

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 an employee of a law enforcement agency and engages
16 in sexual conduct or sexual penetration with a person who is in
17 the custody of a law enforcement agency or employee.

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 law
7 enforcement agency, a penal system, treatment and detention
8 facility, or conditional release program.

9 (e) In ~~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 person in the
13 custody of a law enforcement agency or employee 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 in the
19 custody of a law enforcement agency or employee.

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) detained or under arrest by a law enforcement
21 agency or employee.

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 (3) "Employee" means:

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

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

23 (iii) a contractual employee of a "treatment and
24 detention facility" as defined in paragraph (g)(2.1)
25 of this Code or a contractual employee of the
26 Department of Human Services who provides supervision

1 of persons serving a term of conditional release as
2 defined in paragraph (g) (2.2) of this Code; or -

3 (iv) an employee of a law enforcement agency.

4 (3.5) "Law enforcement agency" means an agency of the
5 State or of a unit of local government charged with
6 enforcement of State, county, or municipal laws or with
7 managing custody of detained persons in the State, but not
8 including a State's Attorney.

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

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

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

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

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

24 Section 99. Effective date. This Act takes effect upon
25 becoming law.