

§260. Unlawful sexual touching

1. Unlawful sexual touching. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and:

A. The other person has not consented to the sexual touching and the actor is criminally negligent with regard to whether the other person has consented. Violation of this paragraph is a Class D crime; [PL 2023, c. 280, §5 (AMD).]

B. The other person is unconscious or otherwise physically incapable of resisting and has not consented to the sexual touching. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

C. The other person, not the actor's spouse, is in fact less than 14 years of age and the actor is at least 5 years older. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

D. The other person suffers from a mental disability that is reasonably apparent or known to the actor that in fact renders the other person substantially incapable of appraising the nature of the touching involved or of understanding that the other person has the right to deny or withdraw consent. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

E. The other person, not the actor's spouse, is under official supervision as a probationer, a parolee, a sex offender on supervised release, a prisoner on supervised community confinement status or a juvenile on community reintegration status or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; [PL 2007, c. 102, §4 (AMD).]

F. The other person, not the actor's spouse, is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor is a teacher, employee or other official having instructional, supervisory or disciplinary authority over the student or the actor was a substitute teacher who had instructional, supervisory or disciplinary authority over the student at any time during the 12 months prior to the sexual touching. Violation of this paragraph is a Class D crime; [PL 2021, c. 360, §5 (AMD).]

G. The other person is in fact less than 18 years of age and the actor is a parent, stepparent, foster parent, guardian or other similar person responsible for the long-term general care and welfare of that other person. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

H. The other person submits as a result of compulsion. Violation of this paragraph is a Class D crime; [PL 2003, c. 138, §5 (NEW).]

I. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and the organization, program or residence recognizes that other person as a person with an intellectual disability or autism. It is an affirmative defense to prosecution under this paragraph that the actor receives services for an intellectual disability or autism or is a person with an intellectual disability, as defined in Title 34-B, section 5001, subsection 3, or autism, as defined in Title 34-B, section 6002. Violation of this paragraph is a Class D crime; [PL 2011, c. 542, Pt. A, §13 (AMD).]

J. The other person, not the actor's spouse, is in fact less than 18 years of age and is a student enrolled in a private or public elementary, secondary or special education school, facility or institution and the actor, who is at least 21 years of age, is a teacher, employee or other official in the school district, school union, educational unit, school, facility or institution in which the student is enrolled. Violation of this paragraph is a Class E crime; [PL 2011, c. 423, §7 (AMD).]

K. The actor is a psychiatrist, a psychologist or licensed as a social worker or counseling professional or purports to be a psychiatrist, a psychologist or licensed as a social worker or counseling professional to the other person and the other person, not the actor's spouse, is a current patient or client of the actor. Violation of this paragraph is a Class D crime; [PL 2019, c. 494, §4 (AMD).]

L. The actor owns, operates or is an employee of an organization, program or residence that is operated, administered, licensed or funded by the Department of Health and Human Services and the other person, not the actor's spouse, receives services from the organization, program or residence and suffers from a mental disability that is reasonably apparent or known to the actor. Violation of this paragraph is a Class D crime; or [PL 2011, c. 423, §9 (NEW).]

M. The actor is employed to provide care to a dependent person, who is not the actor's spouse or domestic partner and who is unable to perform self-care because of advanced age or physical or mental disease, disorder or defect. Violation of this paragraph is a Class D crime. [PL 2021, c. 567, §10 (AMD).]

[PL 2023, c. 280, §5 (AMD).]

SECTION HISTORY

RR 2003, c. 2, §27 (COR). PL 2003, c. 138, §5 (NEW). PL 2005, c. 450, §§3-5 (AMD). PL 2007, c. 102, §4 (AMD). PL 2011, c. 423, §§7-9 (AMD). PL 2011, c. 464, §12 (AMD). PL 2011, c. 542, Pt. A, §13 (AMD). PL 2011, c. 691, Pt. A, §16 (AMD). PL 2015, c. 509, §3 (AMD). PL 2019, c. 494, §4 (AMD). PL 2021, c. 360, §5 (AMD). PL 2021, c. 567, §10 (AMD). PL 2021, c. 608, Pt. E, §4 (AMD). PL 2023, c. 280, §5 (AMD).

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