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Richard F. Allen  
COMMISSIONER

May 22, 2008

**ADMINISTRATIVE REGULATION  
NUMBER** 454

**OPR: TRAINING AND I&I**

**INMATE SEXUAL OFFENSES AND CUSTODIAL SEXUAL MISCONDUCT**

**I. GENERAL**

This Alabama Department of Corrections (ADOC) Administrative Regulation (AR) establishes responsibilities, policies, and procedures to prohibit inmate sexual offenses and custodial sexual misconduct.

**II. POLICY**

It is the policy of the ADOC to maintain a zero-tolerance on inmate sexual offenses and custodial sexual misconduct.

**III. DEFINITION(S) AND ACRONYM(S)**

- A. **ADOC**: For the purpose of this regulation, ADOC includes institutions, work releases, work centers, supervised re-entry programs, community inmate work squads and contracted facilities.
- B. **Custodial Sexual Misconduct**: See Annex B, *Applicable Code of Alabama 1975 Sections*, Section 14-11-31 for a definition of this term.
- C. **Departmental PREA Coordinator(s)**: An individual(s) designated by the Commissioner to: coordinate and develop procedures to identify, monitor, and track sexual assault / rape and sexual misconduct in the ADOC; maintain statistics; and, conduct audits to ensure compliance with Department policy and the Prison Rape Elimination Act of 2003.
- D. **Employee**: For the purpose of this regulation, an individual that is employed by the ADOC as a full-time, part-time, or temporary employee, and all other persons such as contractors, vendors, and volunteers.

- E. **Prison Rape Elimination Act (PREA) of 2003:** A federal statute enacted in September 2003, to provide for the analysis of the incidents and effects of prison rape in federal, state, and local institutions and provide information, resources, recommendations and funding to protect individuals from prison rape.
- F. **Rape:** See Annex B, *Applicable Code of Alabama 1975 Sections*, Sections 13A-6-61 and 13A-6-62 for a definition of this term.
- G. **Regional PREA Coordinator:** A correctional employee designated to conduct training of staff and the education of inmates as it relates to PREA.
- H. **Sexual Abuse:** See Annex B, *Applicable Code of Alabama 1975 Sections*, Sections 13A-6-66 and 13A-6-67 for a definition of this term.
- I. **Sexual Aggressor:** An inmate who threatens, attempts, or commits a sexual assault.
- J. **Sexual Assault:** Any willful attempt or threat with the intent to commit a sexual offense upon an inmate or an employee.
- K. **Sexual Misconduct:** See Annex B, *Applicable Code of Alabama 1975 Sections*, Sections 13A-6-65 for a definition of this term.
- L. **Sexual Offense:** The commission of any sexual act which both participants act willingly to include but not limited to hugging, fondling, caressing, and kissing.
- M. **Sexual Torture:** See Annex B, *Applicable Code of Alabama 1975 Sections*, Section 13A-6-65.1 for a definition of this term.
- N. **Sodomy:** See Annex B, *Applicable Code of Alabama 1975 Sections*, Sections 13A-6-63 and 13A-6-64 for a definition of this term.
- O. **Victim:** A person who has been subjected to any sexual offense.

#### IV. **RESPONSIBILITIES**

- A. The Commissioner shall be responsible for ADOC's compliance with federal and state laws relating to PREA.
- B. The Departmental PREA Coordinator(s) shall be responsible for:
  - 1. Administering, managing and monitoring ADOC's compliance with PREA.

2. Designating the institutions and responsibilities for each Regional PREA Coordinator.
- C. The Director of Training shall be responsible for the education and training of employees and inmates in the specific aspects of PREA, as well as reporting statistical data to the Department of Justice (DOJ).
  - D. The Director of Investigations and Intelligence (I&I) shall be responsible for ensuring that all incidents of sexual offenses and misconduct are thoroughly investigated, as well as reporting statistics to the DOJ.
  - E. Wardens / Directors are responsible for developing their institutional Standard Operating Procedures (SOPs), as necessary, for the implementation of AR 454, *Inmate Sexual Offenses and Custodial Sexual Misconduct*.
  - F. The Director of Treatment shall be responsible for: identifying a diagnostic instrument to be utilized for assessing inmate sexual vulnerability or aggression; providing inmate treatment and counseling; and, ensuring implementation by ADOC Psychology Staff.
  - G. The Regional PREA Coordinators shall be responsible for conducting education and training classes for employees and inmates.
  - H. Employees are responsible for adherence to ADOC policies and procedures relating to sexual offenses and misconduct.
  - I. Inmates are responsible for adherence to ADOC policies and procedures related to sexual offenses and misconduct.

## V. PROCEDURES

- A. Employee Training:
  1. Employees shall receive instructions related to the prevention, detection, response, reporting of incidences of inmate sexual offenses and custodial sexual misconduct. Employee instructions shall be accomplished during initial training and in-service training.
  2. Supervisors shall receive **additional** instructions related to their role in the prevention, response and investigation of incidences of custodial sexual misconduct.
  3. Specialized instructions shall be provided to employees as needed.
- B. Inmate Education:

1. Inmates shall be given verbal, visual and written information during orientation upon their arrival to the ADOC, including but not limited to:
  - a. Prevention.
  - b. Self-Protection.
  - c. Reporting.
  - d. Treatment and Counseling.
2. Inmates shall be required to sign ADOC Form 454-A, *Inmate Awareness Acknowledgement*, indicating that they have received this information. The original copy of this form shall be maintained in the inmate's institutional file and a copy shall be retained by the Regional PREA Coordinator.

C. Identification at Intake.

1. All new inmate commitments to the ADOC shall be screened for potential risk of sexual vulnerability or potential risk of sexual assaultive behavior during the classification intake process.
  - a. The ADOC Psychology Staff, as part of the intake process, shall complete a diagnostic assessment to include an interview with the inmate to determine the inmate's potential risk of sexual vulnerability or sexually assaultive behavior.
  - b. Upon completion of the assessment, classification / mental health shall assign a risk level code based on the results of the diagnostic assessment.
2. Mental Health Assessment.
  - a. Inmates that have been identified as being at risk for potential sexual vulnerability or sexually assaultive behavior shall be referred for a mental health assessment utilizing ADOC Form MH-008, *Referral to Mental Health*.
  - b. An ADOC Psychologist / Psychological Associate shall perform the mental health assessment. The assessment shall include, but not limited to, a review of the inmates'

history of sexual victimization or sexually assaultive behavior.

- c. An employee may make a mental health referral, utilizing ADOC Form MH-008, based on their observation of the inmate's behavior or at the inmate's request. This referral may be based on the concerns that the inmate has been a victim, or is at risk of being a victim or sexual aggressor.

3. Inmate Placement.

- a. All information obtained during the assessment process shall be used to assist in the initial classification and institutional assignment of the inmate, in accordance with ADOC Classification Manual, AR 433, *Administrative Segregation and Housing for Close or Maximum Custody* and AR 435, *Protective Custody*.
- b. Initial inmate institutional assignment shall be made at the discretion of the Warden, or designee.

4. Monitoring.

- a. Identified victims, potential victims and sexual aggressors known to staff through reports, investigations, and disciplinary history for sexual assault shall be monitored and counseled by mental health staff during regularly scheduled contacts.
- b. Employees that observe incidents or behavior that causes a reasonable concern that an inmate may be at significant risk of sexual victimization or sexual aggression shall document this incident or observation on an ADOC Form 302-A, *Incident Report*, in accordance with AR 302, *Incident Reporting*.

D. Types of Sexual Offenses and Misconduct.

1. Inmate-on-Inmate.

- a. When one or more inmates are engaging in, attempting to engage in, or have engaged in a sexual act with another inmate, it is a **sexual offense**.
- b. When an inmate, or group of inmates, through the use of

threats, intimidation, force, or other actions and/ or communications reasonably calculated to cause submission of another inmate to engage in a sexual act against that inmate's will, it is a crime of **sexual assault**.

- c. Any committed or attempted sexual offense, sexual assault or sexual misconduct is a violation of the ADOC zero-tolerance policy.
- d. All cases shall be referred to the I&I Division for a thorough investigation. The I&I Division, where appropriate, shall refer such cases to the district attorney for prosecution.

2. Inmate-on-Staff.

- a. All cases involving sexual assault, rape or other sexual offenses against an employee by an inmate shall be referred to I&I for investigation.
- b. I&I, where appropriate, shall refer such cases to the district attorney for prosecution

3. Staff-on-Inmate.

- a. It is unlawful for an employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections.
- b. Acts of sexual intercourse, inappropriate physical contact or intrusion against inmates by employees are strictly prohibited and are in violation of Code of Alabama Sections 14-11-30, 31, and 32 (See Attachment B).
- c. Any person in violation of the Code of Alabama Section 14-11-31, upon conviction, shall be guilty of custodial sexual misconduct, which is a Class C Felony.
- d. Consent of the person in custody of the ADOC shall not be a defense to prosecution.
- e. Retaliation and / or intimidation against an inmate(s) who refuses to submit to sexual activity are prohibited and may be a criminal offense.
- f. Retaliation and / or intimidation against an ADOC

employee(s) because of their involvement in the reporting or investigation of a custodial sexual misconduct complaint are prohibited and may be a criminal offense.

- g. All cases involving custodial sexual misconduct as discussed in this section shall be referred to the I&I Division. If appropriate, the I&I Division shall refer such cases to the district attorney for prosecution.

E. Reporting and Investigating of Sexual Offenses and Custodial Sexual Misconduct

1. Staff Reporting Procedures

- a. **All** sexual offenses and custodial sexual misconduct incidents shall be reported to the I&I Division immediately, in accordance with AR 302, *Incident Reporting*.
- b. ADOC employees who receive any information, regardless of its source, concerning inmate sexual offenses and custodial sexual misconduct, or who observes an incident of such, shall immediately report the information or incident directly to the Warden / Division Director through the chain of command.
- c. The Warden / Division Director, upon notification, shall ensure that ADOC Form 302-A, *Incident Report*, is completed and notification is made in accordance with AR 302, *Incident Reporting*.

2. Inmate Reporting Procedures

- a. An inmate who is sexually assaulted shall immediately notify an ADOC employee or the I&I Division that a sexual assault has occurred.
- b. An inmate that observes, or is involved in, or has knowledge of a sexual assault shall immediately notify an employee.
- c. Any sexual contact between inmates is strictly prohibited. There is no consensual sex between inmates.
- d. The I&I Division shall work with the local county

prosecutor's office to assure that appropriate criminal prosecution of sexual assault cases.

- e. Disciplinary action may be taken when it is determined that an inmate made a false report of sexual misconduct.
- f. No inmate reporting sexual misconduct shall be issued a disciplinary report for lying based solely on the fact that their allegations could not be substantiated or that the inmate later recanted his / her allegation.
- g. Each case shall be carefully evaluated on its merit, considering all evidence and circumstances and whether there is any possibility that the alleged incident could have occurred.

### 3. Supervisor Investigation Procedures

- a. The shift supervisor shall assure that the victim and aggressor are physically separated. The victim shall be housed in an environment that will, to the extent possible, permit the victim the same level of privileges the victim was permitted immediately prior to the sexual assault.
- b. If the alleged perpetrator is an employee, the shift supervisor shall immediately eliminate contact between the inmate and the employee.
- c. An initial investigation of sexual assault and threats of sexual assault shall be conducted by a supervisor, to include isolating witnesses and securing the crime scene.
- d. The supervisor shall ensure that the aggressor and victim do not wash, brush his / her teeth, shower or change clothes.
- e. The shift supervisor shall ensure that collection of evidence shall be accomplished in accordance with AR 306, *Contraband and Evidence Management*.
- f. The supervisor shall notify the Warden / Division Director as soon as possible and begin completion of ADOC Form 302-A, *Incident Report*.
- g. A non-invasive medical examination of the inmate

victim and aggressor shall be conducted at the institutional infirmary or health care unit by qualified medical personnel.

- h. The I&I Investigator shall advise the shift supervisor whether a Rape / Sexual Assault Kit is warranted, and shall direct the supervisor or Warden to transport the inmate(s) to an outside medical facility.

D. Treatment For Victim

- 1. An inmate victim shall be taken to a designated ADOC infirmary/hospital for an initial assessment. The inmate shall be provided outside medical treatment pursuant to ADOC clinical protocols when necessary.
- 2. An employee victim shall be immediately transported to a local hospital for necessary medical care and the collection of evidence.
- 3. An inmate victim shall be referred immediately to an ADOC Psychologist or Psychological Associate for further treatment and counseling. A referral shall be made, utilizing ADOC Form MH-008, *Referral to Mental Health* in conjunction with completion of the ADOC Form 302-A.

E. Data Collection and Monitoring

- 1. Data Collection
  - a. For the purpose of tracking, the ADOC Form 302-A, alleging sexual assault or sexual misconduct shall be forwarded to the I&I Division within seventy-two (72) hours of notification of an incident.
  - b. The I&I Division shall forward a copy of the ADOC Form 302-A to the Regional PREA Coordinator.
  - c. The Departmental PREA Coordinator(s) and Director of Research and Planning shall compile the records and submitting statistical data to the U. S. Department of Justice (DOJ) as required by Prison Rape Elimination Act of 2003.
- 2. Monitoring
  - a. When an inmate has been identified as a sexual aggressor

or victim and is transferred from one institution to another, the losing institution shall notify the gaining institution. The identified inmate shall be continuously monitored while incarcerated.

- b. Information regarding potential or previous sexual victimization shall be forwarded to the receiving institution as part of the inmate's file. The identified inmate shall be continuously monitored while incarcerated.
- c. Once an inmate receives a sexually assaultive behavior designation based on the "sexual aggressor" definition, the inmate shall retain that designation throughout his / her incarceration.
- d. Any updates of an inmate's history of sexual victimization shall be done by an ADOC Psychologist or Psychological Associate, and notification shall be made to the Departmental and Regional PREA Coordinators.

## **VI. DISPOSITION**

Any forms used will be disposed of and retained according to the Departmental Records Disposition Authority (RDA).

## **VII. FORMS**

- A. ADOC Form 454-A, *Inmate Awareness Acknowledgement*.

## **VIII. SUPERCEDES**

This is a new Administrative Regulation and does not supercede any other regulations.

## **IX. PERFORMANCE**

- A. Prison Rape Elimination Act of 2003.
- B. Code of Alabama 1975, Sections:
  - 1. 13A-6-60, Definitions.
  - 2. 13A-6-61, Rape in the First Degree and 13A-6-62, Rape in the Second Degree.
  - 3. 13A-6-63 Sodomy in the First Degree and 13A-6-64, Sodomy in

the Second Degree.

4. 13A06-65, Sexual Misconduct.
  5. 13A-6-65.1, Sexual Torture.
  6. 13A-6-66 Sexual Abuse in the First Degree and 13A-6-67, Sexual Abuse in the Second Degree.
  7. 14-11-30, Offenses Concerning Prisoners and Prisons – Definitions.
  8. 14-11-31, Offenses Concerning Prisoners and Prisons – Prohibited Acts.
  9. 14-11-32, Offenses Concerning Prisoners and Prisons – Construction with Other Laws.
- C. American Correctional Association (ACA), Standards For Adult Correctional Institutions, Fourth Edition, 4-4281 through 4-4284.
- D. American Correctional Association (ACA), Guidelines for the Development of a Security Program, Third Edition.
- E. AR 302, *Incident Reporting*.
- F. AR 306, *Disposal of Contraband*.
- G. ADOC Classification Manual.
- H. AR 433, *Administrative Segregation and Housing for Close or Maximum Custody*.
- I. AR 435, *Protective Custody*.

  
Richard F. Allen, Commissioner

**ANNEX(S):**

- A. ADOC PREA Pamphlet.
- B. Applicable Code of Alabama 1975 Sections.



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**INMATE AWARENESS ACKNOWLEDGEMENT**

I, \_\_\_\_\_, AIS \_\_\_\_\_,  
Inmate Name

acknowledge that I have received an orientation on the prevention, self-protection, reporting,  
treatment and counseling, relating to Inmate Sexual Offenses and Custodial Sexual Misconduct,

on \_\_\_\_\_ at \_\_\_\_\_.  
Date Institution

Inmate's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Witnessed: \_\_\_\_\_ Date: \_\_\_\_\_

Distribution: Original – Inmate Institution File  
Copy – Regional PREA Coordinator

## **DID YOU KNOW?**

Rape and sexual assault happen to females and males of all ages, from infancy to the senior years.

98% of males who have raped boys reported they are heterosexual. Most males who assault men or women are married or report having girlfriends.

Sexual assault has nothing to do with the victim's present or future sexual orientation. Victims may be either heterosexual or homosexual.

A survivor is not at fault for the rape even if she/he was in a secluded area or had previous consensual sex with the attacker.

If male victims of sexual assault ejaculated or became sexually aroused, it does not mean they were not raped or that they gave consent. These are normal, involuntary physiological reactions.

It is common for survivors of sexual assault to have feelings of embarrassment, anger, guilt, panic, depression, and fear for several months or years after the attack. Other common reactions include loss of appetite, nausea or stomach aches, headaches, loss of memory and / or trouble concentrating and changes in sleep patterns.

## **FACTS FOR THE OFFENDER WHO SEXUALLY ASSAULTS OTHER OFFENDERS:**

All cases of sexual assault are investigated by the Investigations and Intelligence Division (I&I) as a criminal investigation. You will be prosecuted for a criminal offense and if found guilty of a felony, any additional prison time will be stacked on top of your current sentence in accordance with Alabama law.

If you are convicted your VICTIM will have an opportunity to write a statement which can impact your SENTENCE LENGTH and can affect your ability to parole.

You will be a REGISTERED SEX OFFENDER upon release from prison.

**YOU WILL BE ISSUED A DISCIPLINARY CASE** if found guilty, sanctions will be harsh. In addition, your classification level will be reviewed and likely downgraded, which could mean a transfer to a higher security prison or housing unit with significantly less freedom of movement and limited privileges. If you have family, will this affect your loved ones and their ability to visit you?

Engaging in homosexual conduct in prison significantly increases your risk of HIV infection, along with exposing you to other sexually transmitted diseases.

If you have trouble controlling your actions seek help from mental health staff and / or consider participating in programs designed to control anger or reduce stress. To reduce immediate feelings of anger or aggression try talking to or writing a friend, meditate, or do breathing exercises to relax, or engage in some type of exercise.



# **SEXUAL ASSAULT AMERITORS**



## **Alabama Department of Corrections Investigations & Intelligence Division (I & I)**

### **Safe Prisons Program**

#### **ZERO SEXUAL ASSAULTS:**

**“Achieving a Safe Environment for All  
Through Positive Change by All”**

## **SEXUAL ASSAULT**

Sexual assault occurs when a person forces another person to have sexual intercourse, to have sexual contact, or to commit sodomy. Any unwelcome sexual contact is illegal and unacceptable. Sexual assaults are punishable up to 99 years in prison, for the first offense.

Custodial Sexual Misconduct occurs when any employee has any sexual contact with any person in custody, in any corrections facility. The crime of Custodial Sexual Misconduct is punishable up to 10 years in prison, for the first offense.

Predators use sex as a weapon to assault the body, mind, psyche and spirit of their victims. This is done to project power of authority.

Sexual assault affects everyone, either directly or through the experiences of those we care about. This issue can affect persons of any gender, age, race, ethnic group, socioeconomic status, sexual orientation, or disability.

The statistics are proof of this problem: according to the National Crime Victimization Survey (NCVS), in 2002 there were 247,730 victims of rape (this number does not include victims 12 or younger), seven out of every eight rape victims were female, and one in every eight rape victims was male. A 1998 study indicates that about 2.78 million American men have experienced an attempted or completed rape, and one out of every six American women have experienced an attempted or completed rape.

## **RAPE AVOIDANCE**

The only way rape can be prevented is when a potential rapist chooses NOT to rape. However, YOU may avoid an attack by keeping the following safety guidelines in mind:

Position yourself in "Safe Zones" areas where you can see a staff member and the staff member can see you. If you are being pressured for sex, report it to any staff member immediately.

Be aware of situations that make you feel uncomfortable. Trust your instincts. IF IT FEELS WRONG, LEAVE, GET HELP, OR CALL OUT FOR A STAFF MEMBER. Don't be afraid to say "NO" or "STOP IT NOW."

Walk and stand with confidence. Many rapists choose victims who look like they won't fight back or are emotionally weak.

Avoid talking about sex and casual nudity. These things may be considered a come on, or make another believe that you have an interest in a sexual relationship.

Avoid purchasing any items from the commissary/store with the exception of hygiene items for the first 90 days. Large commissary spends will attract attention of predators.

Do not accept commissary/store items or other gifts from other offenders. Placing yourself in debt to another offender can lead to the expectation of repaying the debt with sexual favors.

## **WHAT TO DO IF YOU ARE SEXUALLY ASSAULTED**

**IF THE ATTACK HAS JUST HAPPENED...**

Get to a safe place. **REPORT THE ATTACK TO A STAFF MEMBER IMMEDIATELY.** The longer you wait the more difficult it is to obtain the evidence, necessary for a criminal and / or administrative investigation.

Request immediate medical attention. You may have serious injuries that you are not aware of, and any sexual contact can expose you to sexually transmitted diseases.

Do not shower, brush your teeth, use the restroom, or change your clothes. You may destroy important evidence.

If you have been attacked or witnessed an attack, you should report the attack to any staff member, supervisor or the warden. You may also report the incident to ANY STAFF MEMBER assigned to your facility. All allegations regarding sexual assault will be investigated immediately by I & L.

**Later On...** Seek the support of a trusted friend, family member, or chaplain at your facility. The days ahead can be traumatic and it helps to have people who care about you to support you. Seek professional help. Mental Health staff is available for crisis care 365 days a year, to listen and offer support.

## Applicable Code of Alabama 1975 Sections

### Section 13A-6-60

#### **Definitions.**

The following definitions apply in this article:

(1) **SEXUAL INTERCOURSE.** Such term has its ordinary meaning and occurs upon any penetration, however slight; emission is not required.

(2) **DEVIANT SEXUAL INTERCOURSE.** 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.

(3) **SEXUAL CONTACT.** Any touching of the sexual or other intimate parts of a person not married to the actor, done for the purpose of gratifying the sexual desire of either party.

(4) **FEMALE.** Any female person.

(5) **MENTALLY DEFECTIVE.** Such term means that a person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct.

(6) **MENTALLY INCAPACITATED.** Such term means that a person is rendered temporarily incapable of appraising or controlling his conduct owing to the influence of a narcotic or intoxicating substance administered to him without his consent, or to any other incapacitating act committed upon him without his consent.

(7) **PHYSICALLY HELPLESS.** Such term means that a person is unconscious or for any other reason is physically unable to communicate unwillingness to an act.

(8) **FORCIBLE COMPULSION.** Physical force that overcomes earnest resistance or a threat, express or implied, that places a person in fear of immediate death or serious physical injury to himself or another person.

**(Acts 1977, No. 607, p. 812, §2301; Acts 1988, No. 88-339, p. 515.)**

## Applicable Code of Alabama 1975 Sections

### Section 13A-6-61

#### **Rape in the 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.

(Acts 1977, No. 607, p. 812, §2310; Act 2000-726, p. 1557, §1.)

### Section 13A-6-62

#### **Rape in the 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.

(Acts 1977, No. 607, p. 812, §2311; Acts 1979, No. 79-471, p. 862, §1; Acts 1987, No. 87-607, p. 1056, §2; Act 2000-726, p. 1557, §1.)

## Applicable Code of Alabama 1975 Sections

### Section 13A-6-63

#### **Sodomy in the 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.

**(Acts 1977, No. 607, p. 812, §2315.)**

### Section 13A-6-64

#### **Sodomy in the 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.

**(Acts 1977, No. 607, p. 812, §2316; Acts 1979, No. 79-471, p. 862, §1; Acts 1987, No. 87-607, p. 1056, §3.)**

## Applicable Code of Alabama 1975 Sections

### Section 13A-6-65

#### **Sexual misconduct.**

(a) A person commits the crime of sexual misconduct if:

(1) Being a male, he engages in sexual intercourse with a female without her consent, under circumstances other than those covered by Sections 13A-6-61 and 13A-6-62; or with her consent where consent was obtained by the use of any fraud or artifice; or

(2) Being a female, she engages in sexual intercourse with a male without his consent; or

(3) He or she engages in deviate sexual intercourse with another person under circumstances other than those covered by Sections 13A-6-63 and 13A-6-64. Consent is no defense to a prosecution under this subdivision.

(b) Sexual misconduct is a Class A misdemeanor.

**(Acts 1977, No. 607, p. 812, §2318.)**

### Section 13A-6-65.1

#### **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.

**(Acts 1993, No. 93-606, §1.)**

## Applicable Code of Alabama 1975 Sections

### Section 13A-6-66

#### **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 by forcible compulsion; or

(2) He subjects another person to sexual contact who is incapable of consent by reason of being physically helpless or mentally incapacitated.

(b) Sexual abuse in the first degree is a Class C felony.

**(Acts 1977, No. 607, p. 812, §2320; Act 2006-575, §2.)**

### Section 13A-6-67

#### **Sexual abuse in the 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.

**(Acts 1977, No. 607, p. 812, §2321; Act 2000-728, p. 1566, §1.)**

## Applicable Code of Alabama 1975 Sections

### Section 14-11-30

#### **Definitions.**

When used in this article, 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.
- c. 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.

**(Act 2004-298, p. 420, §1.)**

## Applicable Code of Alabama 1975 Sections

### Section 14-11-31

#### **Prohibited acts.**

(a) It shall be unlawful for any employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.

(b) It shall be unlawful for any probation or parole officer to engage in sexual conduct with a person who is under the supervisory, disciplinary, or custodial authority of the officer engaging in the sexual conduct with the person.

(c) Any person violating subsection (a) or (b) shall, upon conviction, be guilty of custodial sexual misconduct.

(d) Custodial sexual misconduct is a Class C felony.

(e) For purposes of this article, the consent of the person in custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality, or a person who is on probation or on parole, shall not be a defense to a prosecution under this article.

**(Act 2004-298, p. 420, §2.)**

### Section 14-11-32

#### **Construction with other laws.**

This article shall not be construed to repeal other criminal laws. Whenever conduct proscribed by any provision of this article is also proscribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

**(Act 2004-298, p. 420, §3.)**