

# Arkansas

WOMEN IN PRISON: 788 (12/99)<sup>i</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

#### § 5-14-109 – Sexual Abuse in the Second Degree <sup>1</sup>

Arkansas’s law is in the Sexual Offenses chapter of the Criminal Code title as a provision within its lowest-level statutory rape law. The law states the consent of the person under custody is irrelevant.

Does the statute impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the statute covers all relevant forms of sexual abuse?	No	The law only covers sexual contact. It does not cover acts involving penetration.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law states the consent of the inmate is irrelevant.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law covers employees as well as private contractors, of both the state Department of Corrections and county and city jails.
Does the statute cover all places where an inmate might be abused?	No	While the law protects state prisoners, it requires that the custodial sexual misconduct occur within a city or county jail for non-state inmates.
Is the penalty a felony?	No	Violation is a Class A misdemeanor.

### *Custodial Sexual Misconduct – Allegations and Incidents*

Indictments/Convictions (answer to AI letter requesting information) <sup>ii</sup>	The Attorney General’s Office in Arkansas provided the following information in respect of § 5-14-109 Sexual Abuse in the Second Degree 1997: two charges filed and 12 convictions obtained; 1998: one charge filed and 3 convictions obtained 1999: one charge filed and 5 convictions obtained. The Attorney General’s Office was unable to confirm which of these charges and convictions were in respect to custodial sexual misconduct, as they do not keep specific statistics for a particular subdivision of the code. <sup>iii</sup>
Incidents reported in select media since 10/98	<ul style="list-style-type: none"> <li>- Washington County Juvenile Detention Center: Former guard Earl Guillory pleaded guilty to two counts of violation of a minor for sexually abusing female inmates. Sentenced to three years probation; since he was already on probation, he will serve three years in prison for violating the previous probation. <i>The Arkansas Democrat Gazette, 07/16/00</i></li> <li>- Wackenhut Correctional Facility: Former officer Marcus King pleaded guilty to sexual assault of inmate Vera Arnold. The assault took place in the bathroom of a hospital while Arnold was receiving medical treatment. Suspended fine. <i>Associated Press, 10/24/00</i></li> <li>- Tucker Women’s Unit: 8<sup>th</sup> Circuit Reinstates \$ 80,000 Damage Award in Rape Case. A state prisoner at the Tucker Women’s Unit in Arkansas was raped by guard Jay Oswalt. When she revealed to the guard that she was</li> </ul>

<sup>1</sup> The text of Arkansas’s statute is included at the end of this section.

	pregnant as a result of the rape, he attempted to force her to take Quinine and turpentine to induce an abortion. Under further threat, he directed the prisoner to blame another ADC guard, Randall Reed, who had been sexually harassing her. See <i>Berry v Oswalt</i> , 143 F.3d 1127 (8 <sup>th</sup> Cir.1998) <i>Prison Legal News</i> , February 1999
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## ***Custodial Sexual Misconduct – Policies, Procedures and Practices of Guarding Specific to Women***

The following data is based on surveys performed by the National Institute of Corrections in 1996 and 2000, except in cases where further details have been available to AI from alternative sources.

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	<b>Yes</b>	Arkansas Department of Corrections has a specific policy directive on sexual misconduct with inmates, which includes specific language about the sexual nature of the behaviors prohibited. <sup>iv</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	Searches are predominantly same-sex. Cross-sex done only in emergency – “emergency” not defined. This practice reflects policy of private organization Corrections Corporation of America, the operator of Arkansas’ women’s prison. <sup>v</sup>
Restrictions on the duties of male guards?		Not known.
Staff training on sexual misconduct in 1996?	<b>Yes</b>	Correction officers received two hours of annual in-service training. <sup>vi</sup>
Staff training developed 1996-2000?	<b>Yes</b>	Full details of training not available. <sup>vii</sup> Employees receive a copy of Arkansas DOC Administrative Directive 00-11 “Sexual Misconduct With Inmates”, June 19, 2000, during mandatory training. <sup>viii</sup>
Special procedures for investigating allegations of sexual misconduct in 1996?	<b>No</b>	Arkansas is not specifically mentioned in the National Institute of Corrections report. However, it is noted that most DOCs use standard investigatory procedures with no special considerations for the nature of the complaint. <sup>ix</sup>
Investigation procedures introduced 1996-2000?	<b>Yes</b>	Investigation procedures are detailed in Arkansas DOC Administrative Directive 00-11. Inmates may use the Inmate Grievance Procedure to report sexual misconduct allegations. <sup>x</sup> <i>AIUSA Comments: The inmate grievance procedure may not afford the inmate confidentiality when reporting sexual misconduct.</i>
Informing inmates of agency policies on sexual misconduct 1996?	<b>Yes</b>	Arkansas DOC makes the agency policies available in the library. <sup>xi</sup>
Revision of procedures on informing inmates on sexual misconduct 1996-2000?	<b>No</b>	No new initiatives. <sup>xii</sup> Arkansas DOC Administrative Directive 00-11 will be available in the library. <sup>xiii</sup>

## ***Custodial Sexual Misconduct –Legislative Proposals 2000-01***

<b>2001 SB 175<sup>2</sup></b> <i>Sponsored by Senator Hill</i> Introduced 1/17/01	“An Act To Amend Arkansas Code 5-14-108 And 5-14-109 To Make Sexual Abuse Of An Inmate By A Correctional Officer A Class C Felony.” This bill would move the exact same language currently in the misdemeanor section to a felony section.
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<sup>2</sup> The text of the Arkansas bill is reprinted at the end of this section

# Parenting and Pregnancy in Custody

## *Pregnancy - Relevant Statutes/Administrative Rules*

Legislation banning shackling in the third trimester or during labor	No	Arkansas has no legislation limiting the use of shackling on pregnant inmates.
Administrative rules concerning pregnancy and delivery	Yes	“Pre-Natal Care/Pregnant Inmates/Residents” is an administrative regulation that stipulates that pregnant inmates be provided with comprehensive health care services and receive counseling in planning for the custody of their unborn children. <sup>xiv</sup>

## *Pregnancy and Parenting - Policies, Procedures and Practices*

Use of restraints in third trimester		Not known.
Restraints during transport	Yes	Arkansas Department of Corrections policy states that handcuffs and leg-shackles be applied as appropriate by custody level. The policy allows for y physician or health care services provider. However, the Arkansas DOC Administrator of Medical Services has the final decision. <sup>xv</sup>
Restraints during labor	Yes	The Arkansas DOC policy states that no such device may be applied to an inmate “during the final stages of active labor.” <sup>xvi</sup>
Officer in delivery room	Yes	The policy states that at least one escorting employee must be female, and medical staff can request the guard to wait outside the delivery room. <sup>xvii</sup>
Parenting programs specific for women	Yes	Arkansas DOC has a parenting program especially for women. <sup>xviii</sup>
Special visitation rights for women	No	Arkansas DOC has no special visitation rights for women. <sup>xix</sup> However, the Arkansas DOC policy designates “no less than 24 hours post-delivery” for contact and interaction between infant and mother. <sup>xx</sup>
State Mother and Child Residency Program	No	Arkansas DOC has no residential program for inmate mothers and their infants/children. <sup>xxi</sup>

## Contact information

### **ARKANSAS DEPARTMENT OF CORRECTIONS**

<b>Director Larry B. Norris</b> P.O. Box 8707 Pine Bluff, AR 71611 Phone: (870) 267-6999	Home page: <a href="http://www.state.ar.us/doc/">http://www.state.ar.us/doc/</a> Directory DOC: <a href="http://www.state.ar.us/doc/pubindex.htm">http://www.state.ar.us/doc/pubindex.htm</a>
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### **ARKANSAS DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN**

<b>McPherson Correctional Facility</b> <i>Female inmate capacity: 600<sup>xxii</sup></i> Managed by Wackenhut CC  P.O. Box 5555 Newport, AR 72112-5555 Phone: (870) 523-2639 Fax: (870) 523-6202	<b>Boot Camp Program</b> <i>Female inmate capacity: 62</i> Supervisor: Tommy Rochelle P.O. Box 1000 Wrightsville, AR 72183 Phone: (501) 897-5806 Fax: (501) 897-1195 (work-release program for women)
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## ARKANSAS EXECUTIVE

<p><b>Governor Mike Huckabee [R]</b>          Arkansas State Capitol          Little Rock, AR 72201          Phone: (501) 682-2345          Fax: (501) 682-3597          e-mail: <a href="mailto:mike.huckabee@state.ar.us">mike.huckabee@state.ar.us</a></p>	<p>Homepage:  <a href="http://www.state.ar.us/governor/">http://www.state.ar.us/governor/</a>          Contact page:  <a href="http://www.state.ar.us/governor/contacts.html">http://www.state.ar.us/governor/contacts.html</a>          Governor since: July 15, 1996          Elected: Nov. 3, 1998</p>
<p><b>Attorney General Mark Lunsford Pryor [D]</b>          Office of the Attorney General          323 Center Street, Suite 200          Little Rock, Arkansas 72201          Tel: (501) 682-2007 or (800) 482-8982          Fax (501) 682-8084          email: <a href="mailto:oag@ag.state.ar.us">oag@ag.state.ar.us</a></p>	<p>Homepage:  <a href="http://www.ag.state.ar.us/">http://www.ag.state.ar.us/</a></p>

## ARKANSAS LEGISLATIVE INFORMATION

<p><b>Legislative Session:</b> The General Assembly convenes on the second Monday of each odd-numbered year. A session lasts for 60 days unless the legislature votes to extend it. The governor can issue a call for a special session during the interims between regular sessions.</p> <p><b>House:</b> 100 members, 4- year term (8- yr. max)  <b>Senate:</b> 35 members, 2- year term (6- yr. max)</p>	<p>Legislature Homepage:  <a href="http://www.arkleg.state.ar.us/">http://www.arkleg.state.ar.us/</a></p> <p>Research Resources:  <a href="http://www.arkleg.state.ar.us/data/resources.asp">http://www.arkleg.state.ar.us/data/resources.asp</a></p> <p>Bill Search:  <a href="http://www.arkleg.state.ar.us/1999/data/ACSB&amp;R.asp">http://www.arkleg.state.ar.us/1999/data/ACSB&amp;R.asp</a></p>
<p><b>Senate</b>          State Capitol, Little Rock, 72201          Phone: In sessions (501) 682-2902          Not in session: (501) 682-6107</p>	<p>Senate members web site:  <a href="http://www.arkleg.state.ar.us/scripts/ABLR/members/rep.asp?Mtype=S">http://www.arkleg.state.ar.us/scripts/ABLR/members/rep.asp?Mtype=S</a></p> <p>Bill information phone numbers:          House: (501) 375-7771          Senate: (501) 682-6107</p>
<p><b>House of Representatives</b>          State Capitol, Little Rock, AK 72201</p>	<p>Home page:  <a href="http://www.state.ar.us/house/">http://www.state.ar.us/house/</a></p>

## WOMEN IN PRISON - NGO RESOURCES

The organizations listed are not endorsed by or affiliated with Amnesty International.

<p>Arkansas-CURE          P.O. Box 56001          Littlerock, AR 72215          (501) 223-2620</p>
<p>Women's Project          2224 Main Street          Little Rock, AR 72206          Phone: (501) 371-5113  <i>Services provided include support group for battered women, child transportation project and support for prison libraries.</i></p>
<p>ACLU of Arkansas          904 West Second Street, Suite 1          Little Rock, AR 72201          Phone: (501) 374-2660</p>

## Arkansas's Custodial Sexual Misconduct Statute

### § 5-14-109 *Sexual Abuse in the Second Degree*

- (a) A person commits sexual abuse in the second degree if:
- (1) He or she engages in sexual contact with another person not his or her spouse who is incapable of consent because he or she is mentally defective or mentally incapacitated;
  - (2) Being less than eighteen (18) years old, he or she engages in sexual contact with a person not his or her spouse who is less than fourteen (14) years old. It is an affirmative defense to prosecution under this subdivision (a)(2) that the actor was not more than two (2) years older than the victim; or
  - (3) He or she, being employed directly or through contract with the Department of Correction or the Department of Community Punishment, or with any city or county jail, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment or within any city or county jail, the consent of the person in custody notwithstanding.
- (b) Sexual abuse in the second degree is a Class A misdemeanor.

### 2001 SENATE BILL 175 By: Senator Hill; By: Representative Teague Underlined portions are additions. ~~Strikethroughs are deletions~~

#### For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE 5-14-108 AND 5-14-109 TO MAKE SEXUAL ABUSE OF AN INMATE BY A CORRECTIONAL OFFICER A CLASS C FELONY; AND FOR OTHER PURPOSES.

**Subtitle** AN ACT TO AMEND ARKANSAS CODE 5-14-108 AND 5-14-109 TO MAKE SEXUAL ABUSE OF AN INMATE BY A CORRECTIONAL OFFICER A CLASS C FELONY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 5-14-108, concerning sexual abuse in the first degree, is amended to read as follows:

5-14-108. Sexual abuse in the first degree.

- (a) A person commits sexual abuse in the first degree if:
- (1) He engages in sexual contact with another person by forcible compulsion; or
  - (2) He engages in sexual contact with another person who is incapable of consent because he is physically helpless; or
  - (3) He engages in sexual contact with another person, not his spouse, who is a patient or resident of a hospital, nursing home, human development center, or other similar facility, and who is incapable of consent because he is mentally defective or mentally incapacitated; or
  - (4) Being eighteen (18) years old or older, he engages in sexual contact with a person not his spouse who is less than fourteen (14) years old; or
  - (5) He engages in sexual contact with a person who is less than sixteen (16) years of age and who is incapable of consent because he is mentally defective or mentally incapacitated. ; or
  - (6) Being employed directly or through contract with the Department of Correction or the Department of Community Punishment, or with any city or county jail, the person engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment or within any city or county jail, the consent of the person in custody notwithstanding.
- (b) Sexual abuse in the first degree is a Class C felony.

SECTION 2. Arkansas Code 5-14-109, concerning sexual abuse in the second degree, is amended to read as follows:

5-14-109. Sexual abuse in the second degree.

- (a) A person commits sexual abuse in the second degree if:
- (1) He or she engages in sexual contact with another person not his or her spouse who is incapable of consent because he or she is mentally defective or mentally incapacitated; or
  - (2) Being less than eighteen (18) years old, he or she engages in sexual contact with a person not his or her spouse who is less than fourteen (14) years old. It is an affirmative defense to prosecution under this subdivision (a)(2) that the actor was not more than two (2) years older than the victim ; or.
  - ~~(3) He or she, being employed directly or through contract with the Department of Correction or the Department of Community Punishment, or with any city or county jail, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment or within any city or county jail, the consent of the person in custody notwithstanding.~~
- (b) Sexual abuse in the second degree is a Class A misdemeanor.

<sup>i</sup> *Prisoners in 1999*, Bureau of Justice Statistics Bulletin, August 2000 NCJ 183476. Arkansas Department of Corrections, <http://www.state.ar.us/doc/pubindex.htm> An additional 992 inmates of unspecified gender, sentenced to the Department of Correction were housed in county jails and other approved sites.

<sup>ii</sup> The information does not reflect prosecutions or convictions under rape statutes.

<sup>iii</sup> Letter from the Arkansas Attorney General's Office, Sandy Moll, Assistant Attorney General, July 11, 2000

<sup>iv</sup> Arkansas Department of Corrections, Administrative Directive 00-11 "Sexual Misconduct With Inmates," June 19, 2000. Received by facsimile from the Arkansas Department of Corrections, 02/12/2001

<sup>v</sup> National Institute of Corrections Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research," Colorado, January 1999

<sup>vi</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996

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- <sup>vii</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence," National Institute of Corrections, Colorado, May 2000
- <sup>viii</sup> Arkansas Department of Corrections, Administrative Directive 00-11 "Sexual Misconduct With Inmates," June 19, 2000. Received by facsimile from the Arkansas Department of Corrections, 02/12/2001
- <sup>ix</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996
- <sup>x</sup> Arkansas Department of Corrections, Administrative Directive 00-11 "Sexual Misconduct With Inmates," June 19, 2000. Received by facsimile from the Arkansas Department of Corrections, 02/12/2001
- <sup>xi</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996
- <sup>xii</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence," National Institute of Corrections, Colorado, May 2000
- <sup>xiii</sup> Arkansas Department of Corrections, Administrative Directive 00-11 "Sexual Misconduct With Inmates," June 19, 2000. Received by facsimile from the Arkansas Department of Corrections, 02/12/2001
- <sup>xiv</sup> Arkansas Department of Corrections, Administrative Regulation 829, "Prenatal Care/Pregnant Inmates/Residents," August 1, 2000.
- <sup>xv</sup> Administrative Directive 00-06 IV.B.7. Received by mail from the Arkansas Department of Corrections, Policy coordinator, Carl W. Dwyer, 9/27/00
- <sup>xvi</sup> Administrative Directive 00-06 IV.B.6 Received by mail from the Arkansas Department of Corrections, Policy coordinator, Carl W. Dwyer, 9/27/00
- <sup>xvii</sup> Administrative Directive 95-21, Reference: AR 403- AR404 p.4,C.2. Received by mail from the Arkansas Department of Corrections, Policy coordinator, Carl W. Dwyer, 9/27/00
- <sup>xviii</sup> US Department of Justice National Institute of Corrections Information Center, "Current Issues in the Operation of Women's Prisons," National Institute of Corrections, Colorado, September 1998
- <sup>xix</sup> US Department of Justice National Institute of Corrections Information Center, "Current Issues in the Operation of Women's Prisons," National Institute of Corrections, Colorado, September 1998
- <sup>xx</sup> Administrative Directive # 00-06 Ref: JAR 829. Received by mail from the Arkansas Department of Corrections, Policy coordinator, Carl W. Dwyer, 9/27/00
- <sup>xxi</sup> General Accounting Office, "Managing Female Inmate Populations," GAO/GGD-00-22, 2000
- <sup>xxii</sup> All women's facility: Arkansas Department of Corrections, McPherson Correctional Facility, <http://www.state.ar.us/doc/>