

# Michigan

WOMEN IN PRISON: 2,027 (12/99)<sup>i</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

**§750.520e – Criminal sexual conduct in the second degree; felony.** <sup>1</sup>

Michigan’s law is in the criminal code under the general heading of rape. The law was amended in 2000 to make the crime a felony, and further amended to make the purposes of sexual touching to include revenge and humiliation. Apparently, while the law protects pretrial detainees held in local facilities, it only protects post-conviction detainees in the same institution if they are juveniles.

Does the law impose a criminal penalty on the inmate?	<b>No</b>	The law does not penalize the inmate.
Does the statute cover all relevant forms of sexual abuse?	<b>Yes</b>	The law covers all forms of sexual abuse.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	<b>No</b>	The law is part of the statutory rape provisions, and the defendant cannot claim the inmate consented.
Does the statute cover all custodians and staff in contact with inmates?	<b>No</b>	The law does not cover municipal or local jail employees, nor does it protect those convicted who are detained in municipal or local institutions - unless they are juveniles convicted as adults.
Does the statute cover all places where an inmate might be abused?	<b>No</b>	The law does not protect convicted inmates detained in local institutions, but does protect pretrial detainees
Is the penalty a felony?	<b>Yes</b>	Violation is a felony punishable by up to 15 years.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>ii</sup>	Michigan Attorney General’s Office does not maintain statistics on this statute. <sup>iii</sup>
Incidents reported in select media since 10/98	<ul style="list-style-type: none"> <li>- Michigan State Prisons: In the past five years, over 300 female inmates have accused officers of various sexual improprieties (rape, verbal abuse, consensual sex, pat downs, etc.). 31 inmates are suing Michigan for sexual abuse <i>Corrections Professional</i>. 11/19/99 and <i>NBC Transcripts</i>, 09/13/99<sup>iv</sup></li> <li>- Macomb County Jail: Three officers accused of giving gifts and preferential treatment to female prisoners in exchange for sexual favors. One officer was cleared of any wrongdoing and restored to salaried position. Two other officers also were tried. <i>The Detroit News</i>, 10/06/98 and <i>The Detroit News</i>, 08/29/99</li> <li>- Scott Correctional Facility: There were 40 charges of sexual misconduct, as well as allegations of corruption and a thriving sex and drug market inside the prison. A recent investigation stemmed from a 1995 incident when a Scott inmate was raped with a plunger and beaten. <i>The Toronto Star</i> 08/3/99.</li> <li>- Dearborn Jail: A 38-year-old women alleges she was raped by a corrections officer. He took her from her cell, led her into another cell in the women's section of the jail where she was sexually assaulted. Police have arrested the part-time officer. <i>Detroit Free Press</i> 02/19/01</li> </ul>

<sup>1</sup> The text of Michigan’s law is excerpted 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>	In 1995, a US Department of Justice investigation of women’s prisons in Michigan reported evidence of widespread sexual abuse. The Justice Department initiated legal action against the State of Michigan and, as part of the settlement reached in 1999, the Michigan Department of Corrections was required to revise its policies and procedures relating to sexual misconduct.
Allow cross-gender pat-down searches?	<b>No</b>	As part of the settlement reached with the US Department of Justice in May 1999, pat-down searches of female inmates were to be conducted only by female officers during an evaluation period of at least 6 months. The DOC states that cross-gender pat searches have not resumed since June 1999. <sup>v</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the settlement reached with the US Department of Justice, male guards are required to “knock and announce” their presence when entering areas where female inmates could normally be in a state of undress. The DOC Director announced a new policy of not assigning male guards to female housing units. <sup>2</sup>
Was there staff training on sexual misconduct in 1996?	<b>Yes</b>	Staff with inmate contact received 10.5 annual in-service hours of training. <sup>vi</sup>
Staff training developed 1996-2000?	<b>Yes</b>	Michigan DOC provides specialized training to staff at institutions housing women offenders. The training includes 40 hours of pre-service training in critical issues for new staff. Staff also receive an annual six-hour seminar on staff/prisoner interactions. <sup>vii</sup>
Special procedures for investigating allegations of sexual misconduct in 1996?	<b>No</b>	Michigan is not specifically mentioned in the National Institute of Corrections report. However, it is noted that most DOCs used standard investigatory procedures with no special considerations for the nature of the complaint. <sup>viii</sup>
Investigation procedures introduced 1996-2000?	<b>Yes</b>	Michigan DOC implemented refined guidelines and requirements for investigators conducting gender-based misconduct investigations. <sup>ix</sup> The Central Office Internal Affairs Division is assigned to investigate any allegation of sexual misconduct. Based on the nature of the allegation, a detective from the Michigan State Police may also conduct a criminal investigation. <sup>x</sup> According to the settlement reached with the US Department of Justice, inmates can write or speak with a Special Administrator, appointed by the Michigan DOC about any allegations of sexual misconduct. If an inmate makes allegations of sexual misconduct which are determined to be unfounded (by the DOC), the inmate is charged with major misconduct. <sup>xi</sup>
Informing inmates of agency policies on sexual misconduct in 1996?	<b>Yes</b>	Policies are covered in the standard inmate orientation, in the inmate handbook and are also available to inmates in library. <sup>xii</sup>
Revision of procedures on informing inmates on sexual misconduct 1996-2000?	<b>Yes</b>	Inmate orientation has been expanded to cover appropriate and inappropriate staff and prisoner interactions. The women receive written brochure on reporting misconduct and the support and services available to prisoner-victims. <sup>xiii</sup> According to the DOC, in November 1999 all women prisoners were required to attend a class and were given a brochure entitled “Appropriate and Inappropriate Staff and Prisoner Interactions - A Guide to Sexual Misconduct

<sup>2</sup> According to a facsimile from Nancy Zang, Special Administrator, Michigan DOC Executive Division (02/20/01), after the DOC Director announced the policy of not assigning male guards to female housing units, corrections officers (of unspecified gender) filed suit in Federal Court to block the action. The suit has not been decided as yet.

		Prevention and Intervention.” This class is now included as part of the reception process for all women newly committed to the Michigan DOC. <sup>xiv</sup>
<i>Amnesty International USA comments:</i>		<i>The settlement reached between the US Department of Justice and Michigan is problematic in a number of respects: it continues to allow male guards to be present when female inmates undress, shower and use the toilet; it permits the Department of Corrections to punish women whose claims are deemed “unfounded” by the Department, and fails to provide for the independent monitoring of cases of abuse.</i>

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

<b>1999 HB 4881</b> <i>Sponsored by Representative Faunce</i> 09/28/1999 Introduced 06/07/2000 Passed Senate 06/08/2000 Passed House 09/26/2000 Signed by Governor <b>2000 Public Act 227</b>		Custodial sexual misconduct is raised from a misdemeanor with a two-year maximum sentence and \$500 fine to a felony with a 15 year maximum sentence.
<b>1999 HB 4525</b> <i>Sponsored by Representative Jellema</i> 04/20/1999 Introduced 12/14/2000 Passed House 12/14/2000 Passed Senate 12/31/2000 Signed by Governor <b>2000 Public Act 505</b> <i>Effective date 03/28/01</i>		Expanded the definition of unlawful sexual contact to include sexual touching for revenge, to humiliate, or out of anger.’

## **Parenting and Pregnancy in Custody**

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

Legislation banning shackling in the third trimester or during labor	<b>No</b>	Michigan has no legislation limiting the use of shackling on pregnant inmates
Administrative rules concerning pregnancy and delivery	<b>Yes</b>	The Michigan Department of Corrections has an Operating Procedure detailing services available to pregnant inmates incarcerated at Scott Correctional Facility. <sup>xv</sup>

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

Use of restraints in third trimester		Not known. We have received no response to our inquiries from the Michigan Department of Corrections.
Restraints during transport		See above.
Restraints during labor		See above.
Officer in delivery room		See above.
Parenting programs specific for women	<b>No</b>	No parenting programs specific for women <sup>xvi</sup>
Special visitation rights for women	<b>Yes</b>	According to written response from the Michigan DOC, the Department provides in-kind support to two specialized parenting programs, operated by outside agencies: Children’s Visitation Program and Kids Need Moms. <sup>xvii</sup>

State Mother and Child Residency Program	Yes	According to written response from the Michigan DOC, a specialized program, Women and Infants at Risk, provides a placement option for all women who meet the criteria to be housed in a community center. <sup>xviii</sup>
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## Contact information

### MICHIGAN DEPARTMENT OF CORRECTIONS

<b>Director: Bill Martin</b> 206 E. Michigan Avenue Grand view plaza building P.O. box 30003 Lansing, MI 48909 Phone: (517) 373 0720 Fax: (517) 373-6883	Website: <a href="http://www.state.mi.us/mdoc/netscape2.html">HTTP://www.state.mi.us/mdoc/netscape2.html</a>  Public Information Officer: Matt Davis Fax: (517) 373 6883
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### MICHIGAN DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<b>Western Wayne Correctional Facility</b>  Warden Clarice Stovall 48401 Five Mile Road Plymouth, Michigan 48170 Phone: (734) 459 2500	<b>Camp Branch</b> <i>324 Female inmates</i>  ADW: Charles Paradine 19 Fourth Street Coldwater, MI 49036 Phone: (517)-278-3204 or 278-3476
<b>Huron Valley Center</b> <i>30 Female Inmates capacity – psychiatric facility</i> Acting Director Rosettus Weeks 3511 Bemis Road Ypsilanti, MI 48197 Phone: (734) 434-5888	<b>Robert Scott Correctional Facility</b>  Warden Joan Yukins 47500 Five Mile Road Plymouth, MI 48170 Phone: (734) 459-7400

### MICHIGAN EXECUTIVE

<b>Governor John Engler [R]</b> Governor John Engler P.O. Box 30013 Lansing, Michigan 48909 Phone: (517) 335-7858 Fax: (517) 335-6863	Homepage: <a href="http://info.migov.state.mi.us/gov/">http://info.migov.state.mi.us/gov/</a>  Contact page: <a href="http://info.migov.state.mi.us/gov/">http://info.migov.state.mi.us/gov/</a>
<b>Attorney General Jennifer M. Granholm [D]</b> G. Mennen Williams Building, 7th Floor 525 W. Ottawa St. P.O. Box 30212 Lansing, MI 48909 Main Number: (517) 373-1110 Fax: (517) 373-3042	Homepage: <a href="http://www.ag.state.mi.us/">http://www.ag.state.mi.us/</a>  E-mail <a href="mailto:miag@ag.state.mi.us">miag@ag.state.mi.us</a>

## MICHIGAN LEGISLATIVE INFORMATION

<p><b>Legislative Session:</b> Legislative Sessions: 2-year term. Starts second Wednesdays in Jan. every year. Bills carry-over.</p> <p><b>House:</b> 110 members, 2 year term (6 yr limit)</p> <p><b>Senate:</b> 38 members, 4 year term (8 yr limit)</p> <p>All legislative elections held in even-years</p>	<p>Legislature Homepage: <a href="http://MichiganLegislature.org/">http://MichiganLegislature.org/</a></p> <p>Bill Search: on Legislative Homepage</p> <p>Bill information phone number: (517) 373-0169</p>
<p><b>Senate</b> State Capitol P.O. Box 30036 Lansing, MI 48909-7536</p>	<p>Home Page: <a href="http://www.senate.state.mi.us/">http://www.senate.state.mi.us/</a></p>
<p><b>House of Representatives</b> State Capitol P.O. Box 30014 Lansing, MI 48909-7514</p>	<p>Home Page: <a href="http://www.house.state.mi.us/">http://www.house.state.mi.us/</a></p>

## WOMEN IN PRISON - NGO RESOURCES

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

<p>Michigan-CURE P.O. Box 2736 Kalamazoo, MI 49003-2736 Phone: (616) 383-0028</p>
<p>Battered Women's Clemency Project 339 E. Liberty Ann Arbor MI Phone: (313) 995-1600 <i>Categories: Prison Law/Jailhouse Lawyers, Women in Prison</i></p>
<p>Moms and Kids Together 2485 Traver Road Ann Arbor MI 48105 Phone: (734) 487-1435 Email: <a href="mailto:casino@umich.edu">casino@umich.edu</a> <i>Facilitates visitations at the county jail between mothers and children</i></p>
<p>ACLU of Michigan 1249 Washington Blvd., Suite 2910 Detroit, MI 48226-1822 Phone: (313) 961-4662 Web site: <a href="http://www.aclumich.org">www.aclumich.org</a></p>
<p>American Friends Service Committee Criminal Justice Program -- Ann Arbor 1414 Hill St Ann Arbor MI 48104 Phone: (734) 761-8283 Fax: (734) 761-6022 <i>Categories: include Women in Prison</i></p>

<p><b>Michigan's Custodial Sexual Misconduct Statute</b> <i>Excerpt</i> Act 328 of 1931</p> <p><b>750.520e</b> <i>Criminal sexual conduct in the second degree; felony.</i> (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:</p> <p>...</p> <p>(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.</p> <p>...</p> <p>(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the</p>
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other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION  
UNITED STATES OF AMERICA, Plaintiff, Civil Action No. 97-CVB-71514-BDT

v.

Hon. John Corbett O'Meara; STATE OF MICHIGAN, et al, Defendants.

SETTLEMENT AGREEMENT

I. INTRODUCTION

On March 10, 1997, the United States initiated this litigation alleging that Defendants were violating the constitutional rights of inmates incarcerated in Michigan women's prisons to be free from sexual misconduct and unlawful invasions of privacy, and to receive appropriate medical and mental health care for serious medical and mental health needs.

After conducting considerable discovery, the United States has dismissed its medical and mental health care claims against Defendants. In order to resolve the remaining issues in this litigation, the parties have entered into this settlement agreement, which, if substantially complied with by Defendants within the time frames specified in Section XV below, will result in the dismissal of the United States' remaining claims.

The parties agree that this settlement does not constitute an admission by the State of Michigan or the individual Defendants of the truth of the allegations contained in the Complaint, and does not constitute an admission of liability by Defendants in this action. Defendants agree that policies and procedures adopted or changed pursuant to this Settlement Agreement will continue to be implemented after the Complaint has been dismissed; provided, however, that this Settlement Agreement is not intended to, nor does it, prevent Defendants from changing its policies for purposes of confronting issues that could arise in the future.

This Settlement Agreement is the product of negotiations conducted only between the State of Michigan and the United States of America, and DOJ does not purport to speak for any private plaintiffs.

The parties understand and agree that to the extent that this Agreement requires changes in MDOC policy affecting bargaining unit employees, such changes are subject to negotiations with the labor union(s) representing the affected employees, and are subject to approval by the Michigan Office of State Employer and the Michigan Civil Service Commission, and subject to state law. The parties also understand and agree that disciplinary action against employees of the MDOC is subject to the terms of collective bargaining agreements and state civil service rules. MDOC will make a good faith attempt to seek modifications or additions to existing or future collective bargaining agreements to effectuate the provisions of this Settlement Agreement.

II. DEFINITIONS

For purposes of this agreement only, the following definitions shall apply:

A. "MDOC" means the Michigan Department of Corrections.

B. "Inmate" means any female inmate incarcerated in Scott or Crane.

C. "Scott" means the Scott Correctional Facility.

D. "Crane" means the Crane Correctional Facility.

E. "Staff" means correctional officers, maintenance workers, kitchen workers, teachers employed full time by MDOC, counselors, and any other person having significant contact with inmates, whether employed by MDOC or under contract with MDOC, who are assigned to work at Crane or Scott. "Staff" does not include medical specialists, contractual dentists and optometrists, or college instructors who are employed by an entity other than MDOC.

F. "Management" means the Director of the MDOC, Deputy Director of Correctional Facility Administration, Warden and Deputy Warden of Crane and Scott.

G. "Sexual Misconduct" means staff engaging in, or attempting to engage in, a sexual act with any inmate, or the intentional touching of an inmate's genitals, anus, groin, breast, inner thigh or buttocks with the intent to abuse, humiliate, harass, degrade, arouse, or gratify the sexual desire of any person. Sexual misconduct also includes indecent exposure to an inmate(s).

H. "Sexual Harassment" means sexual advances, requests for sexual favors, and other offensive verbal or physical conduct of a sexual nature. Sexual harassment also includes verbal conduct of a gender-related nature intended to humiliate, harass, degrade or arouse.

I. "Overfamiliarity" means conduct between a staff member and an inmate which has or is likely to result in intimacy or a close personal association, or conduct that is contrary to the good order of the institutions.

J. "DOJ" means the United States Department of Justice.

K. "Consult" means only provision of written and/or verbal comments to counsel.

III. MDOC POLICIES AND PROCEDURES

A. Policies And Procedures. MDOC will revise its current policies and procedures relating to sexual misconduct, sexual harassment, overfamiliarity, and other concepts encompassed by this Settlement Agreement and, where necessary, will utilize concepts and materials obtained from other sources generally accepted in the corrections community as knowledgeable in the area to ensure that its policies and procedures are simple, direct, and explicitly define and prohibit sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement.

B. Policies And Procedures Regarding This Settlement Agreement. MDOC will revise as necessary its policies and procedures to ensure that all of the provisions of this Settlement Agreement are incorporated into MDOC policies and procedures. Prior to final adoption of any revised policy and procedure, MDOC will provide DOJ with a reasonable opportunity to review the proposed policy and procedure and to consult with MDOC

regarding the proposed policy and procedure.

#### IV. PRE-EMPLOYMENT SCREENING

A. Current Staff With Inmate Contact. MDOC will conduct a Law Enforcement Information Network ("LEIN") check to include criminal history approximately every 5 years after the initiation of employment for all staff. As a result of those LEIN inquiries, MDOC will take appropriate action consistent with MDOC policies relating to failure to report criminal convictions. Within six months of the execution of this Agreement, MDOC will, to the extent not already accomplished, conduct a LEIN check to include criminal history of all staff who have been employed by MDOC for over five years.

B. Future Correctional Staff with Female Inmate Contact. In accordance with P.D. 02.06.110, 111 and applicable Civil Service Rules, MDOC will continue to utilize reasonable measures to determine applicants' fitness to work in a female facility prior to hiring correctional staff for a women's facility. These measures will include, but will not be limited to: drug abuse screening; fingerprints to be sent to the Michigan State Police; investigation of information in employment application (past employment for previous 5 years, past education, references); LEIN check to include criminal history and filed personal protective orders for domestic violence; National Crime Information Center record check; military discharge status; investigation of whether applicants have ever worked in MDOC prisons, and if so, whether they were the subject of investigations or allegations of sexual misconduct, sexual harassment, overfamiliarity or conduct prohibited by policies established pursuant to this Agreement.

C. Future Non-Correctional Persons With Female Inmate Contact. MDOC will utilize the same pre-employment screening measures for non-correctional staff, who will have significant contact with female inmates as it does for correctional staff. For non-correctional staff employed by an entity other than MDOC, and for volunteers, MDOC will make a LEIN inquiry to include criminal history and filed personal protection orders for domestic violence.

#### V. STAFF TRAINING

A. Training Materials. DOJ recognizes that MDOC provides specialized training for all staff who work in a female correctional facility through the 40-hour seminar entitled Issues in Managing the Female Offender. MDOC will continue to require that all staff who work with inmates complete this training program.

MDOC will, where necessary, revise its current training materials utilizing concepts and materials obtained from other sources generally accepted in the corrections community as knowledgeable in the area to ensure that it will continue to have a current, complete set of training materials relating to sexual misconduct, sexual harassment, overfamiliarity and other subject matter covered by this Agreement. During the pendency of this action, MDOC will, prior to final adoption of any new training materials, provide DOJ with a reasonable opportunity to review the proposed training materials and to consult with MDOC regarding the proposed materials.

Upon implementation, MDOC will require existing staff to acknowledge in writing that they have been apprised of MDOC policies concerning conduct prohibited by policies established pursuant to this Agreement. MDOC will revise its current training materials to incorporate all of the provisions of this Agreement for which training is to be conducted.

B. Training Topics. MDOC will, for sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement, include in its preservice and inservice staff training at least the following concepts: (1) identification of what constitutes the above referenced conduct; (2) explanation of how inmates are harmed by such conduct; (3) description of how the security of the facility is jeopardized by such conduct; (4) a statement of the legal and employment consequences of participating in or failing to report such conduct; (5) a description of how to report such conduct, including when, how, and to whom it should be reported, with emphasis on staff's obligation to monitor, observe, and report the behavior of other staff regarding such conduct and disciplinary consequences for failure to report; (6) instruction on supervising, observing, and interacting with opposite gender inmates; (7) instruction on the proper method of conducting pat down searches of inmates; (8) instruction on the enforcement of MDOC's revised inmate dress code; and (9) instruction on the prohibition of retaliation by staff members and how to report retaliation.

C. Training Topics Regarding Sexual Misconduct and Harassment. MDOC will, within sixty (60) days of the execution of this Agreement, implement a training module, modeled after the Federal Bureau of Prisons' two-hour training module, addressing sexual misconduct and harassment for both new employees and inservice staff training.

D. Routine In-service Training. Subsequent to initial in-service training, the Director of MDOC, after consultation with the Special Administrator (See Section VII (A) (1) (c) below) will determine the number of hours of mandatory in-service training covering the topics described in Section V(B) to be required of all institutional management, corrections officers, and non-correctional staff with inmate contact.

#### VI. INMATE EDUCATION

A. Inmate Information. As part of new inmates' orientation process and reorientation for existing inmates regarding subjects of this Agreement, MDOC will provide inmates with both written and verbal presentations concerning the MDOC's prohibitions against sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement and the reporting thereof, as set forth in MDOC's policies and described in MDOC's Sexual Assault/Abuse Prevention and Intervention brochure and Inmate Handbook. This information will include: (1) identification of what constitutes sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement; (2) a statement that MDOC prohibits such conduct by staff and by inmates; (3) a statement of the consequences of participating in such conduct, including when, how, and to whom it should be reported; (4) a statement on the consequences of reporting such conduct as a victim and as a witness, including assurances of confidentiality and non-retaliation; (5) information on the rules regarding interacting with opposite gender staff; (6) instruction on the MDOC approved method of conducting pat down searches; (7) explanation of staff members' duty to report misconduct; and (8) instruction on the terms of MDOC's inmate dress code.

MDOC will take necessary measures to ensure that non-English speaking inmates receive the above information.

B. High Visibility Reminders. MDOC will post in all Scott and Crane living areas posters or similar signs that remind readers of MDOC's prohibition against sexual misconduct.

C. Copies of this Agreement will be maintained in Scott and Crane law libraries.

#### VII. FACILITATION OF INMATE AND STAFF REPORTING OF ALLEGATIONS OF SEXUAL MISCONDUCT, SEXUAL HARASSMENT OR OVERFAMILIARITY

A. Inmate Reporting. MDOC will facilitate the reporting of sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by policies established pursuant to this Agreement by the means and methods set forth in MDOC policy and described in MDOC's Sexual Assault/Abuse Prevention and Intervention brochure and Inmate Handbook, including verbal reporting by inmates, grievances, kites, and letters. To assure inmates that they will not be placed in protective custody as a result of reporting conduct pursuant to this paragraph, MDOC will continue its current policy regarding protective custody.

#### I. Minimization of Deterrents to Reporting.

a. Confidentiality. MDOC will take all reasonable steps to ensure that staff and inmates preserve the confidentiality of inmates who report sexual misconduct, sexual harassment, overfamiliarity, and other conduct prohibited by this Agreement, including, but not limited to, warnings not to discuss investigations and providing for disciplinary action against a staff member, or an inmate, who intentionally compromises the confidentiality of an investigation.

b. Prohibition of Retaliation. Retaliation will continue to be prohibited by the MDOC pursuant to P.D.02.03.108, and the MDOC will continue to take disciplinary action regarding substantiated instances of retaliation as appropriate.

c. Special Administrator. MDOC will appoint a Special Administrator, not based at either Scott or Crane, who will report directly to the MDOC's Director, to whom inmates can write or speak with in confidence about allegations of sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement. Information about the role and responsibilities of the Special Administrator will be provided to inmates by means of the Sexual Abuse/Assault Prevention and Intervention brochure and the Inmate Handbook. The Special Administrator will have appropriate experience, education and training necessary to address such issues in women's prisons, including, but not limited to, the training identified in Section V(A) above. MDOC will provide to the Special Administrator quarterly reports of complaints and the status of investigations regarding sexual misconduct, sexual harassment, overfamiliarity, other conduct prohibited by policies established pursuant to this Agreement, or retaliation for filing reports of such conduct. The Special Administrator will have the authority to request a criminal or administrative investigation of sexual misconduct, sexual harassment, overfamiliarity, or conduct prohibited by policies established pursuant to this Agreement.

B. Staff Reporting. Confidentiality and Prohibition of Retaliation. MDOC P.D.02.03.100 and Work Rules 1, 33 and 38 shall govern staff reporting, confidentiality, and prohibition of retaliation, including but not limited to, the duty to report conduct prohibited by policies established pursuant to this Agreement, prohibiting retaliation in response to the reporting of such violations, and to keep confidential such reports.

#### VIII. INVESTIGATION OF ALLEGATIONS OF SEXUAL MISCONDUCT

A. MDOC Investigations. MDOC will conduct timely, complete, thorough, documented, and uniform investigations in accordance with generally accepted corrections investigation principles of all allegations, however received (verbal report, kite, grievance, or letter to management) of sexual misconduct, sexual harassment, overfamiliarity, or conduct prohibited by policies established pursuant to this Agreement. MDOC investigators will continue to be trained in conducting such investigations.

B. Continuation of Investigations. MDOC will continue to refer allegations of sexual misconduct that, if true, constitute criminal acts to the Michigan State Police (MSP) for investigation. If, after an MSP investigation, MSP determines that it lacks sufficient evidence to refer the matter to the county prosecuting attorney for criminal prosecution, MDOC will continue to conduct an administrative investigation into the allegations, using a "preponderance of evidence" standard, and will take appropriate disciplinary action.

C. Questionnaires. MDOC may use written questionnaires or statements to secure information from suspects or witnesses in sexual misconduct investigations in conjunction with other investigative techniques. MDOC will conduct face-to-face interviews of all suspects and victims, and of sufficient witnesses to establish the facts.

D. Continuation Of Investigations. If an employee accused of sexual misconduct resigns or is fired, MDOC will continue to take investigative action in accordance with P.D.01.01.140.

E. Mandatory Staff Participation In Investigations. Subject to the limitations reflected in Section I of this Settlement Agreement, MDOC will discipline, up to and including termination, staff who are accused of and/or witnessed sexual misconduct and who refuse to cooperate with an investigation.

F. Response to Allegations Arising In This Lawsuit. MDOC will, in conjunction with the Michigan State Police where necessary, continue ongoing investigation of all remaining allegations of sexual misconduct and of egregious instances of sexual harassment arising in this lawsuit.

G. Temporary Reassignment of Employee. MDOC will continue its current practice of removing staff accused of sexual misconduct from contact with female inmates pending the outcome of the investigation.

H. Review of Sexual Assault/Sexual Misconduct. MDOC will ensure that all investigations of staff accused of sexual misconduct, sexual harassment, overfamiliarity, or other conduct prohibited by policies established pursuant to this Agreement, will include a search for past allegations, investigations, or discipline against the alleged perpetrator. MDOC will also review prior allegations of such conduct made by the inmates.

#### IX. SEARCH FOR AND APPROACH TO SEXUAL MISCONDUCT

A. Minimization of One on One Situations. MDOC will implement a new policy that restricts inmates and male staff from being alone in one-on-one situations together at Scott or Crane in areas not clearly visible to inmates or other staff, with the following exceptions: emergencies, medical care, counseling, questioning during investigations, and reporting of confidential information.

B. Minimizations of Access to Secluded Areas. MDOC has and will continue to take reasonable measure to eliminate access to secluded areas that are not necessary to the operation of Scott or Crane.

C. Monitoring/Protection For Secluded Areas. MDOC has and will continue to increase the visibility and observability of secluded areas of Scott and Crane to which inmates have access, including, but not limited to, retrofitting as necessary doors with windows, screens, or other devices which will facilitate surveillance, installing convex mirrors to provide a line of sight beyond areas not viewable from door windows or other observation points, and rekeying to further restrict access to secluded areas. MDOC will require that supervisors conduct rounds of such areas at periodic intervals sufficient to guard against sexual misconduct, sexual harassment, overfamiliarity or other conduct prohibited by policies established pursuant to this Agreement.

D. Inmate Clothing. MDOC will implement a standard institutional dress code for inmates.

E. Random Inmate Interviews and Exit Interviews. The Special Administrator, or individuals designated by the Director, which may include Scott and Crane Wardens and Deputy Wardens, will conduct periodic, confidential, random interviews of inmates regarding, at a minimum, sexual misconduct, sexual harassment, overfamiliarity, and other policies and procedures established to effectuate the terms of this Settlement Agreement, and inmate understanding of the MDOC rules and regulations governing same. In addition, the Special Administrator or designee, the Scott and Crane Wardens and Deputy Wardens will conduct confidential, random exit interviews of inmates. Nothing in this provision shall be interpreted to mean that the Special Administrator or designee cannot, in order to initiate or assist in an investigation of sexual misconduct, share with the MDOC investigators and management information obtained in random inmate and staff interviews. The Special Administrator will share allegations of sexual misconduct, sexual harassment, overfamiliarity and conduct prohibited by policies established pursuant to this Agreement with the warden.

F. Post Investigation Management Review. Pursuant to P.D.01.01.140, the Sexual Assault/Sexual Misconduct-Review Committee will continue to conduct regular meetings to discuss both substantiated and unsubstantiated incidents of sexual misconduct and possible methods for avoiding such incidents in the future. Significant information resulting from such reviews will be considered for inclusion into MDOC training materials,

policies and procedures.

G. Creation of Sexual Misconduct Files. MDOC will utilize its tracking system to store allegations of, and information concerning, sexual misconduct, sexual harassment, overfamiliarity and conduct prohibited by policies established pursuant to this Agreement, whether substantiated or not. The tracking system will be searchable by, at a minimum, inmate and staff name, and by type of prohibited behavior. Investigators and management will have access to this tracking system. The tracking system will be queried prior to accepting rehires. MDOC will conduct a quarterly search of this tracking system, and any staff shown in this review to have been the subject of more than two allegations of prohibited behavior within the past five years shall be subject to appropriate action, including, but not limited to: a meeting with supervisors, a referral to an employee assistance program, retraining, or reassignment. The tracking system will also be used to effectuate the provision of Paragraph VIII(H).

H. Staffing. Within ninety days after execution of this Settlement Agreement, MDOC will conduct a staffing study to explore the feasibility of: 1) redeploying officers to increase the presence of female officers in the housing units at Scott and Crane; and 2) rotating staff assignments to housing units at Scott and Crane. If feasible, MDOC will develop and implement a plan consistent with this study.

#### X. RESPONSE TO SUBSTANTIATED MISCONDUCT

A. Staff Discipline. Staff who resign in lieu of termination during an investigation for sexual misconduct, sexual harassment, overfamiliarity, other conduct prohibited by policies established pursuant to this Agreement, retaliation, or failure to report a violation of MDOC policy or Work Rules in such areas will not be eligible for rehire by the Michigan Department of Corrections. In a situation where an allegation of sexual misconduct, sexual harassment, overfamiliarity or conduct prohibited by policies established pursuant to this Agreement is substantiated, appropriate disciplinary action will be taken pursuant to MDOC policy and work rules.

B. Inmate Psychological Services. MDOC will offer psychological services consistent with and identified in P.D.04.06.180 to any inmate subjected to or alleged to have been subject to sexual misconduct with staff. MDOC will offer psychological services consistent with and identified in P.D.04.06.180 to any inmate found by MDOC to have been subjected to, or to any inmate who makes a credible allegation in a kite, grievance, or letter to management, that she was subject to, sexual harassment.

C. Inmate Discipline. If an inmate makes allegations of sexual misconduct which are determined to be unfounded, the inmate shall be charged with major misconduct.

#### XI. MONITORING OF INMATE DRESSING SHOWERING AND TOILETING AREAS

Knock And Announce Policies. Absent exigent circumstances or reasonable suspicion of inappropriate behavior, male corrections officers will be trained that, as an accommodation, they are to announce their presence into areas where inmates normally could be in a state of undress.

#### XII. PAT DOWN SEARCHES

Absent exigent circumstances or a reasonable suspicion that the inmate is in possession of contraband, and subject to legitimate penological concerns, pat down searches of female inmates will only be conducted by female corrections officers during an evaluation period of at least six months. During the evaluation period MDOC will (a) conduct training and make any needed policy revisions to further clarify that pat down searches are not used to sexually harass inmates, and (b) evaluate the feasibility of modifying or eliminating the current requirement of five daily pat down searches per officer. Should the MDOC decide to resume the routine search of inmates by male officers, institutional management will routinely observe line staff conducting pat down searches and give instruction or guidance as needed.

#### XIII. SCREENING OF INMATES REGARDING PAST HISTORIES OF PHYSICAL OR SEXUAL ABUSE

MDOC will continue to have trained Reception Center staff conduct adequate screening of all new inmates including inquiries designed to elicit past histories of physical or sexual abuse and, pursuant to P.D.04.06.180, provide, when necessary, mental health services to inmates.

#### XIV. QUALITY ASSURANCE PROGRAM

MDOC will monitor the quality of its pre employment hiring process, its staff training and inmate education programs as described in this Agreement, as well as the quality of investigations described in Section VIII above.

#### XV. DOJ MONITORING OF SETTLEMENT AGREEMENT, TIME FRAME FOR SUBSTANTIAL COMPLIANCE, AND TERMINATION OF THE LITIGATION

A. Conditional Dismissal Under Rule 41(a). Upon execution of this Settlement Agreement, the parties will jointly move the Court for entry of an Order conditionally dismissing this action, pursuant to Fed. R. CIF. P. 41 (a) (2), conditional upon Defendants achieving substantial compliance with its terms, and will attach this Settlement Agreement to such motion. The motion will request that the case be placed on the Court's inactive docket, though the Court shall retain jurisdiction over the case until a final dismissal.

B. Monitoring And Time Frames For Compliance. DOJ and a jointly agreed on expert, who must be selected and contracted with before this Settlement Agreement is executed, will have reasonable access to inmates and staff, MDOC documents, information relating to implementation of this Settlement Agreement, and to allegations of sexual misconduct and other prohibited conduct addressed by this Settlement Agreement for the purpose of monitoring Defendants' implementation of the Settlement Agreement. The parties will equally fund the joint expert's activities. Not more than one DOJ attorney, one attorney for MDOC, the MDOC Director or his designee, and the joint expert will conduct an initial on-site compliance monitoring tour of Scott and Crane approximately three months after execution of this Settlement Agreement. Neither DOJ nor the joint expert shall add provisions or expand the scope of this Settlement Agreement in any manner. Within 30 days of the end of the compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance.

Not more than one DOJ attorney, one MDOC attorney, the MDOC Director or his designee, and the joint expert will conduct a final on-site compliance monitoring tour of Scott and Crane approximately six months after execution of this Settlement Agreement. Within 30 days of the end of the final compliance tour, the joint expert shall inform the parties in writing of his or her opinion of Defendants' compliance with each of the terms of this Settlement Agreement, including identifying any deficiencies in compliance. If the joint expert determines that Defendants have substantially complied with the terms of the Settlement Agreement, the parties will file a stipulation to dismiss containing the following language:

"The United States agrees that dismissal of this action is appropriate. There is no pattern or practice of Defendants violating female inmates' constitutional right to be free from sexual misconduct and sexually inappropriate behavior. The Michigan Department of Corrections remains committed to eliminating sexual misconduct and all other forms of prohibited sexual conduct within the Scott and Crane facilities.

If the joint expert determines that Defendants have not substantially complied with the Settlement Agreement, DOJ may file a motion to restore the case to the Court's active docket for purposes of litigating the allegations in the Complaint, and Defendants agree not to contest such motion. Neither DOJ nor the Defendants shall file a motion or suit for specific performance of the Settlement Agreement. The United States reserves the right to file a motion to restore this case to the Court's active docket for purposes of litigating the allegations in the Complaint at any time if it

believes that defendants are not making a good faith effort to substantially comply with the Settlement Agreement. Plaintiff shall give defense counsel 14 calendar days' written notice before the filing of such motion.

C. Substantial Compliance. "Substantial Compliance" with the terms of the Settlement Agreement will fully satisfy the Settlement Agreement. Isolated and unintentional incidents will not constitute noncompliance.

#### XVI. EVIDENCE

In the event this action goes to trial, nothing contained in this Settlement Agreement will be introduced as evidence.

#### XVII. COSTS.

All parties shall bear their own costs and fees.

Dated:

FOR THE PLAINTIFF: BILL LANN LEE, Acting Assistant Attorney General, Civil Rights Division; SAUL GREEN, United States Attorney, Eastern District of Michigan STEVEN H. ROSENBAUM, Chief, Special Litigation Section; MELLIE H. NELSON, Deputy Chief, Special Litigation Section; SHANETTA Y. BROWN CUTLAR; TAWANA E. DAVIS; DANA SHOENBERG; MARK MASLING; Trial Attorneys; Special Litigation Section; Civil Rights Division; U.S. Department of Justice; P.O. Box 66400; Washington, D.C. 20035-6400; (202) 514-0195

FOR THE DEFENDANT: BILL MARTIN, Director, Michigan Department of Corrections; MICHAEL A. NICKERSON (P25138); LEO H. FRIEDMAN (P26319); MARK W. MATUS (P36659); Assistant Attorneys General, Corrections Division; P. O. Box 30217; Lansing, MI 48909; (517) 335-7021

<sup>i</sup> *Prisoners in 1999*, Bureau of Justice Statistics Bulletin, August 2000 NCJ 183476.

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

<sup>iii</sup> Letter from the State of Michigan Department of Attorney General, Jennifer M. Granholm, Attorney General, September 29, 2000

<sup>iv</sup> Michigan Department of Corrections comments on the 1999 article published in the *Corrections Professional*: "Stating that 300 allegations of sexual impropriety have been made by women prisoners is misleading since no definition of sexual impropriety is provided. Departmental records do not support that 300 allegations of sexual misconduct were made during the referenced time frame." Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01

<sup>v</sup> Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01

<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> 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> 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> 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>x</sup> Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01

<sup>xi</sup> "If an inmate makes allegations of sexual misconduct which are determined to be unfounded, the inmate shall be charged with major misconduct" *Inmate Discipline* X(C) Settlement Agreement, United States V State of Michigan et al. See above for full terms of settlement. According to the Department of Corrections, if an investigation proves that the prisoner intentionally misrepresented the truth by making an allegation of sexual misconduct against a staff member, a major misconduct will be issued.

<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> 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>xiv</sup> Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01

<sup>xv</sup> Michigan Department of Corrections, "Obstetric Prisoners" Operating Procedures, No. 04.06.105B, 12/02/94

<sup>xvi</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>xvii</sup> Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01

<sup>xviii</sup> Facsimile update from Michigan Department of Corrections, Executive Division, Nancy Zang, Special Administrator 02/20/01