Effective 5/4/2022
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76-5-412 Custodial sexual relations -- Penalties -- Defenses and limitations.

(1)
(a) As used in this section:
(i) "Actor" means:
(A) a law enforcement officer, as defined in Section 53-13-103;
(B) a correctional officer, as defined in Section 53-13-104;
(C) a special function officer, as defined in Section 53-13-105; or
(D) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.
(ii) "Indecent liberties" means the same as that term is defined in Section 76-5-401.1.
(iii) "Person in custody" means an individual, either an adult 18 years old or older, or a minor younger than 18 years old, who is:
(A) 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;
(B) under correctional supervision, such as at a work release facility or as a parolee or probationer; or
(C) under lawful or unlawful arrest, either with or without a warrant.
(iv) "Private provider or contractor" means a person 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.
(b) Terms defined in Section 76-1-101.5 apply to this section.

(2)
(a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (2)(b):
(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (4); 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) Acts referred to in Subsection (2)(a) are:
(i) having sexual intercourse with a person in custody;
(ii) engaging in a sexual act with a person in custody involving the genitals of one individual and the mouth or anus of another individual; or
(iii)
(A) 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; and
(B) intending to cause substantial emotional or bodily pain to any individual.
(c) Any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of a violation of Subsection (2)(a).

(3)
(a) A violation of Subsection (2) is a third degree felony.
(b) Notwithstanding Subsection (3)(a), if the person in custody is younger than 18 years old, a violation of Subsection (2) is a second degree felony.

(c) If the act committed under Subsection (3) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (3), this Subsection (3) does not prohibit prosecution and sentencing for the more serious offense.

(4) The offenses referred to in Subsection (2)(a)(i) and Subsection 76-5-412.2(2)(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 Section 76-5-404.3, aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(5)

(a) It is not a defense to the commission of, or the attempt to commit, the offense of custodial sexual relations under Subsection (2) if the person in custody is younger than 18 years old, that the actor:

(i) mistakenly believed the person in custody to be 18 years old 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).

(6) It is a defense that the commission by the actor of an act under Subsection (2) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).