteen (15) years of age, and the victim is at least four (4) years younger than the actor;

(ii) Being twenty (20) years of age or older, the actor engages in sexual intrusion with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim;

(iii) Being less than sixteen (16) years of age, the actor inflicts sexual intrusion on a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or

(iv) Being seventeen (17) years of age or older, the actor knowingly takes immodest, immoral or indecent liberties with a victim who is less than seventeen (17) years of age and the victim is at least four (4) years younger than the actor.

(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than fifteen (15) years.

(c) A person charged with violating the provisions of paragraph (a)(iii) of this section shall be subject to the original jurisdiction of the juvenile court, except the matter may be transferred to the district court having jurisdiction of the offense as provided in [W.S. 14-6-237](#).

CREDIT(S)

Laws 2007, ch. 159, § 1, eff. July 1, 2007.

WYO. STAT. ANN. § 6-2-317 (2013). Sexual abuse of a minor in the fourth degree.

(a) Except under circumstance constituting sexual abuse of a minor in the first, second or third degree as defined by [W.S. 6-2-314](#) through [6-2-316](#), an actor commits the crime of sexual abuse of a minor in the fourth degree if:

(i) Being less than sixteen (16) years of age, the actor engages in sexual contact with a victim who is less than thirteen (13) years of age, and the victim is at least three (3) years younger than the actor; or

(ii) Being twenty (20) years of age or older, the actor engages in sexual contact with a victim who is either sixteen (16) or seventeen (17) years of age, and the victim is at least four (4) years younger than the actor, and the actor occupies a position of authority in relation to the victim.

(b) A person convicted under subsection (a) of this section is subject to imprisonment for not more than five (5) years.

(c) A person charged with violating the provisions of paragraph (a)(i) of this section shall be subject to the original jurisdiction of the juvenile court, except the matter may be transferred to the district court having jurisdiction of the offense as provided in [W.S. 14-6-237](#).

CREDIT(S)

Laws 2007, ch. 159, § 1, eff. July 1, 2007.

WYO. STAT. ANN. § 6-2-318 (2013). Soliciting to engage in illicit sexual relations; penalty.

Except under circumstances constituting sexual assault in the first, second or third degree as defined by W.S. 6-2-302 through 6-2-304, or sexual abuse of a minor in the first, second, third or fourth degree as defined by W.S. 6-2-314 through 6-2-317, anyone who has reached the age of majority and who solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion as defined in W.S. 6-2-301 is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.

CREDIT(S)

Laws 2007, ch. 159, § 1, eff. July 1, 2007; Laws 2010, ch. 82, § 1, eff. March 9, 2010.

WYO. STAT. ANN. § 6-4-403 (2013). Abandoning or endangering children; penalties; "child"; disclosure or publication of identifying information; "minor victim".

(a) No parent, guardian or custodian of a child shall:

(i) Abandon the child without just cause; or

(ii) Knowingly or with criminal negligence cause, permit or contribute to the endangering of the child's life or health by violating a duty of care, protection or support.

(b) No person shall knowingly:

(i) Cause, encourage, aid or contribute to a child's violation of any law of this state;

(ii) Cause, encourage, aid or permit a child to enter, remain or be employed in any place or premises used for prostitution or for professional gambling;

(iii) Commit any indecent or obscene act in the presence of a child;

(iv) Sell, give or otherwise furnish a child any drug prohibited by law without a physician's prescription;

(v) Conceal or refuse to reveal to the parent, guardian, lawful custodian or to a peace officer the location of a child knowing that the child has run away from a parent, guardian or lawful custodian, except when the action of the defendant is necessary to protect the child from an immediate danger to the child's welfare; or

(vi) Cause, encourage, aid or contribute to the endangering of a child's health, welfare or morals, by using, employing or permitting a child:

(A) In any business enterprise which is injurious or dangerous to the health, morals, life or physical safety of the child;

(B) In any place for purposes of begging;

(C) To be exhibited for the purpose of displaying any deformity of a child, except to physicians, nurses or other health professionals; or

(D) In a place used for prostitution.

(E) Repealed By Laws 1999, ch. 180, § 3.

(c) A person violating this section is guilty of a misdemeanor punishable by imprisonment for not more than one (1) year, a fine of not more than one thousand dollars (\$1,000.00), or both. A person convicted of a second violation of this section is guilty of a felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars (\$5,000.00), or both.

(d) As used in this section, "child" means a person under the age of sixteen (16) years.

(e) Paragraph (b)(ii) of this section does not apply to crimes chargeable under W.S. 6-4-103(a)(i). Paragraph (b)(iv) of this section does not apply to crimes chargeable under W.S. 35-7-1036.

(f) Prior to the filing of an information or indictment charging a violation of W.S. 6-4-403(b)(ii), (iii) or (v)(D) or (E), neither the name of the person accused or the victim nor

any other information reasonably likely to disclose the identity of the victim shall be released or negligently allowed to be released to the public by any public employee, except as authorized by the judge with jurisdiction over the criminal charges. The name of the person accused may be released to the public to aid or facilitate an arrest.

(g) After the filing of an information or indictment and absent a request to release the identity of a minor victim by the victim or another acting on behalf of a minor victim, the trial court shall restrict the disclosure or publication of information reasonably likely to identify the minor victim.

(h) Any person who willfully violates subsection (f) or (g) of this section or who willfully neglects or refuses to obey any court order made pursuant thereto is guilty of contempt and, upon conviction, shall be fined not more than seven hundred fifty dollars (\$750.00) or be imprisoned in the county jail not more than ninety (90) days, or both.

(j) A release of a name or other information to the public in violation of the proscriptions of subsection (f) or (g) of this section shall not stand as a bar to the prosecution of a defendant or be grounds for dismissal of any charges against a defendant.

(k) As used in subsection (g) of this section, “minor victim” means a person under the age of eighteen (18) years.

CREDIT(S)

Laws 1982, ch. 75, § 3; Laws 1983, ch. 155, § 3; Laws 1983, ch. 171, § 1; Laws 1985, ch. 44, § 1; Laws 1999, ch. 180, §§ 2, 3, eff. July 1, 1999; Laws 2004, ch. 42, § 1, eff. March 3, 2004; Laws 2005, ch. 129, § 1, eff. July 1, 2005; Laws 2011, ch. 176, § 1, eff. March 3, 2011; Laws 2012, ch. 98, § 1, eff. March 15, 2012.

FEDERAL LEGISLATION

18 U.S.C.S. § 2241 (2013). Aggravated sexual abuse

(a) By force or threat. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly causes another person to engage in a sexual act--

(1) by using force against that other person; or

(2) by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(b) By other means. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly--

(1) renders another person unconscious and thereby engages in a sexual act with that other person; or

(2) administers to another person by force or threat of force, or without the knowledge or permission of that person, a drug, intoxicant, or other similar substance and thereby--

(A) substantially impairs the ability of that other person to appraise or control conduct; and

(B) engages in a sexual act with that other person;

or attempts to do so, shall be fined under this title, imprisoned for any term of years or life, or both.

(c) With children. Whoever crosses a State line with intent to engage in a sexual act with a person who has not attained the age of 12 years, or in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who has not attained the age of 12 years, or knowingly engages in a sexual act under the circumstances described in subsections (a) and (b) with another person who has attained the age of 12 years but has not attained the age of 16 years (and is at least 4 years younger than the person so engaging), or attempts to do so, shall be fined under this title and imprisoned for not less than 30 years or for life. If the defendant has previously been convicted of another Federal offense under this subsection, or of a State offense that would have been an offense under either such provision had the offense occurred in a Federal prison, unless the death penalty is imposed, the defendant shall be sentenced to life in prison.

(d) State of mind proof requirement. In a prosecution under subsection (c) of this section, the Government need not prove that the defendant knew that the other person engaging in the sexual act had not attained the age of 12 years.

CREDIT(S)

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3620; amended Pub.L. 103-322, Title XXXIII, § 330021(1), Sept. 13, 1994, 108 Stat. 2150; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 121, subsection 7(b)], Sept. 30, 1996, 110 Stat. 3009-31; Pub.L. 105-314, Title III, § 301(a), Oct. 30, 1998, 112 Stat. 2978; Pub.L. 109-162, Title XI, § 1177(a)(1), (2), Jan. 5, 2006, 119 Stat. 3125; Pub.L. 109-248, Title II, §§ 206(a)(1),

207(2), July 27, 2006, 120 Stat. 613, 615; Pub.L. 110-161, Div. E, Title V, § 554, Dec. 26, 2007, 121 Stat. 2082.)

18 U.S.C.S. § 2243 (2013). Sexual abuse of a minor or ward

(a) Of a minor. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who--

- (1) has attained the age of 12 years but has not attained the age of 16 years; and
- (2) is at least four years younger than the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years, or both.

(b) Of a ward. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in a sexual act with another person who is--

- (1) in official detention; and
- (2) under the custodial, supervisory, or disciplinary authority of the person so engaging;

or attempts to do so, shall be fined under this title, imprisoned not more than 15 years or both.

(c) Defenses.

(1) In a prosecution under subsection (a) of this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the other person had attained the age of 16 years.

(2) In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.

(d) State of mind proof requirement. In a prosecution under subsection (a) of this section, the Government need not prove that the defendant knew--

- (1) the age of the other person engaging in the sexual act; or
- (2) that the requisite age difference existed between the persons so engaging.

CREDIT(S)

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3621; amended Pub.L. 101-647, Title III, § 322, Nov. 29, 1990, 104 Stat. 4818; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 121, subsection 7(c)], Sept. 30, 1996, 110 Stat. 3009-31; Pub.L. 105-314, Title III, § 301(b), Oct. 30, 1998, 112 Stat. 2978; Pub.L. 109-162, Title XI, § 1177(a)(4),

(b)(1), Jan. 5, 2006, 119 Stat. 3125; Pub.L. 109-248, Title II, § 207, July 27, 2006, 120 Stat. 615; Pub.L. 110-161, Div. E, Title V, § 554, Dec. 26, 2007, 121 Stat. 2082.)

18 U.S.C.S. § 2244 (2013). Abusive sexual contact

(a) Sexual conduct in circumstances where sexual acts are punished by this chapter [[18 USCS §§ 2241](#) et seq.]. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in or causes sexual contact with or by another person, if so to do would violate--

(1) subsection (a) or (b) of section 2241 of this [title \[18 USCS § 2241\]](#) had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than ten years, or both;

(2) section 2242 of this [title \[18 USCS § 2242\]](#) had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than three years, or both;

(3) subsection (a) of section 2243 of this [title \[18 USCS § 2243\]](#) had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both;

(4) subsection (b) of section 2243 of this [title \[18 USCS § 2243\]](#) had the sexual contact been a sexual act, shall be fined under this title, imprisoned not more than two years, or both; or

(5) subsection (c) of section 2241 of this [title \[18 USCS § 2241\]](#) had the sexual contact been a sexual act, shall be fined under this title and imprisoned for any term of years or for life.

(b) In other circumstances. Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, knowingly engages in sexual contact with another person without that other person's permission shall be fined under this title, imprisoned not more than two years, or both.

(c) Offenses involving young children. If the sexual contact that violates this section (other than subsection (a)(5)) is with an individual who has not attained the age of 12 years, the maximum term of imprisonment that may be imposed for the offense shall be twice that otherwise provided in this section.

CREDIT(S)

(Added Pub.L. 99-646, § 87(b), Nov. 10, 1986, 100 Stat. 3622; amended Pub.L. 100-690, Title VII, § 7058(a), Nov. 18, 1988, 102 Stat. 4403; Pub.L. 103-322, Title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub.L. 105-314, Title III, § 302, Oct. 30, 1998, 112 Stat. 2979; Pub.L. 109-162, Title XI, § 1177(a)(5), (b)(2), Jan. 5, 2006, 119 Stat. 3125; Pub.L. 109-248, Title II, §§ 206(a)(2), 207(2), July 27, 2006, 120 Stat. 613, 615; Pub.L. 110-161, Div. E, Title V, § 554, Dec. 26, 2007, 121 Stat. 2082.)

18 U.S.C.S. § 2245 (2013). Offenses resulting in death

(a) In general.--A person who, in the course of an offense under this chapter, or section 1591, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, murders an individual, shall be punished by death or imprisoned for any term of years or for life.

CREDIT(S)

(Added Pub.L. 103-322, Title VI, § 60010(a)(2), Sept. 13, 1994, 108 Stat. 1972; amended Pub.L. 109-248, Title II, § 206(a)(3), July 27, 2006, 120 Stat. 613.)

18 U.S.C.S. § 2247 (2013). Repeat offenders

(a) Maximum Term of Imprisonment.--The maximum term of imprisonment for a violation of this chapter after a prior sex offense conviction shall be twice the term otherwise provided by this chapter, unless section 3559(e) applies.

(b) Prior Sex Offense Conviction Defined.--In this section, the term “prior sex offense conviction” has the meaning given that term in section 2426(b).

CREDIT(S)

(Added Pub.L. 103-322, Title IV, § 40111(a), Sept. 13, 1994, 108 Stat. 1903; amended Pub.L. 105-314, Title III, § 303, Oct. 30, 1998, 112 Stat. 2979; Pub.L. 108-21, Title I, § 106(b), Apr. 30, 2003, 117 Stat. 655.)

18 U.S.C.S. § 2251 (2013). Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that--

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering--

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct:

shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that--

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

CREDIT(S)

(Added Pub.L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub.L. 98-292, § 3, May 21, 1984, 98 Stat. 204; Pub.L. 99-500, Title I, § 101(b) [Title VII, § 704(a)], Oct. 18,

1986, 100 Stat. 1783-75; Pub.L. 99-591, Title I, § 101(b) [Title VII, § 704(a)] Oct. 30, 1986, 100 Stat. 3341-75; Pub.L. 99-628, §§ 2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub.L. 100-690, Title VII, § 7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub.L. 101-647, Title XXXV, § 3563, Nov. 29, 1990, 104 Stat. 4928; Pub.L. 103-322, Title VI, § 60011, Title XVI, § 160001(b)(2), (c), (e), Title XXXIII, § 330016(1)(S) to (U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub.L. 104-208, Div. A, Title I, § 101(a) [Title I, § 121, subsection 4], Sept. 30, 1996, 110 Stat. 3009-30; Pub.L. 105-314, Title II, § 201, Oct. 30, 1998, 112 Stat. 2977; Pub.L. 108-21, Title I, § 103(a)(1)(A), (b)(1)(A), Title V, §§ 506, 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub.L. 109-248, Title II, § 206(b)(1), July 27, 2006, 120 Stat. 614; Pub.L. 110-358, Title I, § 103(a)(1), (b), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub.L. 110-401, Title III, § 301, Oct. 13, 2008, 122 Stat. 4242.)

18 U.S.C.S. § 2423 (2013). Transportation of minors

(a) Transportation with intent to engage in criminal sexual activity.--A person who knowingly transports an individual who has not attained the age of 18 years in interstate or foreign commerce, or in any commonwealth, territory or possession of the United States, with intent that the individual engage in prostitution, or in any sexual activity for which any person can be charged with a criminal offense, shall be fined under this title and imprisoned not less than 10 years or for life.

(b) Travel with intent to engage in illicit sexual conduct.--A person who travels in interstate commerce or travels into the United States, or a United States citizen or an alien admitted for permanent residence in the United States who travels in foreign commerce, for the purpose of engaging in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(c) Engaging in illicit sexual conduct in foreign places.--Any United States citizen or alien admitted for permanent residence who travels in foreign commerce or resides, either temporarily or permanently, in a foreign country, and engages in any illicit sexual conduct with another person shall be fined under this title or imprisoned not more than 30 years, or both.

(d) Ancillary offenses.--Whoever, for the purpose of commercial advantage or private financial gain, arranges, induces, procures, or facilitates the travel of a person knowing that such a person is traveling in interstate commerce or foreign commerce for the purpose of engaging in illicit sexual conduct shall be fined under this title, imprisoned not more than 30 years, or both.

(e) Attempt and conspiracy.--Whoever attempts or conspires to violate subsection (a), (b), (c), or (d) shall be punishable in the same manner as a completed violation of that subsection.

(f) Definition.--As used in this section, the term “illicit sexual conduct” means (1) a sexual act (as defined in section 2246) with a person under 18 years of age that would be in violation of chapter 109A if the sexual act occurred in the special maritime and territorial jurisdiction of the United States; or (2) any commercial sex act (as defined in section 1591) with a person under 18 years of age.

(g) Defense.--In a prosecution under this section based on illicit sexual conduct as defined in subsection (f)(2), it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act had attained the age of 18 years.

CREDIT(S)

(June 25, 1948, c. 645, 62 Stat. 812; Feb. 6, 1978, Pub.L. 95-225, § 3(a), 92 Stat. 8; Nov. 7, 1986, Pub.L. 99-628, § 5(b)(1), 100 Stat. 3511; Sept. 13, 1994, Pub.L. 103-322, Title XVI, § 160001(g), 108 Stat. 2037; Dec. 23, 1995, Pub.L. 104-71, § 5, 109 Stat. 774; Oct. 11, 1996, Pub.L. 104-294, Title VI, §§ 601(b)(4), 604(b)(33), 110 Stat. 3499, 3508; Oct. 30, 1998, Pub.L. 105-314, Title I, § 103, 112 Stat. 2976; Nov. 2, 2002, Pub.L. 107-273, Div. B, Title IV, § 4002(c)(1), 116 Stat. 1808; Apr. 30, 2003, Pub.L. 108-21, Title I, §§ 103(a)(2)(C), (b)(2)(B), 105, 117 Stat. 652, 653, 654; July 27, 2006, Pub.L. 109-248, Title II, § 204, 120 Stat. 613; Pub.L. 113-4, Title XII, § 1211(b), Mar. 7, 2013, 127 Stat. 142.)

AMERICAN SAMOA

AM. SAMOA CODE ANN. § 46.3604 (2013). Rape.

(a) A person commits the crime of rape if:

(1) he has sexual intercourse with another person without that person's consent by the use of forcible compulsion; or

(2) he has sexual intercourse with another person who is 16 years of age or less.

(b) Rape is a class B felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then rape is a class A felony.

AM. SAMOA CODE ANN. § 46.3610 (2013). Sexual assault.

(a) A person commits the crime of sexual assault if he has sexual intercourse with another person who is incapacitated or 16 years of age or less.

(b) Sexual assault is a class C felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then the crime is a class B felony.

AM. SAMOA CODE ANN. § 46.3611 (2013). Sodomy.

(a) A person commits the crime of sodomy if:

(1) he has deviate sexual intercourse with another person without that person's consent or by the use of forcible compulsion; or

(2) he has deviate sexual intercourse with another person who is 16 years of age or less.

(b) Sodomy is a class B felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon, then sodomy is a class A felony.

AM. SAMOA CODE ANN. § 46.3612 (2013). Deviate sexual assault.

(a) A person commits the crime of deviate sexual assault if he has deviate sexual intercourse with another person without consent or who is incapacitated or who is 16 years of age or less.

(b) Deviate sexual assault is a class C felony unless in the course of it the actor inflicts serious physical injury on any person or displays a deadly weapon in a threatening manner, then the crime is a class B felony.

AM. SAMOA CODE ANN. § 46.3615 (2013). Sexual abuse in the first degree.

(a) A person commits the crime of sexual abuse in the first degree if:

(1) he subjects another person to sexual contact without that person's consent or by the use of forcible compulsion; or

(2) he subjects another person who is 16 years of age or less to sexual contact.

(b) Sexual abuse in the first degree is a class D felony unless in the course of it the actor inflicts serious physical harm on any person or displays a deadly weapon in a threatening manner, then the crime is a class C felony.

AM. SAMOA CODE ANN. § 46.3618 (2013). Child molesting.

(a) Notwithstanding any other provision of this chapter, a person commits the crime of child molesting if he engages in sexual intercourse or deviate sexual intercourse with a minor of the age of 12 years or under.

(b) Child molesting is a class A felony, the sentence of imprisonment for which must include a prison term of at least 10 years. This prison term is served without probation or parole.

AM. SAMOA CODE ANN. § 46.3811 (2013). Abuse of a child.

(a) Abuse of a child has the meaning specified in subsection (a) 45.2001.

(b) Abuse of a child is a class D felony.

GUAM

GUAM CODE ANN. tit. 9, § 25.15 (2013). First Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:

(1) the victim is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit;

(3) sexual penetration occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(ii) the actor uses force or coercion to accomplish the sexual penetration.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead

the victim to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration; and

(7) the actor causes personal injury to the victim, and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the first degree is a felony in the first degree. Any person convicted of criminal sexual conduct under ☐ 25.15(a) shall be sentenced to a minimum of fifteen (15) years imprisonment, and may be sentenced to a maximum of life imprisonment without the possibility of parole. Any person convicted of criminal sexual conduct in the first degree shall not be eligible for work release or educational programs outside the confines of prison nor shall the provisions under ☐ 80.31 apply.

SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79. Subsection (b) amended by P.L. 19-6:6. Subsection (b) repealed and reenacted by P.L. 23-114:1.

GUAM CODE ANN. tit. 9, § 25.20 (2013). Second Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

(1) that other person is under fourteen (14) years of age;

(2) that other person is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit;

(3) sexual contact occurs under circumstances involving the commission of any other felony;

(4) the actor is aided or abetted by one or more other persons and either of the following circumstances exists:

(i) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or

(ii) the actor uses force or coercion to accomplish the sexual contact.

(5) the actor is armed with a weapon or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon;

(6) the actor causes personal injury to the victim and force or coercion is used to

accomplish the sexual contact; and

(7) the actor causes personal injury to the victim and the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the second degree is a felony in the first degree but a person convicted of criminal sexual conduct in the second degree who receives a sentence of imprisonment shall not be eligible for work release or educational programs outside the confines of prison.

SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79. Subsection (b) amended by P.L. 19-6:7.

GUAM CODE ANN. tit. 9, § 25.25 (2013). Third Degree Criminal Sexual Conduct.

(a) A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exists:

- (1) that other person is at least fourteen (14) years of age and under sixteen (16) years of age;
- (2) force or coercion is used to accomplish the sexual penetration; and
- (3) the actor knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless.

(b) Criminal sexual conduct in the third degree is a felony of the second degree.

SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

GUAM CODE ANN. tit. 9, § 25.35 (2013). Assault with Intent to Commit Criminal Sexual Conduct.

Assault with intent to commit criminal sexual conduct involving penetration is a felony in a third degree.

SOURCE: Repealed and reenacted by P.L. 15-60:1, eff. 08/31/79.

PUERTO RICO

P.R. LAWS ANN. tit. 33, § 4760 (2013). Abandonment of minors.

The father or mother of a minor or any person who is in charge of said minor for support or education, who abandons said minor in any place with the intent to leave said minor unprotected shall incur a fourth degree felony.

When, due to the circumstances of the abandonment, the life, health, bodily integrity or sexual indemnity of the child jeopardized, the person shall incur a third degree felony.

CREDIT(S)

June 18, 2004, No. 149, § 132, eff. May 1, 2005.

P.R. LAWS ANN. tit. 33, § 4770 (2013). Sexual assault

Any person who performs sexual penetration, whether vaginal, anal, oral-genital, digital or instrumental under any of the following circumstances shall incur a severe second degree felony:

- (a) If the victim has not yet reached the age of sixteen (16) at the time of the event.
- (b) If due to mental disability or illness, whether temporary or permanent, the victim is unable to understand the nature of the act at the time of its commission.
- (c) If the victim has been compelled into the act by means of physical force, violence, intimidation or the threat of serious and immediate bodily harm.
- (d) If the victim's capability to consent has been annulled or diminished substantially without his/her knowledge or without his/her consent by means of hypnosis, narcotics, depressants or stimulants, or similar means or substances.
- (e) When at the time of the commission of the act the victim is not conscious of its nature and this circumstance is known to the person accused.
- (f) If the victim submits to the act by means of deception, trickery, simulation or cover up with respect to the identity of the person accused.
- (g) If the victim is forced or induced by means of abuse or physical or psychological violence into participating or becoming involved in unwanted sexual relations with third parties.
- (h) If the accused person is a relative of the victim, by ascendancy or descendancy, or consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (i) When the accused person takes advantage of the trust deposited in him/her by the victim because there is a relationship of superiority because the victim is under his/her custody, guardianship, or primary, secondary or special education, medical or

psychotherapeutic treatment, or any type of counseling, or because there is a relationship with the victim as the leader of his/her religious belief.

If the conduct typified in subsection (a) of this section is committed by a minor who has not yet reached the age of eighteen (18), the offender shall incur a third degree felony if prosecuted as an adult.

CREDIT(S)

June 18, 2004, No. 149, § 142; Sept. 16, 2004, No. 338, § 4, eff. May 1, 2005.

P.R. LAWS ANN. tit. 33, § 4772 (2013). Lewd acts.

Any person who without the intention to consummate the crime of sexual assault described in § 4770 of this title submits another person to an act that tends to awaken, excite or satisfy the sexual passion or desire of the accused, under any of the following circumstances hereinbelow, shall incur a third degree felony.

- (a) When the victim has not attained the age of sixteen (16) years at the time of the commission of the crime.
- (b) When the victim was compelled to the act by means of physical force, violence, the threat of serious and immediate bodily harm or intimidation, or by means of hypnotics, narcotics, depressants or stimulants, or otherwise similar means or substances.
- (c) When the victim, due to mental disease or a temporary or permanent disability was unable to understand the nature of the act.
- (d) When the victim was compelled to the act through the use of deceptive means that substantially annulled or impaired his/her capacity to consent.
- (e) If the accused has kinship with the victim, by reason of being an ascendant or descendant relative, by consanguinity, adoption or affinity, or collateral by consanguinity or adoption up to the third degree.
- (f) When the accused takes advantage of the trust placed upon him/her by the victim because there is a relationship of superiority due to having the victim under his/her custody, guardianship, or primary, middle school or special education, or medical or psychotherapeutic treatment, or any type of counseling, or because there is a religious belief leadership relationship with the victim.

CREDIT(S)

June 18, 2004, No. 149, § 144, eff. May 1, 2005.

P.R. LAWS ANN. tit. 33, § 4787 (2013). Use of a minor for child pornography

Any person who uses a minor, or persuades or induces a minor into posing, modeling or incur sexual conduct with the purpose of preparing, printing or exhibiting child pornography material or into participating into a show of said nature shall incur a third degree felony.

CREDIT(S)

June 18, 2004, No. 149, § 159, eff. May 1, 2005.

VIRGIN ISLANDS

V.I. CODE ANN. tit. 14, § 486 (2013). Knowledge of sexual abuse of a minor

Any parent or guardian of a minor under sixteen years of age who knows or reasonably should know that an adult residing in the same household has engaged in sexual intercourse or sodomy, or has had sexual contact with the minor under sixteen years of age and who does not report the offense to the Department of Justice, the U.S. Virgin Islands Police Department (V.I.P.D.), the Department of Health, or the Department of Human Services shall be imprisoned not more than 2 years, or fined not less than \$2,000; Provided, however, That in lieu of or in addition to a term of imprisonment, a court may require the parent or guardian to seek family counseling under the direction and supervision of the Commissioner of Human Services in accordance with such terms and conditions as the Court may specify.

CREDIT(S)

-Added Oct. 18, 1984, No. 5013, § 6, Sess. L. 1984, p. 346; amended Act June 15, 1984, No. 4964, § 1(b), Sess. L. 1984, p. 177.

V.I. CODE ANN. tit. 14, § 488 (2013). Visual medium depicting sexually explicit conduct, prohibitions; penalties

(a)

(1) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor or assist any other person to employ, use, persuade, induce, entice, or coerce any minor to engage in any sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(2) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any other person to engage in sexually explicit conduct for the purpose of producing any visual medium depicting such conduct.

(3) It is unlawful for any person knowingly to employ, use, persuade, induce, entice, or coerce any minor to engage in or assist any other person to engage in any sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

(4) It is unlawful for any parent, legal guardian, or person having custody or control of a minor knowingly to permit the minor to engage in or to assist any another person to engage in sexually explicit conduct for the purpose of any performance or to engage in sexual intercourse, sodomy, or to engage in a sexual performance, obscene sexual performance, or obscene sexual conduct that is calculated to promote the violation of the law and the general corruption of morals.

(5) It is unlawful for any person knowingly to create, reproduce, publish, promote, sell, distribute, give, exhibit, or possess with intent to sell or distribute any visual medium that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(6) It is unlawful for any person knowingly to advertise, sell, purchase, barter, or exchange any material or information whether it be printed, verbal, audio or digital which provides information as to where any visual medium which depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct can be found or purchased.

(7) It is unlawful for any person knowingly to bring or cause to be brought into the Virgin Islands any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(8) It is unlawful for any person knowingly to possess or control any material that depicts a minor or a portion of a minor's body engaged in any sexually explicit conduct.

(b) Any person who violates the provision of this section is guilty of a felony punishable upon conviction by imprisonment for not less than five years or more than 20 years and by a fine of not more than \$100,000.

CREDIT(S)

-Added Apr. 7, 2010, No. 7155, § 1, Sess. L. 2010, pp. 4, 5.

V.I. CODE ANN. tit. 14, § 505 (2013). Child abuse

Any person who abuses a child, or who knowingly or recklessly causes a child to suffer physical, mental or emotional injury, or who knowingly or recklessly causes a child to be placed in a situation where it is reasonably foreseeable that a child may suffer physical, mental or emotional injury or be deprived of any of the basic necessities of life, shall be punished by a fine of not less than \$500, or by imprisonment of not more than 20 years, or both.

CREDIT(S)

-Added Oct. 20, 1992, No. 5818, § 1, Sess. L. 1992, p. 157.

V.I. CODE ANN. tit. 14, § 1027 (2013). Employment of minor to perform prohibited acts

(a) Every person who (i) with knowledge that a person is a minor, or (ii) while in possession of such facts that he should reasonably know that such person is a minor, or (iii) any parent or guardian who has a minor under his or her control, knowingly permits, promotes, employs, uses, persuades, induces, or coerces such minor to engage in or assist others to engage in either posing or modeling alone or with others for purposes of preparing a film, photograph, negative, slide, or live performance involving sexual conduct by a minor, alone or with other persons or animals, for commercial purposes, is guilty of a felony and shall be fined not less than \$50,000 and be imprisoned for not less than three years and not more than six years.

(b) As used in subsection (a) of this section, 'sexual conduct' means any of the following, whether actual or simulated: sexual intercourse, oral copulation, sodomy, anal-oral copulation, masturbation, bestiality, sexual sadism, sexual masochism, any lewd or lascivious sexual activity, or excretory functions performed in a lewd or lascivious manner, whether or not any of the above conduct is performed alone or between members of the same or opposite sex or between humans and animals. An act is simulated when it gives the appearance of being actual sexual conduct.

-Added June 17, 1983, No. 4824, § 2, Sess. L. 1983, p. 78.

V.I. CODE ANN. tit. 14, § 1700 (2013). Aggravated rape in the first degree

(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person not the perpetrator's spouse:

(1) Who is under the age of thirteen, or...

(2) who is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act; or

(b) Whoever causes personal injury to a victim as the result of an act of rape as set forth in section 1701 of this title; or

(c) Whoever uses a deadly weapon during the commission of an act of rape as set forth in section 1701--

is guilty of aggravated rape in the first degree and shall be imprisoned for life or for any term of years, but not less than 15 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provisions of law, imposition or execution of the fifteen-year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

Whoever is convicted of a second or subsequent offense of aggravated rape in the first degree shall be punished by imprisonment for life or for any term of years, but not less than 25 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, Virgin Islands Code, or any other provision of law, imposition or execution of the twenty-five year minimum period of incarceration shall not be suspended; neither shall probation, parole, or any other form of release be granted for this minimum period of incarceration.

(d) Whoever is convicted of attempted aggravated rape in the first degree shall be punished by imprisonment for not more than 25 years, but not less than 7 years. Notwithstanding the provisions of Title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the seven-year period of incarceration shall not be suspended, nor shall probation, parole or another form of release be granted for this minimum period of incarceration.

(e) Whoever is found guilty of an offense in this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

CREDIT(S)

-Added Oct. 18, 1984, No. 5013, § 1(b), Sess. L. 1984, p. 343; amended Feb. 13, 1992, No. 5771, § 1, Sess. L. 1992, p. 20; Feb. 20, 2002, No. 6497, § 2 1., Sess. L. 2002, p. 3.

V.I. CODE ANN. tit. 14, § 1700a (2013). Aggravated rape in the second degree

(a) Whoever perpetrates an act of sexual intercourse or sodomy with a person who is under eighteen years but thirteen years or older and not the perpetrator's spouse, or by force, intimidation, or the perpetrator's position of authority over the victim is used to accomplish the sexual act, is guilty of aggravated rape in the second degree and shall be imprisoned for life or for any term in years, but not less than 10 years. "Position of authority" shall include, but not be exclusive to the following: an employer, youth leader, scout leader, coach, teacher, counselor, school administrator, religious leader, doctor, nurse, psychologist, guardian ad litem, baby sitter, or substantially similar position, and a police officer or probation officer other than when the officer is exercising custodial control over a minor.

(b) Whoever is convicted of a second or subsequent offense of aggravated rape in the second degree shall be punished by imprisonment for life or for any term of years, but not less than 20 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407 of this Code, or of any other law, imposition or execution of the twenty-year minimum period of incarceration shall not be suspended; nor shall probation, parole, or any other form of release be granted for the minimum period of incarceration prescribed in this section.

(c) Whoever is convicted of attempted aggravated rape in the second degree shall be punished by imprisonment for not more than 25 years, but not less than 5 years. Notwithstanding the provisions of title 5, chapters 313, 405 and 407, or any other provision of law, imposition or execution of the five-year minimum period of incarceration shall not be suspended, nor shall probation, parole or any other form of release be granted for this minimum period of incarceration.

(d) Whoever is convicted of an offense under this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

CREDIT(S)

-Added Feb. 20, 2002, No. 6497, § 2 2., Sess. L. 2002, p. 4.

V.I. CODE ANN. tit. 14, § 1702 (2013). Rape in the second degree

(a) Any person over 18 years of age who perpetrates under circumstances not amounting to rape in the first degree, an act of sexual intercourse or sodomy with a person not the

perpetrator's spouse who is at least 16 years but less than 18 years of age, and the perpetrator is 5 years or older than the victim, is guilty of rape in the second degree and shall be imprisoned not more than 10 years.

(b) Whoever is convicted of any offense under this section shall receive a psychiatric evaluation and participate in psychosocial counseling.

CREDIT(S)

-Amended Oct. 18, 1984, No. 5013, § 3(a)-(f), Sess. L. 1984, p. 345; Feb. 20, 2002, No. 6497, § 2 3., Sess. L. 2002, p. 5.

V.I. CODE ANN. tit. 14, § 1703 (2013). Rape in the third degree

Any person under 18 years of age but over 16 years of age who perpetrates an act of sexual intercourse or sodomy with a person not the perpetrator's spouse who is under 16 years of age but over 13 years of age, under circumstances not amounting to rape in the first degree, is guilty of rape in the third degree and shall be subject to the jurisdiction of the Family Division of the Superior Court pursuant to Title 4, Chapter 11, Virgin Islands Code. In lieu of a term of detention, the court, in its discretion, may recommend appropriate treatment, counseling or family planning.

CREDIT(S)

-Amended Jan. 29, 1964, No. 1060, Sess. L. 1964, p. 5; Oct. 18, 1984, No. 5013, § 4, Sess. L. 1984, p. 345.

V.I. CODE ANN. tit. 14, § 1708 (2013). Unlawful sexual contact in the first degree

A person who engages in sexual contact with a person not the perpetrator's spouse--

- (1) when force or coercion is used to accomplish the sexual contact;
- (2) when the other person is under thirteen years of age;
- (3) when the other person is under sixteen years of age residing in the same household as the perpetrator, and force, intimidation or the perpetrator's position of authority over the victim is used to accomplish the sexual contact;
- (4) when the other person is threatened or placed in fear of imminent and serious bodily injury;
- (5) when the other person's ability to consent to or resist the contact has been substantially impaired by an intoxicating, narcotic or anesthetic agent; or

(6) when the other person is unconscious or physically helpless, or that person's mental defect or incapacity is known to the perpetrator--is guilty of unlawful sexual contact and shall be imprisoned not more than 15 years.

CREDIT(S)

-Added Oct. 18, 1984, No. 5013, § 5, Sess. L. 1984, p. 346.

V.I. CODE ANN. tit. 14, § 1709 (2013). Unlawful sexual contact in the second degree

A person over eighteen years of age who engages in sexual contact with a person not the perpetrator's spouse who is over thirteen but under sixteen years of age is guilty of unlawful sexual contact in the second degree and shall be imprisoned not more than 1 year.

CREDIT(S)

-Added Oct. 18, 1984, No. 5013, § 5, Sess. L. 1984, p. 346.