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IN FOCUS

Federal Sexual Assault Offenses

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Sexual assault and related offenses are mostly defined and proscribed under state, rather than federal, law. The federal government can act only pursuant to an enumerated power in the Constitution, whereas states have broader authority to enact criminal laws unless otherwise prohibited by the Constitution. Congress has enacted laws prohibiting sexual assault and related conduct, however, where there is a federal jurisdictional basis in the Constitution for Congress to legislate. Congress has also used noncriminal-law means within its jurisdiction, such as grant programs and reporting requirements, to address sex-related crime and its impacts.

This In Focus discusses selected federal criminal laws related to sexual assault; identifies some of the jurisdictional and evidentiary issues that are commonly analyzed in the context of these laws; highlights other, noncriminal approaches Congress has used to address sexual assault and associated conduct; and closes with considerations for Congress.

Sexual Assault in Federal Law Generally

"Sexual assault" and other terms describing sex crimes may not have a uniform definition across the country. The Federal Rules of Evidence define "sexual assault" as

> a crime under federal law or under state law (as "state" is defined in 18 U.S.C. § 513) involving:
>
> (1) any conduct prohibited by 18 U.S.C. chapter 109A;
>
> (2) contact, without consent, between any part of the defendant's body—or an object—and another person's genitals or anus;
>
> (3) contact, without consent, between the defendant's genitals or anus and any part of another person's body;
>
> (4) deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on another person; or
>
> (5) an attempt or conspiracy to engage in conduct described in subparagraphs (1)–(4).

For purposes of federal law, "sexual assault" is an umbrella term that may cover multiple crimes. One such federal crime, "sexual abuse," codified at 18 U.S.C. § 2242, generally refers to knowingly engaging in a sex act with another, by way of force or without the consent of the other person, and applies when certain jurisdictional elements (discussed below) are met. Federal law also prohibits aggravated sexual abuse, for example if the alleged victim is subject to certain threats; sexual abuse of a minor involving interstate travel; abuse of an individual in federal custody; statutory rape; and abusive sexual contact, which includes certain intentional touching. 18 U.S.C. § 1153 extends jurisdiction over the aforementioned offenses in "Indian country." Federal law also prohibits other categories of sex offenses (subject to jurisdictional limitations), including sex trafficking, child pornography, and sexual exploitation of minors.

In addition, Title 18, Chapter 13, contains relevant criminal provisions concerning violations of civil rights. For example, 18 U.S.C. § 242 criminalizes the willful deprivation of a right or privilege protected by the Constitution by individuals acting under the color of law, including through sexual abuse. For example, a state judge who sexually assaulted a party to a case pending before him violated this provision. 18 U.S.C. § 250 enhances the offense level to a felony for violations of Chapter 13 that involve sexual abuse or other sexual misconduct.

Congress has also criminalized sexual assault in Article 120 of the Uniform Code of Military Justice (UCMJ), the code of military criminal laws governing U.S. military members. These crimes are prosecuted in military courts established under Article I of the Constitution. The UCMJ includes the inchoate offenses of attempt, conspiracy and solicitation for sexual assault crimes.

Jurisdictional Bases

As mentioned above, every legislative act of Congress must be traced to an enumerated power in the Constitution. These powers include governance of federal property and authority over interstate commerce and federal spending, among others. As such, the federal sex offenses described above contain jurisdictional elements limiting their reach in particular ways based on the underlying federal power. For example, the crime of sexual abuse applies only if the underlying offense conduct occurs "in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency."

Special Maritime and Territorial Jurisdiction of the United States

Congress has "state-like" authority under a few constitutional provisions to criminalize conduct that occurs in the Special Maritime and Territorial Jurisdiction of the United States (SMTJ), which is statutorily defined to include locations such as the "high seas," domestic aircrafts in flight, and federal enclaves.

Other federal criminal laws related to sexual abuse contain the same jurisdictional requirement or rely on different fonts of congressional authority. For example, child pornography crimes demand that the material in question involve a "means or facility" of interstate or foreign commerce, or be "in or affect[]" interstate or foreign commerce. Sex trafficking similarly requires that the trafficking occur "in or affecting interstate or foreign commerce" or within the SMTJ.

The deprivation of civil rights by individuals acting under color of law is grounded in a different power of Congress: the

authority to enforce the Fourteenth Amendment, which generally ensures due process and equal protection of the laws.

In enacting the sexual assault provisions in Article 120 of the UCMJ, Congress exercised its authority to prescribe rules to govern the military in Article I, Section 8, Clause 14.

Common Evidentiary Issues

As mentioned above, the absence of consent is an element of most sexual assault offenses, including sexual abuse under federal law. Accordingly, the lack of consent is an important and recurring evidentiary issue. The federal sexual abuse statute clarifies that lack of consent requires proof that the alleged victim was either "incapable of appraising the nature of the conduct" or "physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act." According to a federal appeals court, "Not all [such courts] ... have decided whether a defendant must know that the victim was incapacitated to be guilty of this offense," though some courts, including military courts interpreting the UCMJ, require such knowledge.

A person's impairment due to intoxication may bear on whether that person was capable of providing or communicating consent. As one court concluded, a sexual abuse conviction may be sustained where the alleged victim was awake or had some awareness of the situation but "was physically hampered due to sleep, intoxication, or drug use and thereby rendered physically incapable" of consent. As to sexual acts committed under color of law, the law makes clear that "[c]onsent that is the product of official intimidation, harassment, or coercion is not true consent at all."

In jurisdictions that require a defendant to know that the alleged victim could not consent to the sex act, a defendant's intoxication may be relevant to establishing the defendant's mental state. Federal courts have held, however, that voluntary intoxication is a defense where there is evidence that the defendant was "drunk enough to completely lack the capacity to form the requisite intent," such as the intent to attempt to commit sexual abuse.

Selected Noncriminal Federal Laws

Congress also has used its enumerated powers, such as the Spending Clause and the Commerce Clause, to address sexual assault in contexts beyond criminal law. A brief summary of selected statutes in chronological order follows.

- Title IX of the Education Amendments of 1972 prohibits sex discrimination in all education programs receiving federal financial assistance. Federal implementing regulations require schools to take steps in responding to sexual harassment allegations, including sexual assault, and to set up grievance procedures for complaints. (For more information on Title IX in this context, see CRS Legal Sidebar LSB11279, *Status of Education Department's Title IX Regulations*, by Jared P. Cole (2025).)
- The Jeanne Clery Campus Safety Act (Clery Act) requires that domestic institutions of higher education participating in Title IV of the Higher Education Act federal student aid programs disclose crime statistics and campus security policies on an annual basis. Such security policies must include procedures for institutional discipline after an incident, such as a sexual assault, has been reported. (For more information on the Clery Act, see CRS In Focus IF12597, *The Clery Act, as Amended by the Stop Campus Hazing Act*, by Jared P. Cole (2026).)
- The Violence Against Women Act (VAWA) and subsequent reauthorizations enhance legal protections for victims of sexual assault and domestic violence through amendments to existing crimes and the creation of many initiatives, including grant programs and protected housing programs. 34 U.S.C. § 12291(a)(35) defines "sexual assault" for VAWA grant programs as "any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent."
- The Debbie Smith Act authorizes a grant program for state and local governments designed to enhance their capabilities to process and collect DNA samples in cases involving sexual assault and other violent crime. The Act also contains provisions expanding the information in the Combined DNA Index System (CODIS) and requiring the Federal Bureau of Prisons to take DNA samples from individuals convicted of qualifying federal and District of Columbia offenses.
- The Federal Sex Offender Registration and Notification Act (SORNA) requires convicted sex offenders to register with the appropriate authority in the jurisdiction of their residence, employment, and school, and contains criminal penalties for noncompliance. (For more information on SORNA, see CRS Report R42692, *SORNA: A Legal Analysis of 18 U.S.C. § 2250 (Failure to Register as a Sex Offender)*, by Charles Doyle (2021).)

Considerations for Congress

As discussed above, Congress has used its legislative authority to criminalize sexual assault within its jurisdiction and to enact laws aimed at facilitating the investigation of sex-related offenses, increasing transparency around these crimes, and preventing recurrence. Congress could pass new laws within its jurisdiction, as it did in enacting legislation in the 119th Congress that requires the Department of Justice to respond to and assess incidents of sexual harassment and sexual assault by incarcerated individuals against prison staff.

Congress could also consider adjustments to existing laws. For example, legislation introduced in the 119th Congress would increase statutory penalties by amending 18 U.S.C. § 2242 to establish a mandatory minimum prison term for federal sexual abuse offenses. Congress could also consider clarifying language to address nonuniformity among federal appeals courts regarding whether, for purposes of federal crimes involving alleged absence of consent, a defendant must know that the alleged victim is incapable of providing or communicating consent.

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