

Sex Crimes: Definitions and Penalties Idaho

Last Updated: April 2023

Rape

Question	Answer
How is it defined?	<p>The penetration, however slight, of the oral, anal or vaginal opening with a penis accomplished under any one of the following circumstances:</p> <ul style="list-style-type: none">• Where the victim is under the age of 16 years, the perpetrator is 18 years of age or older, and the victim is not lawfully married to the perpetrator.• Where the victim is 16 or 17 years, the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator. <p>(Note: Bullet points 1 and 2 shall not affect the age requirements in any other provision of law, unless otherwise provided in any such law. Further, for the purposes of bullet point 2, in determining whether the perpetrator is 3 years or more older than the victim, the difference in age shall be measured from the date of birth of the perpetrator to the date of birth of the victim).</p> <ul style="list-style-type: none">• Where the victim is incapable, through any unsoundness of mind, due to any cause including, but not limited to, mental illness, mental disability or developmental disability (temporary or permanent), of giving legal consent.• Where the victim resists but the resistance is overcome by force or violence.• Where the victim is prevented from resistance by the infliction, attempted infliction, or threatened infliction of bodily harm, accompanied by apparent power of execution; or is unable to resist due to any intoxicating, narcotic, or anesthetic substance.• Where the victim is prevented from resistance due to an objectively reasonable belief that resistance would be futile or that resistance would result in force or violence beyond that necessary to accomplish the prohibited contact.• Where the victim is at the time unconscious of the nature of the act. As used in this section, “unconscious of the nature of the act” means incapable of resisting because the victim meets one of the following conditions:<ul style="list-style-type: none">• Was not aware, knowing, perceiving, or cognizant that the act occurred.• Was unconscious or asleep;• Where the victim submits under the belief that the person committing the act is the victim’s spouse, and the belief is induced by artifice, pretense or concealment practiced by the accused, with intent to induce such belief.

	<ul style="list-style-type: none"> • Where the victim submits under the belief that the person is someone other than the accused, and the belief is induced by artifice, pretense or concealment practiced by the accused, with the intent to induce such belief. • Where the victim submits under the belief, instilled by the actor, that if the victim does not submit, the actor will cause physical harm to some person in the future; or cause damage to property; or engage in other conduct constituting a crime; or accuse any person of a crime or cause criminal charges to be instituted against the victim; or expose a secret or publicize an asserted fact, whether true or false, tending to subject any person to hatred, contempt, or ridicule.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Rape is punishable by imprisonment in the state prison for a term not less than one year. In the discretion of the District Judge who shall pass sentence, the imprisonment may be extended to life. • Persons convicted of offenses under Chapter 61 (Rape) may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Unconscious of the nature of the act” means incapable of resisting because the victim: was unconscious or asleep; or was not aware, knowing, perceiving, or cognizant that the act occurred. • No conviction for rape can be had against one who is under the age of 14 at the time of the alleged act, unless his physical ability to accomplish penetration is proved as an independent fact, and beyond a reasonable doubt. • Males and females are both capable of committing the crime of rape as defined in this section. • Any sexual penetration, however slight, is sufficient to complete the crime of rape.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-6101 • Proof of physical ability, Idaho Code Ann. § 18-6102 • Penetration, Idaho Code Ann. § 18-6103 • The punishment for rape appears in Idaho Code Ann. § 18-6104 • Restitution to the victim appears in Idaho Code Ann. § 18-6106

Rape of Spouse

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • The statute was repealed effective July 1, 2021. Rape of spouse is now covered by the definition of Rape above.

What are the punishments for this crime?	<ul style="list-style-type: none"> • Rape is punishable by imprisonment in the state prison for a term not less than one year. The District Judge, at his/her discretion, may extend the imprisonment to life. • Defendant also may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.
Anything else I should know?	N/A
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-6107 (Repealed by S.L. 2021, ch. 172, §2, eff. July 1, 2021) • Idaho Code Ann. § 18-6101 • Penetration, Idaho Code Ann. § 18-1603 • The punishment for rape appears in Idaho Code Ann. § 18-6104 • Restitution to the victim appears in Idaho Code Ann. § 18-6106

Sexual Contact With a Prisoner

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • It is a felony for any employee of the Idaho department of correction, the Idaho department of juvenile corrections or any officer, employee or agent of a state, local, or private correctional facility, to have sexual contact with a prisoner or juvenile offender, not his/her spouse, whether an in-state or out-of-state prisoner or juvenile offender. • It is a felony for any supervising officer to knowingly have sexual contact with any parolee or probationer, who is not the person's spouse.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual contact with a prisoner or juvenile is a felony, punishable by imprisonment in the state prison for a term not to exceed life.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • “Sexual Contact” means sexual intercourse, genital-genital contact, manual-anal contact, manual-genital contact, oral-genital contact, anal-genital contact or oral-anal contact, between persons of the same or opposite sex.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-6110 • Restitution to the victim appears in Idaho Code Ann. § 18-6106 • Definitions for this section are located in section 18-101A, Idaho Code.

Statutory Rape

Question	Answer
How is it defined?	<p>“Statutory rape” is commonly used to refer to sexual penetration that is illegal because it involves a youth and consent is immaterial. While Idaho does not expressly penalize statutory rape, the offense of rape targets this conduct.</p> <ul style="list-style-type: none"> • Statutory rape is rape if defendant penetrates, however slight, the oral, anal or vaginal opening with a penis and: <ul style="list-style-type: none"> • The victim is under the age of 16 years, and the perpetrator is 18 years of age or older, and the victim is not lawfully married to the perpetrator; or • The victim is 16 or 17 years, the perpetrator is three years or more older than the victim, and the victim is not lawfully married to the perpetrator.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Rape is punishable by imprisonment in the state prison for a term not less than one year. In the discretion of the District Judge who shall pass sentence, the imprisonment may be extended to life. • Persons convicted of offenses under Chapter 61 (Rape) may be ordered by the court to provide restitution to the victim for specific costs incurred by the victim as a result of injury or loss caused by the criminal act.
Anything else I should know?	<p>The following definitions are relevant to this crime:</p> <ul style="list-style-type: none"> • See Rape for relevant definitions.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-6101

Sexual Exploitation of a Vulnerable Adult

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • Sexual abuse of a vulnerable adult: with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, a vulnerable adult or a third party to: <ul style="list-style-type: none"> • Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether

	<ul style="list-style-type: none"> between persons of the same or opposite sex; • Involve a vulnerable adult in any act of bestiality or sadomasochism; or • Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in the first sub-bullet above. • Sexual exploitation of a vulnerable adult: if, for any commercial purpose, a person knowingly: <ul style="list-style-type: none"> • Causes, induces, or permits a vulnerable adult to engage in or be used in any explicit sexual conduct; or • Prepares, arranges for, publishes, produces, promotes, makes, sells, finances, offers, exhibits, advertises, deals in, possesses, or distributes sexually exploitive material. • The possession by any person of 3 or more identical copies of any sexually exploitative material shall create a presumption that such possession is for a commercial purpose.
<p>What are the punishments for this crime?</p>	<ul style="list-style-type: none"> • Sexual abuse of a vulnerable adult is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed 25 years or by a fine not to exceed \$25,000, or by both such fine and imprisonment. • Sexual exploitation of a vulnerable adult shall be punishable by imprisonment in the state prison for a period not to exceed 15 years or by a fine not to exceed \$25,000, or by both such fine and imprisonment.
<p>Anything else I should know?</p>	<ul style="list-style-type: none"> • “Bestiality” means a sexual connection in any manner between a human being and any animal. • “Commercial purpose” means the intention, objective, anticipation or expectation of monetary gain or other material consideration, compensation, remuneration or profit. • “Explicit sexual conduct” means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality. • “Sadomasochism” means: <ul style="list-style-type: none"> o Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or o Real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person. • “Sexual contact” means any physical contact between a vulnerable adult and any person or between vulnerable adults, which is caused by the actor, or the actor causing the vulnerable adult to have self-contact. • “Sexually exploitative material” means any image, photograph, motion picture, video, print, negative, slide or other mechanically, electronically, digitally or chemically produced or reproduced visual material that shows a vulnerable adult engaged in, participating in, observing or being used for explicit sexual conduct, or showing a vulnerable adult engaging in, participating in, observing or being used for explicit sexual

	<p>conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.</p> <ul style="list-style-type: none"> • “Vulnerable adult” means a person 18 years of age or older who is unable to protect himself from abuse, neglect, or exploitation due to physical or mental impairment which affects the person's judgment or behavior to the extent that he lacks sufficient understanding or capacity to make or communicate or implement decisions regarding his person, funds, property or resources.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-1505B • Idaho Code Ann. § 18-1505 • Idaho Code Ann. § 18-1507

Sexual Abuse of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • It is a felony for any person 18 years of age or older, with the intent to gratify the lust, passions, or sexual desire of the actor, minor child, or third party to: <ul style="list-style-type: none"> • Solicit a minor child under the age of 16 years to participate in a sexual act; • Cause or have sexual contact with such minor child, not amounting to lewd conduct (as defined in 18-1508); • Induce, cause or permit a minor child to witness an act of sexual conduct. • A person is guilty of a felony when he involves the child in a mock, unauthorized or unlawful marriage ceremony with another person or representation of any force or deity, followed by sexual contact with the child as part of a ceremony, rite or any similar observance.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual abuse of a child is a felony punishable by imprisonment in the state prison for a period not to exceed 25 years.
Anything else I should know?	<ul style="list-style-type: none"> • “Sexual conduct” means human masturbation, sexual intercourse, sadomasochistic abuse, or any touching of the genitals or pubic areas of the human male or female, or the breasts of the female, whether alone or between members of the same or opposite sex or between humans and animals in an act of apparent sexual stimulation or gratification. • “Sexual contact” means any physical contact between such minor child and any person, which is caused by the actor, or the actor causing such minor child to have self contact. • “Solicit” means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing or observing such minor child engaged in

	<p>sexual contact.</p> <ul style="list-style-type: none"> • See Sexual Exploitation of a Child for additional definitions.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-1506 • Idaho Code Ann. § 18-1506a • Idaho Code Ann. § 18-1508

Sexual Exploitation of a Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • A person commits sexual exploitation of a child if he knowingly and willfully: <ul style="list-style-type: none"> • Possesses or accesses through any means including, but not limited to, the internet, any sexually exploitative material; • Causes, induces, or permits a child to engage in, or be used for, any explicit sexual conduct for the purpose of producing or making sexually exploitative material; • Promotes, prepares, publishes, produces, makes, finances, offers, exhibits or advertises any sexually exploitative material; or • Distributes through any means including, but not limited to, mail, physical delivery or exchange, use of a computer or any other electronic or digital method, any sexually exploitative material. Distribution of sexually exploitative material does not require a pecuniary transaction or exchange of interests in order to complete the offense. • Note: Bullet points 1, 3 and 4 above shall not be construed to impose criminal or civil liability on law enforcement officers acting in good faith and in the course and scope of their official duties.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual exploitation of a child (possessing or accessing sexually exploitative material) is a felony and shall be punishable by imprisonment in the state prison for a period not to exceed 10 years or by a fine not to exceed \$10,000, or by both such imprisonment and fine. • Sexual exploitation of a child (other than by possessing or accessing sexually exploitative material) is a felony and shall be punishable by imprisonment in the state prison for a term not to exceed 30 years or by a fine not to exceed \$50,000 or by both such fine and imprisonment. • Notwithstanding any other provisions of this section, a person 18 years of age or older who is found to be in knowing and willful possession of content created and distributed under circumstances defined in section 18-1507A(1) or (2), Idaho Code (possessing or accessing sexually exploitative material, or causing, inducing, or permitting child to engage in, or be used for, any explicit sexual conduct for the purposes of producing or making sexually exploitive material), is guilty of a misdemeanor provided that: <ul style="list-style-type: none"> • The minor depicted in the content distributed the content in such a way that the minor intended the person found to be in possession to receive it; • The minor depicted in the content is not greater than 3 years younger than the person found to be

in possession; and

- The person found to be in possession of the content did not use coercion, manipulation or fraud to obtain possession of the content.

Anything else I should know?

- **“Child”** means a person who is less than 18 years of age.
- **“Erotic fondling”** means touching a person’s clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved. “Erotic fondling” shall not be construed to include physical contact, even if affectionate, which is not for the purpose of real or simulated overt sexual gratification or stimulation of one or more of the persons involved.
- **“Erotic nudity”** means the display of the human male or female genitals or pubic area, the undeveloped or developing genitals or pubic area of the human male or female child, the human female breasts, or the undeveloped or developing breast area of the human female child, for the purpose of real or simulated overt sexual gratification or stimulation of one (1) or more of the persons involved.
- **“Explicit sexual conduct”** means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality.
- **“Masturbation”** means the real or simulated touching, rubbing, or otherwise stimulating of a person’s own clothed or unclothed genitals or pubic area, developing or undeveloped genitals or pubic area (if the person is a child), buttocks, breasts (if the person is a female), or developing or undeveloped breast area (if the person is a female child), by manual manipulation or self-induced or with an artificial instrument, for the purpose of real or simulated overt sexual gratification or arousal of the person.
- **“Sadomasochism”** means:
 - The real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.
 - Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or
- **“Sexual excitement”** means the real or simulated condition of human male or female genitals when in a state of real or simulated overt sexual stimulation or arousal.
- **“Sexual intercourse”** means real or simulated intercourse, whether genital-genital, oral-genital, anal-genital, or oral-anal, between persons of the same or opposite sex, or between a human and an animal, or with an artificial genital.
- **“Sexually exploitative material”** means any image, photograph, motion picture, video, print, negative, slide, or other mechanically, electronically, digitally or chemically produced or reproduced visual material which shows a child engaged in, participating in, observing, or being used for explicit sexual conduct, or showing a child engaging in, participating in, observing or being used for explicit sexual conduct, in actual time, including, but not limited to, video chat, webcam sessions or video calling.
- If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to

	be severable.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-1507 • Sexual exploitation of a child by electronic means appears in Idaho Code Ann. § 18-1507A • Visual representations of the sexual abuse of children appears in Idaho Code Ann. § 18-1507C

Lewd Conduct with a Minor Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • With the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of a person, a minor child, or third party: <ul style="list-style-type: none"> • Committing any lewd or lascivious act or acts upon or with the body or any part or member thereof of a minor child under the age of 16 years, including but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact, or manual-genital contact, whether between persons of the same or opposite sex, or • Involving such minor child in any act of bestiality or sadomasochism.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Lewd conduct with a minor child is a felony and shall be punished by imprisonment in the state prison for a term of not more than life.
Anything else I should know?	<ul style="list-style-type: none"> • “Bestiality” means a sexual connection in any manner between a human being and any animal. • “Sadomasochism” means: <ul style="list-style-type: none"> • Real or simulated flagellation or torture for the purpose of real or simulated sexual stimulation or gratification; or • Real or simulated condition of being fettered, bound, or otherwise physically restrained for sexual stimulation or gratification of a person.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-1508 • Idaho Code Ann. § 18-1507

Sexual Battery of a Minor Child

Question	Answer
How is it defined?	<ul style="list-style-type: none"> • It is a felony for any person who is at least 5 years of age older than a minor child who is 16 or 17 years of age, who, with the intent of arousing, appealing to or gratifying the lust, passion, or sexual desires of such person, minor child, or third party, to: <ul style="list-style-type: none"> • Commit any lewd or lascivious act or acts upon or with the body or any part or any member thereof of such minor child including, but not limited to, genital-genital contact, oral-genital contact, anal-genital contact, oral-anal contact, manual-anal contact or manual-genital contact, whether between persons of the same or opposite sex, or who shall involve such minor child in any act of explicit sexual conduct; • Solicit such minor child to participate in a sexual act; or • Cause or have sexual contact with such minor child, not amounting to lewd conduct as defined in the first sub-bullet above.
What are the punishments for this crime?	<ul style="list-style-type: none"> • Sexual battery of a minor child (committing any lewd or lascivious act): imprisonment in the state prison for a period not to exceed life. • Sexual battery of a minor child (other than committing any lewd or lascivious act): imprisonment in the state prison for a period not to exceed 25 years.
Anything else I should know?	<ul style="list-style-type: none"> • “Explicit sexual conduct” means sexual intercourse, erotic fondling, erotic nudity, masturbation, sadomasochism, sexual excitement, or bestiality. • “Sexual contact” means any physical contact between such minor child and any person or between such minor children which is caused by the actor, or the actor causing such minor child to have self contact. • “Solicit” means any written, verbal, or physical act which is intended to communicate to such minor child the desire of the actor or third party to participate in a sexual act or participate in sexual foreplay, by the means of sexual contact, photographing, or observing such minor child engaged in sexual contact.
Statutory citation(s):	<ul style="list-style-type: none"> • Idaho Code Ann. § 18-1508A • Idaho Code Ann. § 18-1507

Sodomy

Question	Answer
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How is it defined?	<ul style="list-style-type: none">• Idaho does not criminalize consensual sodomy.• Any state laws that outright prohibit sodomy are unconstitutional under <i>Lawrence v. Texas</i>, 539 U.S. 588 (2003).
What are the punishments for this crime?	<ul style="list-style-type: none">• N/A
Anything else I should know?	<ul style="list-style-type: none">• N/A
Statutory citation(s):	<ul style="list-style-type: none">• N/A