

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing
5 Section 11-9.2 as follows:

6 (720 ILCS 5/11-9.2)

7 Sec. 11-9.2. Custodial sexual misconduct.

8 (a) A person commits custodial sexual misconduct when: (1)
9 he or she is an employee of a penal system and engages in
10 sexual conduct or sexual penetration with a person who is in
11 the custody of that penal system or (2) he or she is an
12 employee of a treatment and detention facility and engages in
13 sexual conduct or sexual penetration with a person who is in
14 the custody of that treatment and detention facility; or (3) he
15 or she is a law enforcement officer and engages in sexual
16 conduct or sexual penetration with a person who is detained or
17 in custody of law enforcement.

18 (b) A probation or supervising officer, surveillance
19 agent, or aftercare specialist commits custodial sexual
20 misconduct when the probation or supervising officer,
21 surveillance agent, or aftercare specialist engages in sexual
22 conduct or sexual penetration with a probationer, parolee, or
23 releasee or person serving a term of conditional release who is

1 under the supervisory, disciplinary, or custodial authority of
2 the officer or agent or employee so engaging in the sexual
3 conduct or sexual penetration.

4 (c) Custodial sexual misconduct is a Class 3 felony.

5 (d) Any person convicted of violating this Section
6 immediately shall forfeit his or her employment with a penal
7 system, treatment and detention facility, ~~or~~ conditional
8 release program, or law enforcement agency.

9 (e) For purposes of this Section, the consent of the
10 probationer, parolee, releasee, ~~or~~ inmate in custody of the
11 penal system or person detained or civilly committed under the
12 Sexually Violent Persons Commitment Act, or a person who is
13 detained or in custody of law enforcement shall not be a
14 defense to a prosecution under this Section. A person is deemed
15 incapable of consent, for purposes of this Section, when he or
16 she is a probationer, parolee, releasee, ~~or~~ inmate in custody
17 of a penal system or person detained or civilly committed under
18 the Sexually Violent Persons Commitment Act, or a person who is
19 detained or in custody of law enforcement.

20 (f) This Section does not apply to:

21 (1) Any employee, probation or supervising officer,
22 surveillance agent, or aftercare specialist who is
23 lawfully married to a person in custody if the marriage
24 occurred before the date of custody.

25 (2) Any employee, probation or supervising officer,
26 surveillance agent, or aftercare specialist who has no

1 knowledge, and would have no reason to believe, that the
2 person with whom he or she engaged in custodial sexual
3 misconduct was a person in custody.

4 (g) In this Section:

5 (0.5) "Aftercare specialist" means any person employed
6 by the Department of Juvenile Justice to supervise and
7 facilitate services for persons placed on aftercare
8 release.

9 (1) "Custody" means:

10 (i) pretrial incarceration or detention;

11 (ii) incarceration or detention under a sentence
12 or commitment to a State or local penal institution;

13 (iii) parole, aftercare release, or mandatory
14 supervised release;

15 (iv) electronic monitoring or home detention;

16 (v) probation;

17 (vi) detention or civil commitment either in
18 secure care or in the community under the Sexually
19 Violent Persons Commitment Act; or -

20 (vii) a person who is detained or in custody of law
21 enforcement.

22 (2) "Penal system" means any system which includes
23 institutions as defined in Section 2-14 of this Code or a
24 county shelter care or detention home established under
25 Section 1 of the County Shelter Care and Detention Home
26 Act.

1 (2.1) "Treatment and detention facility" means any
2 Department of Human Services facility established for the
3 detention or civil commitment of persons under the Sexually
4 Violent Persons Commitment Act.

5 (2.2) "Conditional release" means a program of
6 treatment and services, vocational services, and alcohol
7 or other drug abuse treatment provided to any person
8 civilly committed and conditionally released to the
9 community under the Sexually Violent Persons Commitment
10 Act;

11 (2.3) "Detained or in custody of law enforcement" means
12 detained or in custody of a law enforcement officer or the
13 law enforcement agency that employs the officer.

14 (3) "Employee" means:

15 (i) an employee of any governmental agency of this
16 State or any county or municipal corporation that has
17 by statute, ordinance, or court order the
18 responsibility for the care, control, or supervision
19 of pretrial or sentenced persons in a penal system or
20 persons detained or civilly committed under the
21 Sexually Violent Persons Commitment Act;

22 (ii) a contractual employee of a penal system as
23 defined in paragraph (g) (2) of this Section who works
24 in a penal institution as defined in Section 2-14 of
25 this Code;

26 (iii) a contractual employee of a "treatment and

1 detention facility" as defined in paragraph (g) (2.1)
2 of this Code or a contractual employee of the
3 Department of Human Services who provides supervision
4 of persons serving a term of conditional release as
5 defined in paragraph (g) (2.2) of this Code.

6 (4) "Sexual conduct" or "sexual penetration" means any
7 act of sexual conduct or sexual penetration as defined in
8 Section 11-0.1 of this Code.

9 (5) "Probation officer" means any person employed in a
10 probation or court services department as defined in
11 Section 9b of the Probation and Probation Officers Act.

12 (6) "Supervising officer" means any person employed to
13 supervise persons placed on parole or mandatory supervised
14 release with the duties described in Section 3-14-2 of the
15 Unified Code of Corrections.

16 (7) "Surveillance agent" means any person employed or
17 contracted to supervise persons placed on conditional
18 release in the community under the Sexually Violent Persons
19 Commitment Act.

20 (Source: P.A. 100-431, eff. 8-25-17.)