



Sen. Elgie R. Sims, Jr.

Filed: 3/14/2018

10000SB3500sam001

LRB100 20828 SLF 36790 a

1 AMENDMENT TO SENATE BILL 3500

2 AMENDMENT NO. _____. Amend Senate Bill 3500 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by
5 changing 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

1 in custody of law enforcement.

2 (b) A probation or supervising officer, surveillance
3 agent, or aftercare specialist commits custodial sexual
4 misconduct when the probation or supervising officer,
5 surveillance agent, or aftercare specialist engages in sexual
6 conduct or sexual penetration with a probationer, parolee, or
7 releasee or person serving a term of conditional release who is
8 under the supervisory, disciplinary, or custodial authority of
9 the officer or agent or employee so engaging in the sexual
10 conduct or sexual penetration.

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

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

16 (e) For purposes of this Section, the consent of the
17 probationer, parolee, releasee, ~~or~~ inmate in custody of the
18 penal system or person detained or civilly committed under the
19 Sexually Violent Persons Commitment Act, or a person who is
20 detained or in custody of law enforcement shall not be a
21 defense to a prosecution under this Section. A person is deemed
22 incapable of consent, for purposes of this Section, when he or
23 she is a probationer, parolee, releasee, ~~or~~ inmate in custody
24 of a penal system or person detained or civilly committed under
25 the Sexually Violent Persons Commitment Act, or a person who is
26 detained or in custody of law enforcement.

1 (f) This Section does not apply to:

2 (1) Any employee, probation or supervising officer,
3 surveillance agent, or aftercare specialist who is
4 lawfully married to a person in custody if the marriage
5 occurred before the date of custody.

6 (2) Any employee, probation or supervising officer,
7 surveillance agent, or aftercare specialist who has no
8 knowledge, and would have no reason to believe, that the
9 person with whom he or she engaged in custodial sexual
10 misconduct was a person in custody.

11 (g) In this Section:

12 (0.5) "Aftercare specialist" means any person employed
13 by the Department of Juvenile Justice to supervise and
14 facilitate services for persons placed on aftercare
15 release.

16 (1) "Custody" means:

17 (i) pretrial incarceration or detention;

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

20 (iii) parole, aftercare release, or mandatory
21 supervised release;

22 (iv) electronic monitoring or home detention;

23 (v) probation;

24 (vi) detention or civil commitment either in
25 secure care or in the community under the Sexually
26 Violent Persons Commitment Act; or -

1 (vii) a person who is detained or in custody of law
2 enforcement.

3 (2) "Penal system" means any system which includes
4 institutions as defined in Section 2-14 of this Code or a
5 county shelter care or detention home established under
6 Section 1 of the County Shelter Care and Detention Home
7 Act.

8 (2.1) "Treatment and detention facility" means any
9 Department of Human Services facility established for the
10 detention or civil commitment of persons under the Sexually
11 Violent Persons Commitment Act.

12 (2.2) "Conditional release" means a program of
13 treatment and services, vocational services, and alcohol
14 or other drug abuse treatment provided to any person
15 civilly committed and conditionally released to the
16 community under the Sexually Violent Persons Commitment
17 Act;

18 (2.3) "Detained or in custody of law enforcement" means
19 detained or in custody of a law enforcement officer or the
20 law enforcement agency that employs the officer.

21 (3) "Employee" means:

22 (i) an employee of any governmental agency of this
23 State or any county or municipal corporation that has
24 by statute, ordinance, or court order the
25 responsibility for the care, control, or supervision
26 of pretrial or sentenced persons in a penal system or

1 persons detained or civilly committed under the
2 Sexually Violent Persons Commitment Act;

3 (ii) a contractual employee of a penal system as
4 defined in paragraph (g)(2) of this Section who works
5 in a penal institution as defined in Section 2-14 of
6 this Code;

7 (iii) a contractual employee of a "treatment and
8 detention facility" as defined in paragraph (g)(2.1)
9 of this Code or a contractual employee of the
10 Department of Human Services who provides supervision
11 of persons serving a term of conditional release as
12 defined in paragraph (g)(2.2) of this Code.

13 (4) "Sexual conduct" or "sexual penetration" means any
14 act of sexual conduct or sexual penetration as defined in
15 Section 11-0.1 of this Code.

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

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

23 (7) "Surveillance agent" means any person employed or
24 contracted to supervise persons placed on conditional
25 release in the community under the Sexually Violent Persons
26 Commitment Act.

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