

# Massachusetts

WOMEN IN PRISON: 615 (01/00)<sup>i</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

*Chapter 268: Section 21A – Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.<sup>1</sup>*

Massachusetts's law is in the Criminal Code under the heading Crimes Against Public Justice.

Does the law impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the statute cover all relevant forms of sexual abuse?	Yes	Sexual conduct is broadly defined.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law specifically states that the inmate is deemed incapable of consenting to sexual relations with the officer.
Does the statute cover all custodians and staff in contact with inmates?	No	The law specifies that the actor must either be an employee, officer or contractor, and does not cover volunteers or service providers.
Does the statute cover all places where inmates might be abused?	Yes	The law specifically states that it is not concerned where the sexual acts took place.
Is the penalty a felony?	Yes	Violation is up to five years imprisonment and \$10,000 fine.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>ii</sup>	Not known. Amnesty International has received no response from the Massachusetts Attorney General's Office.
Incidents reported in select media since 10/98	<ul style="list-style-type: none"> <li>- House of Correction in South Bay: Officer Mark Vaughn was charged with two counts of providing gifts in exchange for sex, with a possible sentence of up to three years in prison. <i>The Boston Globe</i>. 08/24/00</li> <li>- Suffolk County House of Correction: Four guards were fired from the Suffolk County House of Correction in Boston in August and October 1999 on charges that they had sexual contact with female prisoners. One female inmate became pregnant in what was described by <i>The Boston Globe</i> as a "guard-inmate drugs-for-sex ring." The charges prompted multiple lawsuits and investigations by the FBI and the Suffolk County District Attorneys office. In November 1999, a guard at the state prison for women in Framingham, Massachusetts was charged with raping two prisoners after DNA evidence from one of his victims matched a sample of his blood. <i>Prison Legal News</i>, April 2000 <i>The Boston Globe</i> 10/20/99</li> <li>- Framingham State Prison: Former guard Anthony Maddix pleaded "not guilty" to charges of rape and indecent assault. It is alleged he forced female inmates to perform oral sex on him. <i>Providence Journal Bulletin</i>. 11/23/99</li> </ul>

<sup>1</sup> The text of Massachusetts's statute is reprinted at the end of this section

## *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>	The policy includes direct and specific language about the nature of the sexual behaviors prohibited <sup>iii</sup> The policy includes all employees, contractors and volunteers, and specifies that the inmate’s consent is irrelevant in criminal prosecution of such misconduct. The policy also stipulates that all allegations must be reported, fully investigated, and treated in a confidential and serious manner. <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. <sup>v</sup>
Restrictions on the duties of male guards?		Not known.
Was there staff training on sexual misconduct in 1996?	<b>Yes</b>	All staff with inmate contact received training. No further details on training were provided. <sup>vi</sup>
Staff training developed 1996-2000?	<b>Yes</b>	Massachusetts Department of Corrections introduced a new policy in 12/99 by which all staff received training within Basic Training Classes (40-hour classes conducted for new employees), In-Service Training and Volunteer Orientation Classes. Training includes recognizing, preventing, reporting and investigating incidents. Employees who might come into contact with female inmates receive additional specialized training on-site, prior to entering service with the department. <sup>vii</sup>
Special procedures for investigating allegations of sexual misconduct in 1996?	<b>No</b>	Massachusetts 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>viii</sup>
Investigation procedures introduced 1996-2000?	<b>Yes</b>	Massachusetts DOC introduced a new policy in 12/99 by which failure to report an allegation of sexual misconduct may result in termination. The policy stipulates that the allegation must be reported to the Chief of Investigations, Deputy Commissioner and if the allegations involve a possible violation of state law, the District Attorney. There are specific requirements for securing any crime scene, taking the inmate for emergency medical care/mental health referral and, if warranted, taking the inmate to an outside hospital with a rape crisis unit. <sup>ix</sup> Accused staff are removed from inmate contact while investigations take place. Evidence used may include letters, files, records, physical evidence, lab reports and expert opinions. Retaliation for reporting complaints or assisting in making the report may result in termination. <sup>x</sup> The policy stipulates that a database will be set up to track all allegations of sexual misconduct. Allegations will be cross-checked against the database to determine common themes including facility, shifts, alleged victim and/or alleged perpetrators. An annual report is also generated. <sup>xi</sup>
Informing inmates of agency policies on sexual misconduct in 1996?		Not known. <sup>xii</sup>
Revision of procedures on informing inmates on sexual misconduct 1996-2000?	<b>Yes</b>	Massachusetts DOC introduced a new policy in 12/99 which stipulates that sexual misconduct must be covered in an orientation booklet, including a statement that misconduct is prohibited and all incidents must be reported to unit team staff. The policy also states that inmates should also be informed of the confidential hot-line

		telephone number available at the facility. In addition, all female inmates undergo training conducted during weekly orientation sessions. The sessions provide information on how to protect oneself from becoming a victim, treatment options, and methods for reporting incidents. <sup>xiii</sup>
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## ***Custodial Sexual Misconduct –Legislative Proposals 2000-01***

<i>None</i>
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## **Parenting and Pregnancy in Custody**

### ***Pregnancy – Relevant Statutes/Administrative Rules***

Legislation banning shackling in the third trimester or during labor	No	Massachusetts has no legislation limiting the use of shackling on pregnant inmates
Administrative rules concerning pregnancy and delivery	Yes	When an inmate is about to give birth, the physician of the institution where the inmate is confined shall send to the commissioner a certificate of her condition, and the commission shall thereupon order her removal to a hospital, but not to a penal or reformatory institution, for the purpose of giving birth. The inmate will remain in the hospital until the physician there proclaims her ready to be removed. <sup>xiv</sup>
Administrative rules concerning prenatal care	Yes	Upon the determination of pregnancy, access must be arranged to counseling services. A treatment plan is developed by medical provider, and written procedures are developed to ensure that regular medical care is received, including medical examinations, advice on appropriate levels of activity and safety precautions, nutrition guidance and counseling. <sup>xv</sup> The inmate is referred to counseling services in the event she wishes to terminate the pregnancy. The DOC is not responsible for payment of abortion services, unless deemed medically necessary by physician. <sup>xvi</sup>

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

Use of restraints in third trimester		Not known.
Restraints during transport	Yes	According to a Massachusetts DOC official, formal procedure dictates that inmates would be restrained according to security level. Inmates housed outside the facility in the community (with the lowest security classification) would not be restrained. Specifics are not available to the public for security reasons. <sup>xvii</sup> The Massachusetts DOC policy, obtained on the internet, states that health services staff cooperate with correctional staff in determining conditions of transportation and security precautions, based on custody classification of inmate. <sup>xviii</sup>
Restraints during labor	Yes	According to a Massachusetts DOC official, formal procedures based on security classification dictate what restraints – if any – are applied. Further specifics are not available to the public for security reasons. Exceptions may be made if medical conditions require restraints to be removed. <sup>xix</sup>
Officer in delivery room	Yes	According to a Massachusetts DOC official, formal procedures based on security classification dictate positioning of guards. A female

		guard may be posted in the delivery room depending on classification. A guard posted outside the room must have visual contact with inmate. Further specifics are not available to the public for security reasons. <sup>xx</sup>
Parenting programs specific for women	No	Massachusetts DOC has no parenting programs specifically for women. <sup>xxi</sup>
Special visitation rights for women	No	Massachusetts DOC has no special visitation rights for women with children. <sup>xxii</sup>
State Mother and Child Residency Program	Yes	Catch the Hope Program (MCI Framingham), established through a federal grant 10 years ago, provides comprehensive services to pregnant/ post partum women. The state took over funding and the program is now provided through Correctional Medical Systems. The program's main aim is to keep mothers and newborns together. In most cases, caseworkers try to obtain early release for the mother, often with enrollment in a substance abuse program. Otherwise, a custody plan is devised; the program works with mothers to determine custody of the child and ensure visits with newborn babies. <sup>xxiii</sup>

## Contact information

### MASSACHUSETTS DEPARTMENT OF CORRECTION

<b>Commissioner: Michael T Maloney</b> Massachusetts Department of Corrections Central Headquarters 50 Maple Street, Suite 3 Milford, Ma 01757 Phone: (617) 727 7775, Fax: (617) 422 7403 Email: <a href="mailto:docinfo@doc.state.ma.us">docinfo@doc.state.ma.us</a>	Website: <a href="http://www.state.ma.us/doc/">http://www.state.ma.us/doc/</a> Public Information Officer: Justin Lotini Fax: (508) 422 3386  Inmate hotline telephone number: (617) 727-2828 <i>The number is to be set up within the inmate telephone system to allow universal access.</i>
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### MASSACHUSETTS DEPARTMENT OF CORRECTION FACILITIES FOR WOMEN

<b>MCI-Framingham</b> Barbara Guarino, Superintendent 99 Loring Drive P.O. Box 9007 Framingham, MA 01701 Phone (617) 727-5056 (Security Level 4) (Awaiting Trial Unit Security Level 6)	<b>MCI-Lancaster</b> Kelly Ryan, Superintendent Old Common Road P.O. Box 123 Lancaster, MA 01523 (Security Level 3 and 2)	<b>Massachusetts Boot Camp</b> Michael Corsini, Administrator 2 Administration Road Bridgewater, MA 02324 Phone (617) 727- 1507  Male and female(Security Level 4)
<b>Community Residential Services</b> Linda Busker - Cutler, Director 180 Morton Street, 2nd Floor Jamaica Plain, MA Phone (617) 727-4672	<b>Neil J. Houston House</b> Dimock Community Health Center Roxbury, MA For incarcerated pregnant substance abusers (Security Level 1)	<b>Charlotte House</b> 32 Charlotte Street Dorchester, MA 02121 Phone (617) 825-3460 (Security Level 1)

## **MASSACHUSETTS EXECUTIVE**

<p><b>GOVERNOR Paul Cellucci [D]</b> Office of the Governor Room 360 Boston, MA 02133 Phone: (727) 6250 Fax: (617) 727 9725</p>	<p>Homepage: <a href="http://www.state.ma.us/gov/govco.htm">http://www.state.ma.us/gov/govco.htm</a></p> <p>Email: <a href="mailto:GOffice@state.ma.us">GOffice@state.ma.us</a></p>
<p><b>Attorney General Tom Reilly [D]</b> One Ashburton Place Boston, MA 02108 Phone: (617) 727 2200</p>	<p>Homepage: <a href="http://www.ago.state.ma.us/">http://www.ago.state.ma.us/</a></p>

## **MASSACHUSETTS LEGISLATIVE INFORMATION**

<p><b>House:</b> 160 members <b>Senate:</b> 40 members</p> <p><b>Legislative Session:</b> Each biennial session begins in an odd-numbered year.</p>	<p>Legislature Homepage: <a href="http://www.state.ma.us/legis/legis.htm">http://www.state.ma.us/legis/legis.htm</a></p> <p>Bill Search: <a href="http://www.state.ma.us/legis/ltsform.htm">http://www.state.ma.us/legis/ltsform.htm</a></p> <p>Bill information phone number: (617) 722-2860</p>
<p><b>Senate</b> State House Boston, MA 02133 Phone: (617) 722 2500</p>	<p>Home page: <a href="http://www.state.ma.us/legis/">http://www.state.ma.us/legis/</a> <a href="http://www.state.ma.us/legis/memmenus.htm">http://www.state.ma.us/legis/memmenus.htm</a></p>
<p><b>House Of Representatives</b> State House Boston, MA 02133 (617) 722 2500</p>	<p>Home page: <a href="http://www.state.ma.us/legis/">http://www.state.ma.us/legis/</a></p>

## **WOMEN IN PRISON - NGO RESOURCES**

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

<p>Massachusetts-CURE 409 Main St. Amherst, MA 01002 413-253-6400</p>
<p>Criminal Justice Policy Coalition 99 Chauncy St Room 310 Boston MA 02111 Phone: 617-482-3170 ext.319 Fax: 617-451-0009 Email: <a href="mailto:info@cjpc.org">info@cjpc.org</a> Web page: <a href="http://www.cjpc.org">www.cjpc.org</a> <i>Categories: Death Penalty, Families/Visiting, Prison Labor, Prison Law/Jailhouse Lawyers, Prisoner Support, Prisoners' Rights, Research/Analysis, Women in Prison</i></p>
<p>American Friends Service Committee Criminal Justice Program -- Cambridge 2161 Mass Ave Cambridge MA 02141 Phone: 617-661-6130 Fax: 617-354-2832 <i>Categories: Prisoner Support, Prisoners' Rights, Research/Analysis</i></p>
<p>ACLU of Massachusetts 99 Chauncy Street, Suite 310 Boston, MA 02111 Phone: (617) 482-3170 Web site: <a href="http://www.aclu-mass.org">www.aclu-mass.org</a></p>

Cape Codders Against Racism  
PO Box 1053  
E Dennis MA 02641  
Phone: 508-790-8837

*Categories: Prisoners' Rights*

Western Mass Prison Issues Group  
PO Box 9606  
N Amherst MA 01059

Email: wmpig@persephone.hampshire.edu

*Categories: Publications, Research/Analysis, Student/campus organizations*

## Massachusetts's Custodial Sexual Misconduct Statute

*Chapter 268: Section 21A. Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.*

Section 21A. An officer or other person who is employed by or contracts with any penal or correctional institution in the commonwealth, and who, in the course of such employment or contract or as a result thereof, engages in sexual relations with an inmate confined therein, within or outside of such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person, shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both. In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person. For purposes of this section, sexual relations shall include intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 or 24 of chapter 265 or section 2, 3, 35 or 53A of chapter 272.

<sup>i</sup> This number is estimated by calculating 6% of the entire prison population, Massachusetts Department of Corrections "Inmate Statistics," January 2000, <http://www.state.ma.us/doc/pdf/1100.pdf>

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

<sup>iii</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>iv</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.01 Policy

<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

<sup>vii</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.06 Staff Training

<sup>viii</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>ix</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.03 General Procedures

<sup>x</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.04 Investigation

<sup>xi</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.05 Tracking

<sup>xii</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>xiii</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.07 Inmate Training

<sup>xiv</sup> Annotated laws of Massachusetts, Part 1. Administration of the Government, Title XVII. Prisons, Imprisonment, Parolees and Pardons. Chapter 127. Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons. Removals, 118. Pregnant Females (Mass. Ann. Laws ch. 127, § 118 (2000))

<sup>xv</sup> Massachusetts Department of Corrections, health Services Division 103 DOC 620, Special Health Care Practices, 620.04.1 Programs for Female Inmates

<sup>xvi</sup> Massachusetts Department of Corrections, health Services Division 103 DOC 620, Special Health Care Practices, 620.04.2 Programs for Female Inmates

<sup>xvii</sup> Phone conversation, Justin Lotini, Massachusetts Department of Corrections, Public Information Officer, 02/13/2001

<sup>xviii</sup> Massachusetts Department of Correction – Health Services Division. Outside Hospital Relations, 103 DOC 604.06 1.a

<sup>xix</sup> Phone conversation, Justin Lotini, Massachusetts Department of Corrections, Public Information Officer, 02/13/2001

<sup>xx</sup> Phone conversation, Justin Lotini, Massachusetts Department of Corrections, Public Information Officer, 02/13/2001

<sup>xxi</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>xxii</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>xxiii</sup> The Boston Globe, June 4 2000