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## Police Sexual Violence: Enacting Effective Laws

Police sexual violence (PSV) is a term that encompasses interactions in which a law enforcement officer (sometimes referred to as a peace officer) engages in sexual contact with someone they have encountered in the line of duty. Law enforcement officers are inherently in a position of authority over civilians, and this authority can be wielded to coerce unwanted sexual contact. The International Association of Chiefs of Police (IACP) has recognized that policing “create[s] opportunities for sexual misconduct” because officers “have power and authority over others” and “engage with vulnerable populations who lack power and are often perceived as less credible”.<sup>1</sup> PSV is the second-most prevalent form of police violence behind excessive force, but because victims are often hesitant to report their experience, there are likely exponentially more cases than have been documented.<sup>2</sup>

States across the country have enacted laws to establish PSV as a crime either within or in addition to existing sexual assault laws. These laws vary in their scope – some include all forms of police interaction and some only apply when the victim is in custody; they take varying approaches to addressing consent; some states omit language identifying law enforcement, instead referring to anyone in a position of authority over the victim; some only apply to corrections officers; and some states do not explicitly prohibit PSV at all.

### Examples of Strong PSV Laws

The most robust protections for victims of sexual assault by a law enforcement entity prohibit sexual contact by peace officers at any point in the line of duty, rather than only when the victim is in custody.

Vermont, Colorado, Maryland, and Arizona’s statutes are some of the most thorough in terms of covering a wide swath of police interactions. In 2023, Vermont amended its law to become the most robust in the country, specifically protecting both people in law enforcement custody, as well as subjects, victims, and informants in investigations. The law provides that “no law enforcement officer shall engage in...sexual conduct with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer,” as well as “with a person whom the officer is investigating pursuant to an open investigation; knows is being investigated by another law enforcement officer pursuant to an open investigation; or knows is a victim or confidential informant in any open investigation.”<sup>3</sup> Colorado’s law includes when “the peace officer contacts the victim for the purpose of law enforcement or contacts the victim in the exercise of the officer’s employment activities or duties”; “the peace officer knows that the victim is, or causes the victim to believe that he or she is the subject of an active investigation and the peace officer uses that knowledge to further sexual contact, intrusion, or penetration”; or when, “in furtherance of sexual contact, intrusion, or penetration, the peace officer makes any show of real or

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<sup>1</sup>Int’l Ass’n of Chiefs of Police, Addressing Sexual Offenses and Misconduct by Law Enforcement: Executive Guide at 4 (2011). <https://www.theiacp.org/sites/default/files/all/a/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>.

<sup>2</sup>Dara E. Purvis & Melissa Blanco, Police Sexual Violence: Police Brutality, #MeToo, and Masculinities, 108 Cal. L. Rev. 1487 (2020). <https://californialawreview.org/print/police-sexual-violence/>

<sup>3</sup>13 V.S.A. § 3259. The statute also defines “detaining” and “detained” to include “a traffic stop or questioning pursuant to an investigation of a crime.”

apparent authority”.<sup>4</sup> Colorado’s law protects individuals from PSV during essentially any law enforcement interaction and also specifically prohibits peace officers from using their position of authority over the victim to coerce them into sexual contact. Maryland’s PSV statute is similarly thorough, prohibiting sexual contact with a person who is “a victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with”; “requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer’s official duties”; or “in the custody of the law enforcement officer.”<sup>5</sup> Arizona’s law lists fewer scenarios, but is still one of the country’s stronger laws, prohibiting sexual conduct with people who are both in custody and subjects of investigations.<sup>6</sup>

## Addressing Consent

Strong PSV laws also address consent, preventing an accused officer from using the defense that their victim consented to sexual contact. PSV laws are often referred to as closing a loophole in sexual assault laws - while sexual assault is a crime in every state, law enforcement officers can avoid assault allegations by claiming their victim consented to sexual contact. Someone who is being investigated in relation to a crime or is in police custody inherently cannot consent to sexual contact because the power dynamic between law enforcement and a citizen is in itself coercive.<sup>7</sup> Law enforcement officers can wield their power over victims by threatening arrest or intimidating them into silence.<sup>8</sup>

In order to address the consent loophole, some states provide that consent of the victim cannot be a defense to prosecution under those states’ PSV laws. For example, Georgia’s statute contains a subsection that simply provides that “consent of the victim shall not be a defense to a prosecution under this Code section”.<sup>9</sup> Other states instead define police sexual contact occurring during the line of duty as inherently non-consensual. For example, under Louisiana law, “a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either: (1) arrested the person or was responsible for maintaining the person in actual custody[; or,] (2) knows or reasonably should know that the person is under arrest or otherwise in actual custody”.<sup>10</sup>

The U.S. Congress passed the “Closing the Law Enforcement Consent Loophole Act” in 2022 which not only codified a new federal PSV law, but also created a grant system to incentivize states to pass laws that “make[] it a criminal offense for any person acting under color of law of the State to knowingly engage in a sexual act with an individual who is under arrest, in detention, or otherwise in the actual custody of any law enforcement officer; and prohibits a person charged with [that] offense ... from asserting the consent of the other individual as a defense.”<sup>11</sup> In order to receive federal funding, a state must have a law that prohibits custodial sexual assault *and* prevents the use of a consent defense. Currently, 21 of the 36 states with PSV statutes have some form of a consent provision.

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<sup>4</sup>Colorado R.S.A. § 18-3-405.7(1)

<sup>5</sup>Maryland. Code, Crim. Law § 3-314(e)(1)(i-iii)

<sup>6</sup>A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact ... with any person who is in the officer’s custody or a person who the officer knows or has reason to know is the subject of an investigation.” A.R.S.. § 13-1412(A).

<sup>7</sup>For a more detailed explanation of police sexual contact being inherently non-consensual regardless of expressed consent, see Purvis & Blanco, *supra*, 1502-1504.

<sup>8</sup>For in-depth discussion of police threats and intimidation of victims, see Isidoro Rodriguez, “Predators Behind the Badge: Confronting Police Sexual Misconduct”, *The Crime Report*, March 12, 2020.

<https://thecrimereport.org/2020/03/12/predators-behind-the-badge-confronting-hidden-police-sexual-misconduct/>

<sup>9</sup>O.C.G.A. § 16-6-5.1(e)

<sup>10</sup>Louisiana R.S. § 14:41.1

<sup>11</sup>“Closing the Law Enforcement Consent Loophole Act of 2022” <https://www.congress.gov/117/plaws/publ103/PLAW-117publ103.pdf>

## Examples of Narrow PSV Laws

Many state laws only prohibit sexual contact where the victim is in some form of police custody. However, persons are vulnerable to sexual assault by police officers in any stage of police interaction – especially where an officer is able to coerce a victim using the threat of arrest, or where law enforcement is conducting an undercover investigation and the victim engages in sexual contact with an officer under false pretenses. In many states, the PSV law only addresses sexual contact where the victim was being detained by or in the custody of law enforcement. The definition of “custody” varies state to state. Washington’s statute reads that “a person is guilty of custodial sexual misconduct ... when the person has sexual intercourse with another person ... when the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.”<sup>12</sup> Maine’s law has a broad definition of when someone is in custody: “under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime”<sup>13</sup>. This language is fairly comprehensive, but would be even more protective if it covered any interaction related to investigations versus only questioning. Alaska, on the other hand, doesn’t define custody: “An offender commits the crime of sexual assault in the third degree if the offender ... while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.”<sup>14</sup>

## Examples of Weak PSV Laws

Even weaker laws only prohibit sexual assault by someone in a “position of authority” over the victim, failing to specifically enumerate peace officers as being in positions of authority can allow for prosecutorial interpretation that leaves victims of law enforcement sexual assault behind. For example, Wyoming’s sexual assault in the second degree statute has a subsection including situations in which “the actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit.”<sup>15</sup> Several states only have laws prohibiting sexual contact between corrections officers and inmates or parole officers and parolees, and others don’t create explicit protections from assault by law enforcement at all.

## PSV Policy and Sex Work

Adult consensual sex workers and trafficked persons are especially vulnerable to police sexual violence for a number of reasons. The IACP noted in their *Addressing Sexual Offenses and Misconduct by Law Enforcement Executive Guide* that “predators select victims based on vulnerabilities and a perceived lack of credibility, and therefore, victimization is often higher among certain populations including ... individuals in prostitution and/or the commercial sex industry.”<sup>16</sup> Law enforcement officers use the fear of arrest as a tool to coerce victims,<sup>17</sup> and due to their engagement in a criminal activity, victims of PSV who are engaged in prostitution by choice or by coercion put themselves in danger of criminalization by reporting an experience with PSV. Additionally, police vice units frequently use raids and undercover work in their investigations of suspected prostitution. Undercover officers can and do engage in sexual conduct with the targets of their investigations, despite this being wholly

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<sup>12</sup>R.C.W. § 9A.44.160(1)(b)

<sup>13</sup>Maine R.S. tit. 17-A. § 253(2)(N)

<sup>14</sup>Alaska Stat. § 11.41.425(a)(4)

<sup>15</sup>Wyoming Stat. § 6-2-303(a)(iv)

<sup>16</sup>Int’l Ass’n of Chiefs of Police, *supra*, at 13.

<sup>17</sup>A Department of Justice investigation into the Baltimore Police Department found that officers regularly coerced sex in exchange for immunity from arrest. See U.S. Department of Justice Civil Rights Division, *Investigation of the Baltimore City Police Department*, August 10, 2016 at 149-150. <https://www.justice.gov/crt/file/883296/dl> See also, Aydan Murphy-Stanley, *The Paradox of Salvation: Police-perpetrated sexual violence against Sex Workers in the United States*, August 2022 at 16-18. [https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1260&context=ij\\_etds](https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1260&context=ij_etds)

unethical as well as unnecessary. This is an example of law enforcement exploiting their authority to needlessly engage in sexual contact with a subject of an investigation – while technically this interaction could have been consensual initially, the agreement is made under false pretenses which renders the sexual contact non-consensual. Illinois is the first state to consider legislation recognizing sex workers’ unique vulnerability to PSV. Lawmakers there introduced the “Prostitution Investigation Act” in February 2024, which would require all law enforcement agencies to create and publicly post a policy prohibiting officers from “knowingly and willingly performing an act of sexual penetration with the suspect of a criminal investigation of prostitution during the course of an investigation conducted by that officer.”<sup>18</sup>

## Recommendations

Statutory language differs in each state, creating varying degrees of protection, but ultimately every jurisdiction should create the most comprehensive laws possible to protect victims of sexual assault. The power imbalance between law enforcement officers and citizens is significant, making any sexual contact between the parties inherently coercive and non-consensual. The best police sexual violence laws will cover interactions in any form of law enforcement duties, including at initial contact and the investigatory stage, and they will also make clear that any sexual contact between a peace officer and someone they encounter during the line of duty is inherently non-consensual.

## Pending Legislation in 2024

### Illinois

[HB4410/SB3523](#) - The “Prostitution Investigation Act” requires every law enforcement body in the state to create “a policy that prohibits law enforcement officers from knowingly and willingly performing an act of sexual penetration with the suspect of a criminal investigation of prostitution during the course of an investigation conducted by that officer.”

### Maryland

[HB302/SB177](#) - Increases criminal penalties “relating to sexual contact between a law enforcement officer, correctional employee, or court-ordered services provider” and requiring persons convicted of those crimes to register as a sex offender.

### Mississippi

**[DEAD]** [HB1540/SB2435](#) - Makes it unlawful for law enforcement to engage in sexual penetration with anyone who is detained, arrested or otherwise in custody. Existing law only protects incarcerated persons and those serving on probation or parole.

### New York

[A692/S2628](#) - Establishes incapacity to consent when a person is a witness to or subject of an investigation under certain circumstances.

[A1774/S2922](#) - Deems a person who engages in sexual conduct during the period of their probation with his or her supervising probation officer as being incapable of consent.

[S4348](#) - Deems individuals facing criminal charges as being incapable of consent when the actor is a police officer, peace officer or other law enforcement agent who knows or reasonably should know that such person is facing pending charges.

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<sup>18</sup>H.B.4410/S.B.3523, 103rd Gen. Assemb, Reg. Sess. (Ill. 2024).

<https://www.ilga.gov/legislation/billstatus.asp?DocNum=4410&GAID=17&GA=103&DocTypeID=HB&LegID=151357&SessionID=112>

**Rhode Island**

[H7833/S2651](#) - Prohibits members of law enforcement from engaging in sexual penetration with individuals in their custody.

**Virginia**

[SB394](#) - Creates the crime of carnal knowledge of a person serving as a confidential informant; also expands the crime of sexual battery to include where the victim is: a person detained or arrested and the accused is law-enforcement officer, a pretrial defendant or posttrial offender and the accused is an owner or employee of the bail company that posted the pretrial defendant's or posttrial offender's bond, or a person serving as a confidential informant and the accused is a law-enforcement officer.

# Excerpts of Police Sexual Violence Laws by Category<sup>19</sup>

\* state prohibits use of a consent defense

\*\* state defines police sexual contact as non-consensual

## **Laws Including All or Most Law Enforcement Interactions:**

**Arizona, Colorado\*, Kansas, Kentucky, Maine, Maryland, Missouri\*, Montana\*\*,  
Vermont**

### **Arizona Criminal Code § 13-1412(A);(D)(1)**

[13-1412](#). *Unlawful sexual conduct; peace officers; classification; definitions*

A. A peace officer commits unlawful sexual conduct by knowingly engaging in sexual contact, oral sexual contact or sexual intercourse with any person who is in the officer's custody or a person who the officer knows or has reason to know is the subject of an investigation.

D. For the purposes of this section:

1. "Custody" includes the imposition of actual or constructive restraint pursuant to an on-site arrest, a court order or any contact in which a reasonable person would not feel free to leave. Custody does not include detention in a correctional facility, a juvenile detention facility or a state hospital.

### **Colorado Criminal Code § 18-3-405.7(1);(4)**

[18-3-405.7](#). *Unlawful sexual conduct by a peace officer – definition.*

(1) A peace officer commits unlawful sexual conduct by a peace officer by knowingly engaging in sexual contact, sexual intrusion, or sexual penetration under any of the following circumstances:

(a) In the same encounter, the peace officer contacts the victim for the purpose of law enforcement or contacts the victim in the exercise of the officer's employment activities or duties;

(b) The peace officer knows that the victim is, or causes the victim to believe that he or she is, the subject of an active investigation, and the peace officer uses that knowledge to further the sexual contact, intrusion, or penetration; or

(c) In furtherance of sexual contact, intrusion, or penetration, the peace officer makes any show of real or apparent authority.

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(4) It is not a defense to this section that the victim consented to the sexual contact, intrusion, or penetration.

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<sup>19</sup>Sections have been removed from several statutes for the sake of brevity and readability. The full text of each statute is available at the linked sites.

### **Kansas Statutes § 21-5512(a)(13)**

[21-5512](#). *Unlawful sexual relations*.

(a) Unlawful sexual relations is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy with a person who is not married to the offender if:

(13) the offender is a law enforcement officer and the person with whom the offender is engaging in consensual sexual intercourse, lewd fondling or touching, or sodomy is a person 16 years of age or older who is interacting with such law enforcement officer during the course of a traffic stop, a custodial interrogation, an interview in connection with an investigation,<sup>20</sup> or while the law enforcement officer has such person detained.

### **Kentucky Revised Statutes § 510.120(1)(c)**

[510.120](#). *Sexual abuse in the second degree*.

(1) A person is guilty of sexual abuse in the second degree when: (c) Being a peace officer, while serving in his or her official capacity, he or she subjects a person who the officer:

1. Arrested, held in custody, or investigated for commission of a traffic or criminal offense; or
2. Knew or should have known was under arrest, held in custody, or being investigated for commission of a traffic or criminal offense; to sexual contact.

### **Maine Criminal Code § 253(2)(N)**

[253](#). *Gross sexual assault*

2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and:

N. The actor is a law enforcement officer acting in performance of official duties and the other person, not the actor's spouse, is under arrest, in custody or being interrogated or temporarily detained, including during a traffic stop or questioning pursuant to an investigation of a crime.<sup>21</sup>

### **Maryland Criminal Law § 3-314(e)(1)(i-iii)**

[3-314](#). *Sexual Conduct Between Correctional or Department of Juvenile Services Employee or Court-Provided Services Provider and Inmate or Confined Child*

(e) (1) Except as provided in paragraph (2) of this subsection, a law enforcement officer may not engage in sexual contact, vaginal intercourse, or a sexual act with a person:

- (i) who is a victim, witness, or suspect in an open investigation that the law enforcement officer is conducting, supervising, or assisting with if the law enforcement officer knew or should have known that the person is a victim, witness, or suspect in the investigation;
- (ii) requesting assistance from or responding to the law enforcement officer in the course of the law enforcement officer's official duties; or
- (iii) in the custody of the law enforcement officer.

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<sup>20</sup>Only applies to interviews, not all contact in the course of an investigation.

<sup>21</sup>Only applies to questioning, not all contact in the course of an investigation.

**Missouri Revised Statutes § 566.145:1(1)(c),(2);4**

[566.145](#). *Sexual conduct in the course of public duty, offense of – definitions – violation, penalty – consent not a defense.*

1. A person commits the offense of sexual conduct in the course of public duty if the person engages in sexual conduct:

(1) With a detainee, a prisoner, or an offender and the person:

(c) Is a law enforcement officer and engages in sexual conduct with a detainee or prisoner who is in the custody of such officer; or

(2) With someone who is not a detainee, a prisoner, or an offender and the person is:

(a) A probation and parole officer, a police officer, or an employee of, or assigned to work in, any jail, prison, or correctional facility;

(b) On duty; and

(c) The offense was committed by means of coercion as defined in section 566.200.<sup>22</sup>

4. Consent of a detainee, a prisoner, an offender, or any other person is not a defense.

**Montana Code § 45-5-501(1)(b)(xi)**

[45-5-501](#). *Definitions.*

(1)(b) Subject to subsections (1)(c) through (1)(g), the victim is incapable of consent because the victim is:

(xi) a witness in a criminal investigation or a person who is under investigation in a criminal matter and the perpetrator is a law enforcement officer who is involved with the case in which the victim is a witness or is being investigated.<sup>23</sup>

**Vermont Statutes § 3259(a),(b)(1)**

[3259](#). *Sexual exploitation of a person who is being investigated, detained, or is in the custody of a law enforcement officer*

(a) No law enforcement officer shall engage in ... sexual conduct with a person whom the officer is detaining, arresting, or otherwise holding in custody or who the officer knows is being detained, arrested, or otherwise held in custody by another law enforcement officer. For purposes of this section “detaining” and “detained” include a traffic stop or questioning pursuant to an investigation of a crime.

(b)(1) No law enforcement officer shall engage in sexual conduct as defined in section 2821 of this title with a person whom the officer:

(A) is investigating pursuant to an open investigation;

(B) knows is being investigated by another law enforcement officer pursuant to an open investigation; or

(C) knows is a victim or confidential informant in any open investigation.

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<sup>22</sup>This only applies to a victim who is not in custody at the time of the sexual contact when the perpetrator used coercion as defined by [MO law](#): “(a) Threats of serious harm to or physical restraint against any person; (b) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (c) The abuse or threatened abuse of the legal process.”

<sup>23</sup>This law extends only to investigatory sexual contact; it does not appear to extend to contact with a person in law enforcement custody.



# **Laws That Prohibit Sexual Assault Only When the Victim Is in Custody:**

**Alabama\*\***, **Alaska**, **California\***, **Connecticut**, **Delaware\***, **District of Columbia**, **Florida\*\***, **Georgia\***, **Hawaii**, **Illinois\*\***, **Indiana\***, **Louisiana\*\***, **Massachusetts\*\***, **Minnesota\***, **Nebraska\***, **New Hampshire\***, **New York\*\***, **North Dakota**, **Ohio**, **Oklahoma**, **Oregon\***, **Pennsylvania\***, **Virginia**, **United States**, **Utah\***, **Washington\***, **Wisconsin\*\***

## **Alabama Criminal Code §§ 13A-6-60(1); 13A-6-70(b)(1)**

[13A-6-60](#). *Sexual Offenses; Definitions.*

The following definitions apply in this article:

(1) **FORCIBLE COMPULSION.** Use or threatened use, whether express or implied, of physical force, violence, confinement, restraint, physical injury, or death to the threatened person or to another person. Factors to be considered in determining an implied threat include, but are not limited to, the respective ages and sizes of the victim and the accused; the respective mental and physical conditions of the victim and the accused; the atmosphere and physical setting in which the incident was alleged to have taken place; the extent to which the accused may have been in a position of authority, domination, or custodial control over the victim;<sup>24</sup> or whether the victim was under duress. Forcible compulsion does not require proof of resistance by the victim.

[13A-6-70](#). *Lack of consent.*

(b) Lack of consent results from either of the following: (1) Forcible compulsion.

## **Alaska Criminal Law § 11.41.425(a)(4)**

[11.41.425](#). *Sexual assault in the third degree.*

(a) An offender commits the crime of sexual assault in the third degree if the offender ...

(4) while employed in the state by a law enforcement agency as a peace officer, or while acting as a peace officer in the state, engages in sexual penetration with a person with reckless disregard that the person is in the custody or the apparent custody of the offender, or is committed to the custody of a law enforcement agency.

## **California Penal Code § 289.6(a)(2);(c);(e); 261(a)(7)**

[289.6](#). (a)(2) An employee or officer of a public entity detention facility, or an employee, officer, agent of a private person or entity that provides a detention facility or staff for a detention facility, a person or agent of a public or private entity under contract with a detention facility, a volunteer of a private or public entity detention facility, or a peace officer who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.

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<sup>24</sup>"Custodial control" is only a factor in determining forcible compulsion.

(c) As used in this section, the term “detention facility” means:

- (1) A prison, jail, camp, or other correctional facility used for the confinement of adults or both adults and minors.
- (2) A building or facility used for the confinement of adults or adults and minors pursuant to a contract with a public entity.
- (3) A room that is used for holding persons for interviews, interrogations, or investigations and that is separate from a jail or located in the administrative area of a law enforcement facility.
- (4) A vehicle used to transport confined persons during their period of confinement, including transporting a person after he or she has been arrested but has not been booked.
- (5) A court holding facility located within or adjacent to a court building that is used for the confinement of persons for the purpose of court appearances.

(e) Consent by a confined person or parolee to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.

[261.](#) (a) Rape is an act of sexual intercourse accomplished under any of the following circumstances:

(7) If 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. As used in this paragraph, “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.

**Connecticut Penal Code § 53a-71(a)(5); 53a073(a)(1)(E)**

[Sec.53a-71.](#) *Sexual assault in the second degree: Class C or B felony.*

(a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and:

(5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person

[Sec. 53a-73a.](#) *Sexual assault in the fourth degree: Class A misdemeanor or class D felony.*

(a) A person is guilty of sexual assault in the fourth degree when: (1) Such person subjects another person to sexual contact who is

(E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person

## **Delaware Criminal Code § 780A**

[§ 780A.](#) *Sexual intercourse or penetration with a person in custody; class F felony.*

(a) It is unlawful for a law-enforcement officer, an employee working at a detention facility, a contractor or employee of a contractor working at a detention facility, or a volunteer working at a detention facility to engage in sexual intercourse or sexual penetration with a person who is in custody, as defined in § 1258 of this title.

(b) Subsection (a) of this section does not apply to a licensed medical doctor or nurse when the penetration occurs for the purpose of diagnosis or treatment or to a law-enforcement officer who is lawfully performing job duties.

(c) Consent of the person in custody is not a defense to an act in violation of subsection (a) of this section.

(d) A violation of subsection (a) of this section is a class F felony.

## **Code of the District of Columbia § 22-3013**

[22-3013.](#) *First degree sexual abuse of a ward, patient, client, arrestee, detainee, or prisoner.*

Any staff member, employee, contract employee, consultant, or volunteer of a law enforcement agency or at a hospital, treatment facility, law enforcement facility, detention or correctional facility, group home, or other institution; anyone who is an ambulance driver or attendant, bus driver or attendant, or person who participates in the transportation of a ward, patient, client, arrestee, detainee, or prisoner to and from such institutions; or any official custodian of a ward, patient, client, arrestee, detainee, or prisoner, who engages in a sexual act with a ward, patient, client, arrestee, detainee, or prisoner, or causes a ward, patient, client, arrestee, detainee, or prisoner to engage in or submit to a sexual act shall be fined not more than the amount set forth in § 22-3571.01, or incarcerated for no more than 10 years, or both.

## **Florida Statutes § 794.011(4)(e)(7);(9)**

[794.011.](#) *Sexual battery.*

(4)(e) The following circumstances apply to paragraphs (a)-(d) [degrees of sexual battery]:

7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), (3), (6), (7), (8), or (9), who is certified under 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.

(9) For prosecution under paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an offense committed under any of the circumstances listed in subparagraph (4)(e)7., 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.

## **Georgia Code § 16-6-5.1(b)(3);(c)(3);(d)**

[16-6-5.1.](#) *Improper sexual contact by employee, agent, or foster parent; consent not a defense; penalty.*

(b) An employee or agent commits the offense of improper sexual contact by employee or agent in the first degree when such employee or agent knowingly engages in sexually explicit conduct with another person whom such employee or agent knows or reasonably should have known is contemporaneously:

(3) Being detained by or is in the custody of any law enforcement agency of which he or she is an employee or agent;

(c) A person commits the offense of improper sexual contact by employee or agent in the second degree when such employee or agent knowingly engages in sexual contact, excluding sexually explicit conduct, with another person whom such employee or agent knows or reasonably should have known is contemporaneously:

(3) Being detained by or is in the custody of a law enforcement agency of which he or she is an employee or agent;

(d) Consent of the victim shall not be a defense to a prosecution under this Code section.

**Hawaii Penal Code § 707-731(1)(c)(v)**

[707-731](#). *Sexual assault in the second degree.*

(1) A person commits the offense of sexual assault in the second degree if ...

(c) The person, while employed...

(v) As a law enforcement officer as defined in section 710-1000, knowingly subjects to sexual penetration: 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; a person in custody; a person who is stopped by a law enforcement officer; or a person who is being accompanied by a law enforcement officer for official purposes; provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

**Illinois Criminal Code § 11-9.2(a)(3);(e);(g)(1)**

[Sec. 11-9.2](#). *Custodial sexual misconduct.*

(a) A person commits custodial sexual misconduct when: (3) he or she is an employee of a law enforcement agency and engages in sexual conduct or sexual penetration with a person who is in the custody of a law enforcement agency or employee.

(e) In this Section, the consent of the probationer, parolee, releasee, inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or a person in the custody of a law enforcement agency or employee 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, inmate in custody of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act, or a person in the custody of a law enforcement agency or employee.

(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, aftercare release, or mandatory supervised release;
- (iv) electronic monitoring or home detention;
- (v) probation;
- (vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act; or
- (vii) detention or arrest by a law enforcement agency or employee.

**Indiana Code § 35-44.1-3-10(b);(e)**

[35-44.1-3-10](#). *Sexual misconduct with a service provider*

(b) A service provider who knowingly or intentionally engages in any fondling or touching with a person who is subject to lawful detention or lawful supervision with the intent to arouse or satisfy the sexual desires of the service provider or the person commits sexual misconduct, a Level 6 felony. However, the offense is a Level 5 felony if the service provider engages in sexual intercourse or other sexual conduct (as defined in IC 35-31.5-2-221.5) with the person who is subject to lawful detention or lawful supervision.

(e) It is not a defense that an act described in subsection (b) or (c) was consensual.

**Louisiana Criminal Law § 14:41.1**

[41.1](#). *Consent; victim in police custody*

For purposes of this Subpart, a person is deemed incapable of consent when the person is under arrest or otherwise in the actual custody of a police officer or other law enforcement official and the offender is a police officer or other law enforcement official who either:

- (1) Arrested the person or was responsible for maintaining the person in actual custody.
- (2) Knows or reasonably should know that the person is under arrest or otherwise in actual custody.

**Massachusetts General Laws § c.265 13H1/2(a);(b)**

[C.265 § 13H1/2](#). *Indecent assault and battery by a law enforcement officer*

(a) For the purposes of this section "law enforcement officer" shall mean a police officer, an auxiliary, intermittent, special, part-time or reserve police officer, a police officer in the employ of a public institution of higher education pursuant to section 5 of chapter 15A, a public prosecutor, a municipal or public emergency medical technician, a deputy sheriff, a correction officer, a court officer, a probation officer, a parole officer, an officer of the department of youth services, a constable, a campus police officer who holds authority as a special state police officer or a person impersonating one of the foregoing.

(b) A law enforcement officer who commits an indecent assault and battery on a person who has attained the age of 14 and who is in the custody or control of such law enforcement officer shall be punished by imprisonment in the state prison for not more than 5 years, or by imprisonment for not more than 2½ years in a jail or house of correction. In a prosecution commenced under this subsection, a person shall be deemed incapable of consent to contact of a sexual nature with a law enforcement officer.

**Minnesota Criminal Code §§ 609.341 Subd.24(2)(vii); 609.344(1)(d); 609.345(1)(d)**

609.341. Definitions

Subd. 24. Prohibited occupational relationship. A "prohibited occupational relationship" exists when the actor is in one of the following occupations and the act takes place under the specified circumstances:

(2) the actor and the complainant were in one of the following occupational relationships at the time of the act. Consent by the complainant is not a defense:

(vii) the actor was or falsely impersonated a peace officer, as defined in section 626.84, the actor physically or constructively restrained the complainant or the complainant did not reasonably feel free to leave the actor's presence,<sup>25</sup> and the sexual penetration or sexual contact was not pursuant to a lawful search or lawful use of force;

609.344. Criminal sexual conduct in the third degree

§Subdivision 1. Adult victim; 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:

(d) at the time of the act, the actor is in a prohibited occupational relationship with the complainant.

609.345. Criminal sexual conduct in the fourth degree

Subdivision 1. Adult victim; 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:

(d) at the time of the act, the actor is in a prohibited occupational relationship with the complainant.

**Nebraska Revised Statutes § 28-322.05**

28-322.05. Sexual abuse of a detainee; penalty.

(1) For purposes of this section:

(a) Detainee means an individual who has been:

(i) Arrested by a person;

(ii) Detained by a person, regardless of whether the detainee has been arrested or charged; or

(iii) Placed into the custody of a person, regardless of whether the detainee has been arrested or charged;

(b) Law enforcement agency means an agency or department of this state or of any political subdivision of this state which is responsible for the prevention and detection of crime; the enforcement of the penal, traffic, or highway laws of this state or any political subdivision of this state; and the enforcement of arrest warrants. Law enforcement agency includes a police department, an office of the town marshal, an office of the county sheriff, the Nebraska State Patrol, and any department to which a deputy state sheriff is assigned as provided in section 84-106; and

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<sup>25</sup>This statute does not encompass all custodial interactions because it requires actual or constructive restraint of the victim by the perpetrator.

(c) Person means an individual:

(i) Who is employed by a law enforcement agency, including an individual working under contract with the agency;

(ii) To whom the law enforcement agency has authorized or delegated authority to make arrests, to place a detainee in detention or custody, or to otherwise exercise control over a detainee or a detainee's activities; and

(iii) Who is not the spouse of a detainee.

(2) A person commits the offense of sexual abuse of a detainee if the person engages in sexual penetration or sexual contact with a detainee. It is not a defense to a charge under this section that the detainee consented to such sexual penetration or sexual contact.

(3) An otherwise lawful pat-down or body cavity search by a person is not a violation of this section.

**New Hampshire Criminal Code § 632-A:2(I)(n)(1)**

[632-A:2](#). *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:

(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, disciplinary, or other authority authorized by law over, or direct responsibility for maintaining detention of, the victim by virtue of the victim being detained or incarcerated in a correctional institution, the secure psychiatric unit, a juvenile detention facility, or any other setting in which the victim is not free to leave

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

**New York Penal Law § 130.05(3)(j)(i-ii)**

[130.05](#). *Sex offenses; lack of consent*.

3. A person is deemed incapable of consent when he or she is:

(j) detained or otherwise in the custody of a police officer, peace officer, or other law enforcement official and the actor is a police officer, peace officer or other law enforcement official who either:

(i) is detaining or maintaining custody of such person; or

(ii) knows, or reasonably should know, that at the time of the offense, such person was detained or in custody.

**North Dakota Criminal Code § 12.1-20-07(1)(d)**

[12.1-20-07](#). *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:

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.

**Ohio Revised Code § 2907.03(A)(6)**

[2907.03](#). *Sexual battery*

(A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply:

(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.

**Oklahoma Statutes § 21-1111.1(A)(7)**

[§21-1111](#). *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:

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 the subcontractor or employee of a subcontractor of the contractor of the state or federal government, a county, a municipality or a political subdivision that exercises authority over the victim.

**Oregon Revised Statutes § 163.452(1)(a)(A);(2)**

[163.452](#). *Custodial sexual misconduct in the first degree*

(1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or oral or anal sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

(A) In the custody of a law enforcement agency following arrest;

(2) Consent of the other person to sexual intercourse, oral or anal sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.



## **Pennsylvania Consolidated Statutes § 3124.2(a.4);(a.5)**

### § 3124.2. Institutional sexual assault.

(a.4) Peace officers. –

(1) Except as provided under sections 3121, 3122.1, 3123, 3124.1 and 3125, a person who is a peace officer or employee of an agency employing a peace officer in his official capacity commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with another person who is under official detention or in the custody of the person or is a confidential informant of the person.

(2) A person who is a peace officer commits a felony of the third degree when the person engages in sexual intercourse, deviate sexual intercourse or indecent contact with a child who is under official detention or in the custody of the person or is a confidential informant of the person.

(a.5) Consent not a defense. – Consent is not a defense to a violation of subsection (a), (a.1), (a.2), (a.3), (a.4) or (a.6).

## **Virginia Code § 18.2-64.2<sup>26</sup>**

### § 18.2-64.2. Carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender; penalty.

A. An accused is guilty of carnal knowledge of a person detained or arrested by a law-enforcement officer or an inmate, parolee, probationer, juvenile detainee, or pretrial defendant or posttrial offender if he is a law-enforcement officer or 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 person detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender; knows that the person detained or arrested by a law-enforcement officer, inmate, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender is in the custody of a private, local, or state law-enforcement agency or under the jurisdiction of 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; 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 person detained or arrested by a law-enforcement officer, probationer, parolee, juvenile detainee, or pretrial defendant or posttrial offender in the custody of a private, local, or state law-enforcement agency or 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.

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<sup>26</sup> In March 2024, the Virginia General Assembly passed a bill expanding this law to also include carnal knowledge of a confidential informant, and adding the crime of sexual battery of someone in law enforcement custody, pretrial defendants, and confidential informants. As of this writing, the bill awaits the Governor's signature.

**18 United States Code § 2243(c)**

[2243](#). *Sexual abuse of a minor, a ward, or an individual in Federal custody*

(c) Of an Individual in Federal Custody. – Whoever, while acting in their capacity as a Federal law enforcement officer, knowingly engages in a sexual act with an individual who is under arrest, under supervision, in detention, or in Federal custody, shall be fined under this title, imprisoned not more than 15 years, or both.

**Utah Criminal Code § 76-5-412(1)(a)(i)(A);(1)(a)(iii)(C);(2)(a)(i)(A-B);(2)(b);(5)(b)**

[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;

(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:

(C) under lawful or unlawful arrest, either with or without a warrant.

(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.

(5)(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2).

**Washington Revised Code § 9A.44.160(1)(b);(2)**

[9A.44.160](#). *Custodial sexual misconduct in the first degree.*

(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(b) When the victim is being detained, under arrest[,] or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

**Wisconsin Criminal Code § 940.225(2)(k)**

[940.225](#) *Sexual assault*

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:

(k) Is a law enforcement officer and has sexual contact or sexual intercourse with any person who is detained by any law enforcement officer, as provided under s. 968.24, or is in the custody of any law enforcement officer. This paragraph applies whether the custody is lawful or unlawful and whether the detainment or custody is actual or constructive. Consent is not an issue in an action under this paragraph.

## **States with laws referring only to persons in authority:**

### **Tennessee, Texas\*\*, Wyoming**

#### **Tennessee Code § 39-13-527(a)(3)(A)**

[39-13-527](#). *Sexual battery by an authority figure*

(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:

(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.

#### **Texas Penal Code § 22.011(b)(8)**

[Sec. 22.011](#). *Sexual assault*.

(b) A sexual assault under Subsection (a)(1) is without the consent of the other person if:

(8) the actor is a public servant who coerces the other person to submit or participate.

#### **Wyoming Statutes §§ 6-2-301 6-2-303(a)(iv)**

[6-2-301](#). *Definitions*.

(a) As used in this article: (iv) "Position of authority" means that position occupied by a parent, guardian, relative, household member, teacher, employer, custodian, health care provider or any other person who, by reason of his position, is able to exercise significant influence over a person.

[6-2-303](#). *Sexual assault in the second degree*.

(a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting sexual assault in the first degree:

(vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit.

## **States with laws only applying to correctional institutions and/or parole officers**

**Arkansas Code § 5-14-[126](#); [127](#)**

**Idaho Statutes § [18-6110](#)**

**Iowa Code § [709.16](#)**

**Michigan Penal Code § [750.520c](#)**

**Mississippi Code § [97-3-104](#)**

**Nevada Statutes § [212.188](#)**

**New Jersey Statutes § [2C:14-2\(c\)\(2\)](#)**

**New Mexico Statutes § [30-9-11](#)**

**Rhode Island § [11-25-24](#)<sup>27</sup>**

**South Dakota Codified Laws § [22-22-7.6](#)**

**West Virginia Code § [61-8B-10](#)**

## **States without any form of PSV law**

**North Carolina, South Carolina**

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<sup>27</sup> A bill creating a “Custodial Law Enforcement Sexual Penetration” offense was introduced in both chambers of the Rhode Island General Assembly in March 2024. See S2651/H7833, 2024 Gen. Assemb., Reg. Sess. (R.I. 2024).  
<https://webserver.rilegislature.gov/BillText/BillText24/SenateText24/S2651.pdf>  
<https://webserver.rilegislature.gov/BillText/BillText24/HouseText24/H7833.pdf>