

76-5-412 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).

Amended by Chapter 8, 2002 Special Session 5

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