

South Dakota

WOMEN IN PRISON: 187^(07/00)ⁱ

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§ 24-1-26.1 – *Sexual acts prohibited between prison employees and prisoners.*

§ 22-22-7.6 – *Sexual acts between jail employees and detainees -- Felony -- Juvenile correctional facility defined.*¹

South Dakota’s law on prison employees is in the Management section of the Penal Institutions title. The law covering jail employees is in the Sexual Offenses section of the criminal code.

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?	No	For prison employees, the only prohibited act is penetration. Jail employees are also prohibited from sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The laws are “statutory rape” offenses, an officer cannot claim the victim consented to avoid prosecution.
Does the statute cover all custodians and staff in contact with inmates?	No	Both laws require the person to have custodial, supervisory, or disciplinary authority over the victim.
Does the statute cover all places where an inmate might be abused?	No	Both laws require the victim to be “in detention.”
Is the penalty a felony?	Yes	Violation of either is a class 6 felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ⁱⁱ	South Dakota Attorney General’s Office does not maintain statistics. ⁱⁱⁱ	
Incidents reported in select media since 10/98	<ul style="list-style-type: none"> - South Dakota Women’s Prison, Pierre: An inmate sued the State alleging she was raped in mid-1998; South Dakota’s Supreme Court ruled that officials are protected by sovereign immunity. <i>AP 09/05/2000</i> - State Penitentiary: A special education teacher was sentenced to 45 days in jail for having sex with an inmate. <i>AP 12/09/99</i> 	

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?	No	The policy does not contain specific language about the nature of the sexual behaviors prohibited. ^{iv}
Allow cross-gender pat-down searches?	No	According to a written response from the South Dakota Department of Corrections, no cross-sex searches are allowed. ^v
Restrictions on the duties of male	Yes	No cross-sex pat-down searches or strip searches are allowed. See

¹ The text of the South Dakota statute is reprinted at the end of this section.

guards?		above.
Staff training on sexual misconduct in 1996?	Yes	All staff received two hours of annual in-service training. ^{vi}
Staff training developed 1996-2000?	Yes	No details of the training were available. ^{vii} A written response from the South Dakota DOC states that all staff now receive four hours annual in-service training. ^{viii}
Special procedures for investigating allegations of sexual misconduct in 1996?	Yes	South Dakota DOC uses procedures which may include covert investigative techniques, monitoring mail and/or phone calls, DNA tests, searching work area, polygraph exams. ^{ix}
Investigation procedures introduced 1996-2000?	Yes	No details of the procedures were available. ^x
informing inmates of agency policies on sexual misconduct in 1996?	Yes	Policies are covered in the standard inmate orientation and are available in library. ^{xi}
Revision of procedures on informing inmates on sexual misconduct 1996-2000?	No	No new initiatives. ^{xii}

Custodial Sexual Misconduct –Legislative Proposals 2000-01

None

Parenting and Pregnancy in Custody

Pregnancy - Relevant Statutes/Administrative Rules

Legislation banning shackling in the third trimester or during labor	No	South Dakota has no legislation limiting the use of shackling on pregnant inmates.
Administrative rules concerning pregnancy and delivery		Not known.

Pregnancy and Parenting - Policies, Procedures and Practices

Use of restraints in third trimester	Yes	According to a written response from the South Dakota DOC, high-risk inmates may be handcuffed during transport. Women in the third trimester at the correctional facility are not restrained. It is unclear whether this is determined by policy or procedure. ^{xiii}
Restraints during transport	Yes	According to South Dakota DOC, high-risk inmates are handcuffed. It is unclear whether this is determined by policy or procedure. ^{xiv}
Restraints during labor	No	According to South Dakota DOC, no restraints are applied during labor. ^{xv}
Officer in delivery room	Yes	According to South Dakota DOC, a correctional officer is present. ^{xvi}
Parenting programs specific for women	No	South Dakota DOC provides no parenting program specifically for women. ^{xvii}
Special visitation rights for women	Yes	According to South Dakota DOC, Parent and Children (PACT) program enables incarcerated mothers to have minor children visit them in prison for a weekend once each month, in addition to regular visiting hours. ^{xviii}
State Mother and Child Residency Program	Yes	South Dakota DOC has a residential program for inmate mothers and their infants/children. Infants are allowed to stay 30 days with their mothers in nursery-like facilities within the prison. ^{xix}

Contact information

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS

Secretary: Jeff Bloomberg 3200 East Highway 34, Suite 8 Pierre, SD 57501-5070 Phone (605) 773-3478; Fax (605) 773-3194	Home page: http://www.state.sd.us/state/executive/corrections/corrections.html Email: doc.internet.info@state.sd.us
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SOUTH DAKOTA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

SOUTH DAKOTA WOMEN'S PRISON <i>Female inmates: 169^{xx}</i> Warden: Dwane Russell Solem Public Safety Center 3200 East Highway 34, Suite 1, Pierre, SD 57501-5070 Phone: (605) 773-6636 Home page: http://www.state.sd.us/state/executive/corrections/corrections.html
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SOUTH DAKOTA EXECUTIVE

Governor William J. Janklow [R] Office of the Governor 500 East Capitol Pierre, SD 57501-5070 Phone: (605) 773-3212 Fax: (605) 773-4711	Homepage: http://www.state.sd.us/governor/index.htm Email: sdgov@state.sd.us Governor for two terms: 1979-1987 Elected again: January 1995
Attorney General Mark Barnett [R] Office of Attorney General 500 East Capitol Ave. Pierre, SD 57501-5070 Phone: (605)-773-3215 Fax: (605) 773-4106	Homepage: http://www.state.sd.us/attorney/attorney.html Contact page: http://www.state.sd.us/attorney/contactus.shtml E-mail: help@state.sd.us

SOUTH DAKOTA LEGISLATIVE INFORMATION

Legislative Session: Sessions begin on the second Tuesday in January at noon. In odd-numbered years, the session is limited to 40 legislative days, and in even-numbered years, the session is limited to 35 legislative days. Legislative days do not include Sundays, holidays, or days when the legislature is in recess. The Governor can convene a special session, and the legislature can also call itself into special session. Senate: 35 members, 2-year terms, 8 year term-limit House: 70 members, 2-year terms, 8 year term-limit Elections are held for the entire legislature every even-numbered year.	Legislative home page: www.state.sd.us/state/legis/legis.htm Legislative Research Council: http://www.state.sd.us/state/legis/lrc.htm Phone: (605) 773-3251 - Fax: (605) 773-4576 Bill search: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/lrcmenu.htm or http://www.state.sd.us/state/legis/lrc/lawstat/https/75/mainfrm.htm Bill information phone number: (605) 733-3011
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Senate Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070	Senate home page: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/senrost.htm
House of Representatives Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070	Home page: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/hourost.htm

WOMEN IN PRISON - NGO RESOURCES

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

South Dakota-CURE
 P.O. Box 961
 Sioux Falls, SD 57101

South Dakota's Custodial Sexual Misconduct Statute

§ 24-1-26.1. Sexual acts prohibited between prison employees and prisoners.

Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.

§ 22-22-7.6. Sexual acts between jail employees and detainees -- Felony -- Juvenile correctional facility defined.

Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony.

A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections under § 1-15-1.4.

ⁱ Department of Corrections Monthly Report, Average Daily Count Adult Female Population, June, 2000

ⁱⁱ The information does not reflect prosecutions or convictions under rape statutes.

ⁱⁱⁱ Letter from Office of Attorney General, Mark Barnett, Attorney General, August 11, 2000

^{iv} 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

^v Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{vi} 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

^{vii} 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

^{viii} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{ix} 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

^x 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

^{xi} 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

^{xii} 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

^{xiii} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{xiv} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{xv} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{xvi} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{xvii} 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

^{xviii} Faxed corrections from the South Dakota Department of Corrections, Administration, 02/15/2001

^{xix} General Accounting Office, "Managing Female Inmate Populations," GAO/GGD-00-22, 2000

^{xx} All women are housed here, unless they are under house arrest etc. Source: Department of Corrections Monthly Report, Adult Female Population, South Dakota Women's Prison, June, 2000