

- Pursuant to section 174 of the Criminal Code, criminal liability is incurred by individuals who perform sexual acts on or involving persons in their charge (i.e. where an individual has been entrusted to provide education or care; in superior-subordinate relationships of training, service or protection in which a dependency is abused; or in the case of biological or adopted children or children of spouses, of civil partners or of persons with whom the individual is living in a relationship similar to marriage or civil partnership). Those abusing children entrusted to them in institutions for education, training and care may incur a higher penalty.
 - Sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalised persons is punishable under section 174a.
 - Persons who, in their capacity as a public official charged with participation in criminal proceedings or in proceedings with the aim of imposing a custodial measure of reform and prevention or detention imposed by a public authority, exploit the dependency caused by the proceedings to commit sexual abuse are criminally liable pursuant to section 174b of the Criminal Code.
 - Sexual abuse exploiting a counselling, treatment or support relationship is punishable under section 174c of the Criminal Code. Those who perform sexual acts on a person entrusted to them for psychotherapeutic treatment are criminally liable pursuant to section 174c (2) of the Criminal Code. Substantive criminal law provisions essentially do not distinguish between juvenile and adult offenders. Section 176 (2) of the Criminal Code, which criminalises the sexual abuse of children, provides an exception to this rule. Pursuant to this provision, the court may dispense with punishment if the sexual acts between the perpetrator and the child are consensual and there is only a small difference in age and maturity between them; this does not apply if the perpetrator exploits the child's lack of capacity for sexual selfdetermination.
- Pursuant to section 182 (1) and (2) respectively, criminal liability is also incurred by anyone who abuses a person under eighteen years of age by performing sexual acts on that person or having that person perform sexual acts on him or her, either by exploiting that person's coercive situation or by financially rewarding that person. Pursuant to section 182 (3) of the Criminal Code, a person over 21 years of age who abuses a person under 16 years of age and thereby takes advantage of the victim's lack of capacity for sexual self-determination incurs criminal liability.

§ 174 Sexual abuse of persons in one's charge

(1) Whoever performs sexual acts

1. on a person under 18 years of age who is entrusted to them for upbringing or care,
 2. on a person under 18 years of age who is entrusted to them within a training, service or employment relationship, by abusing the dependence associated with the training, service or employment relationship or
 3. on a person under 18 years of age who is their biological or adopted descendant or the biological or adopted descendant of their spouse, life partner or a person with whom they live in a quasi-marital relationship or quasi-life partnership
- or has the person in their charge perform sexual acts on them incurs a penalty of imprisonment for a term of between three months and five years. Whoever, under the conditions of sentence 1, causes the person in their charge to perform sexual acts on or in the presence of a third person or causes a third person to perform sexual acts on them incurs the same penalty.

(2) Whoever is entrusted with the upbringing, education or care of persons under 18 years of age in an institution specified for this purpose and who

1. performs sexual acts on a person under 16 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them or
2. exploits their position in order to perform sexual acts on a person under 18 years of age who has a legal relationship with the institution which serves this person's upbringing, education or care, or who has that person perform sexual acts on them

incurs a penalty of imprisonment for a term of between three months and five years. Whoever, under the conditions of sentence 1, causes the person in their charge to perform sexual acts on or in the presence of a third person or causes a third person to perform sexual acts on them incurs the same penalty.

(3) Whoever, under the conditions of subsection (1) or (2),

1. performs sexual acts in the presence of the person in their charge for their own sexual arousal or that of the person in their charge or
 2. causes the person in their charge to perform sexual acts in their presence
- incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (1) sentence 1 no. 1, subsection (2) sentence 1 no. 1 or subsection (3) in conjunction with subsection (1) sentence 1 no. 1 or with subsection (2) sentence 1 no. 1, the court may dispense with imposing a penalty pursuant to this provision if the wrongfulness of the act is minor.

§ 174a Sexual abuse of prisoners, persons detained by official order, or sick or vulnerable institutionalised persons

(1) Whoever abuses their position to perform sexual acts on a prisoner or a person detained by official order, a person who is entrusted to them for upbringing, education, supervision or care, or has the prisoner or person detained perform sexual acts on them or causes the prisoner or person detained to perform or acquiesce to sexual acts on or by a third person incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever abuses a person who has been admitted to an institution for sick or vulnerable persons and is entrusted to them for supervision or care and performs sexual acts on that person, thereby exploiting said person's illness or vulnerability, or whoever has that person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs the same penalty.

(3) The attempt is punishable.

§ 174b Sexual abuse exploiting official position

(1) Whoever, in the capacity as a public official charged with participating in criminal proceedings or proceedings whose aim is to impose a measure of reform and prevention involving deprivation of liberty or detention imposed by official order, exploits the dependency caused by the proceedings to perform sexual acts on the person against whom the proceedings have been instituted or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs a penalty of imprisonment for a term of between three months and five years.

(2) The attempt is punishable.

§ 174c Sexual abuse exploiting counselling, treatment or support relationship

(1) Whoever performs sexual acts on a person entrusted to them for counselling, treatment or support due to a mental illness or disability, including an addiction, or due to a physical illness or disability, and exploits the counselling, treatment or support relationship or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third persons incurs a penalty of imprisonment for a term of between three months and five years.

(2) Whoever performs sexual acts on a person entrusted to them for psychotherapeutic treatment, thereby exploiting the treatment relationship, or has said person perform sexual acts on them or causes that person to perform or acquiesce to sexual acts on or by a third person incurs the same penalty.

(3) The attempt is punishable.

§ 176 Sexual abuse of children

(1) Whoever

1. performs sexual acts on a person under 14 years of age (child) or has the child perform sexual acts on them,
 2. causes a child to perform sexual acts on a third person or to have a third person perform sexual acts on them,
 3. offers or promises to supply a child for an offence under no. 1 or no. 2
- incurs a penalty of imprisonment for a term of at least one year.

(2) In the cases under subsection (1) no. 1, the court may dispense with imposing a penalty in accordance with this provision if the sexual act between the offender and the child was consensual and the difference both in age and level of development and maturity is small, unless the offender is exploiting the child's lack of capacity for sexual self-determination.

§ 177 Sexual assault; sexual coercion; rape

(1) Whoever, against a person's discernible will, performs sexual acts on that person or has that person perform sexual acts on them, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs a penalty of imprisonment for a term of between six months and five years.

(2) Whoever performs sexual acts on another person or has that person perform sexual acts, or causes that person to perform or acquiesce to sexual acts being performed on or by a third person incurs the same penalty if

1. the offender exploits the fact that the person is not able to form or express a contrary will,
2. the offender exploits the fact that the person is significantly impaired in respect of the ability to form or

express a will due to said person's physical or mental condition, unless the offender has obtained the consent of that person,

3. the offender exploits an element of surprise,

4. the offender exploits a situation in which the victim is threatened with serious harm in case of offering resistance or

5. the offender has coerced the person to perform or acquiesce to the sexual acts by threatening serious harm.

(3) The attempt is punishable.

(4) The penalty is imprisonment for a term of at least one year if the inability to form or express a will is due to the victim's illness or disability.

(5) The penalty is imprisonment for a term of at least one year if the offender

1. uses force against the victim,

2. threatens the victim with a present danger to life or limb or

3. exploits a situation in which the victim is unprotected and at the mercy of the offender's influence.

(6) In especially serious cases, the penalty is imprisonment for a term of at least two years. An especially serious case typically occurs where

1. the offender has sexual intercourse with the victim or has the victim have sexual intercourse or commits such similar sexual acts on the victim or has the victim commit them on them which are particularly degrading for the victim, especially if they involve penetration of the body (rape), or

2. the offence is committed jointly by more than one person.

(7) The penalty is imprisonment for a term of at least three years if the offender

1. carries a weapon or other dangerous implement,

2. otherwise carries an instrument or other means for the purpose of preventing or overcoming the resistance of another person by force or threat of force or

3. places the victim at risk of serious damage to health.

(8) The penalty is imprisonment for a term of at least five years if

1. the offender uses a weapon or other dangerous implement during the commission of the offence or

2. the offender

a) seriously physically abuses the victim during the offence or

b) by committing the offence places the victim in danger of death.

(9) In less serious cases under subsections (1) and (2), the penalty is imprisonment for a term of between three months and three years, in less serious cases under subsections (4) and (5) imprisonment for a term of between six months and 10 years, and in less serious cases under subsections (7) and (8) imprisonment for a term of between one year and 10 years.

§ 182 Sexual abuse of juveniles

(1) Whoever abuses a person under 18 years of age by taking advantage of a predicament by

1. performing sexual acts on that person or having said person perform sexual acts on them or

2. causing the person to perform sexual acts on a third person or to have sexual acts performed on them by a third person

incurs a penalty of imprisonment for a term not exceeding five years or a fine.

(2) A person over 18 years of age who abuses a person under 18 years of age by performing sexual acts on that person or having that person perform sexual acts on them for a consideration incurs the same penalty.

(3) A person over 21 years of age who abuses a person under 16 years of age by

1. performing sexual acts on that person or having that person perform sexual acts on them or

2. causing that person to perform sexual acts on a third person or to have a third person perform sexual acts on that person,

and thereby exploits the victim's lack of capacity for sexual self-determination, incurs a penalty of imprisonment for a term not exceeding three years or a fine.

(4) The attempt is punishable.

(5) In the cases under subsection (3), the offence is prosecuted only upon request, unless the prosecuting authority deems there to be a special public interest in prosecution which calls for ex officio intervention.

(6) In the cases under subsections (1) to (3), the court may dispense with imposing a penalty pursuant to these provisions if, having regard to the conduct of the person against whom the offence was committed, the wrongfulness of the act is minor.