

# Alabama

WOMEN IN PRISON: 1,907 (01/05)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

The Alabama legislature passed HB4 (Act # 2004-298) on April 20, 2004<sup>1</sup> making custodial sexual misconduct a crime for the first time. The act was subsequently passed to the Governor for his approval and was signed on April 27, 2004.

**Ala. Code 1975 14-11. Article 2. Custodial Sexual Misconduct**

**§ 14-11-30. Definitions.**

**§ 14-11-31. Prohibited Acts.**

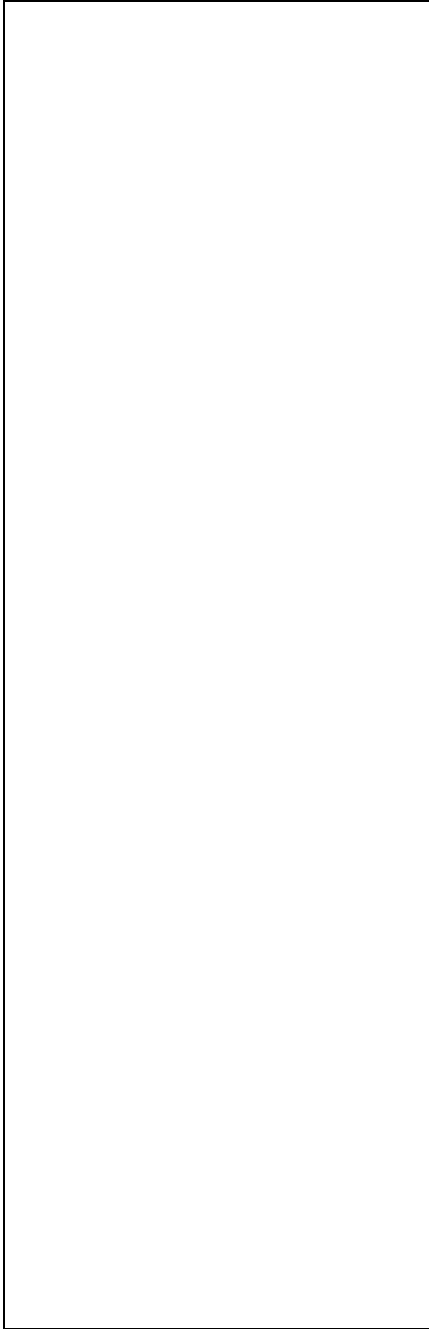
**§ 14-11-32. Construction with other laws.**

Does the statute impose a criminal penalty on the inmate?	<b>No</b>	No penalty is imposed on the inmate.
Does the statute cover all relevant forms of sexual abuse?	<b>Yes</b>	The statute covers (a) sexual intercourse; (b) sexual contact; and (c) sexual intrusion.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	<b>No</b>	Consent is not a defense to prosecution for this offense.
Does the statute cover all custodians and staff in contact with inmates?	<b>Yes</b>	The statute covers all employees and contractual employees of any governmental agency of the state, county, or municipality that has by statute, ordinance or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or detention facility.
Does the statute cover all places where an inmate might be abused?	<b>Yes</b>	The statute covers the following locations: (a) pretrial incarceration or detention; (b) Incarceration or detention under a sentence or commitment to a state or local penal institution, any detention facility for children or youthful offenders; (c) Parole or mandatory supervised release; (d) Electronic home detention; and (e) Parole or probation.
Is the penalty a felony?	<b>Yes</b>	Custodial sexual misconduct is a Class C felony.

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

Indictments/Convictions (answer to AI letter requesting information)	The Office of the Attorney General reported to AI that the Attorney General has not conducted prosecutions for offenses under the state's CSM laws, as cited above. The Attorney General does not compile statistics on prosecutions conducted by local district attorneys. <sup>2</sup>
Incidents reported in select media since January 2000	- Bibb County Jail: A federal civil suit was filed by a former inmate who alleged that a guard indicated that he would only provide her with her prescription medication for high blood pressure if she showed him her breasts. The lawsuit claims that the plaintiff suffered permanent damage to her retinas as a result of being denied medicine. ( <i>Birmingham News</i> , 8/27/04)

<sup>1</sup> The text of this Statute is reprinted at the end of this section.



- Chalkville Campus of the Department of Youth Services: Fifteen employees were fired or resigned over allegations of sexual misconduct; more than 3 dozen girls and young women filed a federal lawsuit, which includes charges dating back to the early '90s. Allegations include claims that 10 girls had sex with workers at the center, some by force and one at age 12, and that girls were beaten and pressured to have abortions after being impregnated. Male guards watched girls take showers and conducted strip searches, the suit contends. (AP, 06/17/01; AP, 07/25/01; AP, 7/31/02) A recently released federal court opinion from Judge Scott Coogler indicates that Department of Youth Services officials knew years before firing any staffers that teens at the Chalkville campus had repeatedly complained about physical and sexual abuse by employees. Judge Coogler reportedly notes, that former superintendent James Caldwell had notice of alleged sexual abuse through complaint forms, notes, letters, internal memoranda and reports date as early as 1994 and continuing through 2001. Caldwell investigated only some of the complaints, but not all reportedly because officials presumed the girls to be liars and troublemakers. (Birmingham News, 8/9/05; AP, 8/9/05)
- Prattville City Jail: A criminal investigation and civil suit were filed in 2004 following the claims of three inmates that a jail guard coerced them into having sex in jail offices and bathrooms. The three inmates received medical care for a sexually transmitted disease and were released from jail early. (Birmingham News, 8/27/04) The case against the defendant alleging assault and battery was stayed in 2005 when he was called up for military duty, it is not currently before the Court.<sup>3</sup>
- Houston County Jail: More than 10 percent of jail staff reportedly resigned after being accused of allowing inmates access to contraband, such as cigarettes, in exchange for sex. Houston County Sheriff Lamar Glover stated that he had no plans to pursue a criminal investigation because Alabama's new CSM law did not take effect until August 1, 2004 and the incidents occurred in June. (Birmingham News, 8/27/04)
- Julia Tutwiler Prison for Women: A correctional officer has resigned amid allegations of sexual misconduct with a 23-year-old inmate. The mother of the inmate alleged that her daughter called her after an officer forced her to perform a sex act last month. (Montgomery Advertiser, 01/09/03)
- Decatur City Jail: Police officers and prisoners testified at personnel hearings that male guards had sexual relations with female prisoners. (AP, 06/29/01)
- Scottsboro Jail: A former city jailer who had quit his job the month prior was arrested for sexually assaulting inmates. (AP, 12/19/00)
- A lieutenant in the police department resigned over allegations that he solicited sex from a female inmate in the city jail. (AP, 04/15/00)

***Custodial Sexual Misconduct – Policies, Procedures and Practices of Guarding Specific to Women***

The following is based on data provided by the Alabama Department of Corrections in response to AI's survey in 2005. AI did not receive data from the Alabama Department of Corrections in 2000 and 2002. Additional information from other sources is included where available.

Is the current Department of Corrections policy on custodial sexual misconduct language-explicit?	<b>Yes</b>	According to the Alabama DOC, the language in its regulations is congruent with the terminology outlined in the statute. <sup>4</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	According to the Alabama DOC, cross-gender pass-down is allowed only if no female officers are available. Male officers can only use

		back of hand per institutional standard operating procedure. <sup>5</sup>
What is the percentage of female officers in relation to male officers?		According to statistics provided by the Alabama DOC, 58% of officers in the Department's female facilities are female and 42% are male. System-wide, only 17% are female. <sup>6</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the Alabama DOC, male officers are not allowed in the receiving [area] and female officers accompany women in segregation areas. The Alabama DOC further states that male guards do not perform strip searches and that view of showers is 'restricted.' <sup>7</sup>
Staff training on sexual misconduct?	<b>Yes</b>	The Alabama DOC states that it provides training for new hires as well as in-service training. No details were provided. <sup>8</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	The Alabama DOC states that inmates are informed of procedures for reporting all illegal incidents occurring within the facility. No details were provided. <sup>9</sup>

## ***Custodial Sexual Misconduct - Policies and Procedures***

### ***Guiding Official Response***

The following is based on the Alabama Department of Corrections response to AI's surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Alabama DOC, "Institutions are equipped to address inmate medical issues," and inmates alleging mistreatment are examined at the prison facility or offsite. <sup>10</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	The Alabama DOC states that mental health staff is available at all major institutions. No details were provided. <sup>11</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Alabama DOC, counseling is available from contracted mental health staff. No details were provided. <sup>12</sup>
Is a rape kit taken?	<b>Yes</b>	The Alabama DOC states this is part of the usual rape investigation. <sup>13</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>No</b>	The Alabama DOC states that "other than specific procedures such as conducting a rape kit, investigations of all alleged illegal acts are conducted in a procedural manner." No details were provided. <sup>14</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to the Alabama DOC, its regulations and policies include the filing of incident reports and notification to the legal and Commissioner's offices. <sup>15</sup>
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	<b>No</b>	According to the Alabama DOC, any allegations may be reported to any law enforcement agency, inmate attorney or inmate advocate group. The Alabama DOC further states that the Department's Investigations Division operates separately from the institution and reports directly to the Commissioner of the Alabama DOC. <sup>16</sup>
Is the investigation external?	<b>No</b>	The Alabama DOC states that the Investigations Division has primary responsibility; however, the DOC notes that external investigations are possible. <sup>17</sup>
If there is an external investigation, how is it triggered?		In a written response, the Alabama DOC states that an outside agency would either conduct the investigation at the request of the DOC or be directed by a court. <sup>18</sup>
Are special measures to shield alleged victims from retaliation taken?	<b>Yes</b>	According to the Alabama DOC, alleged victims are removed from 'any potential situation.' This may include the use of protective custody. <sup>19</sup>
If so, do the measures include solitary confinement or lockdown of the inmate?	<b>Yes</b>	No details provided.
Is there an independent body, such as a corrections ombudsman, with independent oversight of correctional facilities and the DOC?	--	According the Alabama DOC, the Joint Prison Oversight Committee has statutory authority to examine the prison system and offer recommendations. <sup>20</sup>

Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	In a written response, the Alabama DOC states that it tracks investigations but does not track indictments or convictions. <sup>21</sup>
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## ***Custodial Sexual Misconduct – Previous Legislative Attempts Include:***

<b>House Bill 136</b> <i>Sponsored by Representative Boyd</i> 01/08/02 Introduced 02/28/02 Passed House 03/05/02 Sent to Senate Judiciary Committee 04/11/02 No further action taken so bill timed out.	The Alabama Legislature considered 2002 House Bill 136 which established the crime of custodial sexual misconduct; provided for penalties; provided immunities under certain conditions. HB 136 was not passed.  ---Not Enacted---
<b>House Bill 48</b> <i>Sponsored by Representative Boyd</i> 03/04/03 Introduced 04/01/03 Passed House 06/16/03 Passed Senate; to House for concurrence.	House Bill 48, which is identical to House Bill 136, was introduced in March of 2003 and is currently being considered by the Alabama Legislature. <sup>22</sup> HB 48 establishes the crime of custodial sexual misconduct, provides for penalties, provides immunities under certain conditions, and has as its purpose or effect the requirement of a new or increased expenditure of local funds.  ---Not Enacted---

## **Pregnancy in Custody**

### ***Pregnancy – Statute***

Legislation banning shackling in the third trimester or during labor	No	Alabama has no legislation limiting the use of restraints on pregnant inmates.
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### ***Pregnancy - Policies, Procedures and Practices***

The following is based on Alabama Department of Corrections response to AI's surveys, please see above.

Use of restraints in third trimester	Yes	According to the Alabama DOC, institutional standard operating procedures regarding shackling are 'based on the security level' of the inmate. No details were provided. <sup>23</sup>
Restraints during transport	Yes	According to the Alabama DOC, the standard operating procedure is 'based on security level' of the inmate. The DOC further states that the policy is "distinguishable between male and female inmates." No details were provided. <sup>24</sup>
Restraints during labor	Yes	According to the Alabama DOC, the use of restraints for inmates in labor is governed by institutional standard operating procedures and the practice for restraints is directly related to 'security class.' Often two extremities are restrained prior to delivery. <sup>25</sup>
Officer in delivery room	Yes	According to the DOC, this is standard operating procedure. <sup>26</sup>

# Contact information

## ALABAMA DEPARTMENT OF CORRECTIONS

<b>Commissioner Donald Campbell</b> 301 S. Ripley Street P.O. Box 301501 Montgomery, AL. 36130-1501 Phone: (334) 353-3883 Fax: 334-353-3967	Website: <a href="http://www.doc.state.al.us/index.htm">http://www.doc.state.al.us/index.htm</a>  Email Public Information officer: pio@doc.state.al.us
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## ALABAMA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<b>Julia Tutwiler Prison For Women</b> <sup>27</sup> Warden: Gladys Deese <i>Female inmates:</i> 1,063 <sup>28</sup> 8966 U.S. Highway 231 N Wetumpka, Al. 36092 Phone: (334) 567-4369
<b>Birmingham Community Based Facility</b> Warden: Edward Ellington <i>Female inmates:</i> 182 1216 25 <sup>th</sup> St. North Birmingham, Al. 35234 (205) 252-2924
<b>S. Louisiana Correctional (contract)</b> Warden: Gary Copes <i>Female inmates:</i> 307 3843 Stagg Avenue Basile, La. 70515 (337) 432-5493

## ALABAMA EXECUTIVE

<b>Governor Bob Riley [R]</b> State Capitol 600 Dexter Avenue Montgomery, AL 36130 Phone: (334) 242-7100; Fax: (334) 353-0004	Homepage: <a href="http://www.governor.state.al.us/">http://www.governor.state.al.us/</a>  Elected: January 20, 2003
<b>Attorney General Troy King</b> Office of the Attorney General Alabama State House 11 South Union Street, Third Floor Montgomery, AL 36130 Phone: (334) 242-7300	Homepage: <a href="http://www.ago.state.al.us/">http://www.ago.state.al.us/</a>  Elected: 2004

## LEGISLATIVE INFORMATION

<b>House:</b> 105 members, 4-year term <b>Senate:</b> 35 members, 4-year term All terms expire together. Regular annual sessions, 30 meeting days over 105 calendar days. <b>Legislative Session:</b> Year [1]: First Tuesday in March	Legislature Homepage: <a href="http://www.legislature.state.al.us/">http://www.legislature.state.al.us/</a> Legislative Information System: <a href="http://www.legislature.state.al.us/ALISHome.html">http://www.legislature.state.al.us/ALISHome.html</a> Bill Search <a href="http://www.legislature.state.al.us/Search/SearchKey.htm">http://www.legislature.state.al.us/Search/SearchKey.htm</a>
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Year [2]: First Tuesday in February Year [3]: First Tuesday in February Year [4]: Second Tuesday in January	
<b>Senate</b> 11 South Union Street Montgomery, AL 36130 Phone: (334) 242-7824	Home page: <a href="http://www.legislature.state.al.us/senate/senate.html">http://www.legislature.state.al.us/senate/senate.html</a>
<b>House Of Representatives</b> 11 South Union Street Montgomery, AL 36130 Phone: (334) 242-7627	Home page: <a href="http://www.legislature.state.al.us/house/house.html">http://www.legislature.state.al.us/house/house.html</a>

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

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

Alabama-CURE PO Box 190504 Birmingham, AL 35219-0504 Phone: (205) 481-3781; Toll Free: (800) 665-3602; Fax 205-481-3991
ACLU of Alabama 207 Montgomery Street, Suite 825 Montgomery, AL 36104 Phone: (334)262-0304 E-Mail: <a href="mailto:info@aclualabama.org">info@aclualabama.org</a> Website: <a href="http://www.aclualabama.org">www.aclualabama.org</a>
Aid to Inmate Mothers Physical Address: 434 N. McDonough Street, Montgomery, AL 36104 Mailing Address: P.O. Box 986, Montgomery, AL 36101-0986 Office: (334) 262-2245; Toll Free: (800) 679-0246; Fax: (334) 262-2296 Website: <a href="http://www.inmatemoms.org">www.inmatemoms.org</a> Services: Provide emotional interaction between inmate mothers and their children; Support the children of inmates through outreach programs; Improve inmate mothers' parenting skills; Minimize the likelihood of child abuse or neglect; Help the mothers make a successful transition from prison to community life.
Southern Poverty Law Center 400 Washington Avenue Montgomery AL 36104 Phone: (334) 956-8200 Website: <a href="http://www.splcenter.org">www.splcenter.org</a>

**Alabama's custodial sexual misconduct statute**

**§ 14-11-30. Definitions.**

When used in this article, the following words shall have the following meanings:

- (1) CUSTODY. Any of the following:
  - a. Pretrial incarceration or detention.
  - b. Incarceration or detention under a sentence or commitment to a state or local penal institution, any detention facility for children or youthful offenders.
  - c. Parole or mandatory supervised release.
  - d. Electronic home detention.
  - e. Parole or probation.
  
- (2) EMPLOYEE. An employee or contractual employee of any governmental agency of the state, county, or municipality that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or detention facility.
  
- (3) SEXUAL CONDUCT. Any of the following acts:
  - a. Sexual intercourse. This term shall have its ordinary meaning and occurs upon a penetration, however slight; emission is not required.
  - b. Sexual contact. Any known touching for the purpose of sexual arousal, gratification, or abuse of the following:
    - 1. The sexual or other intimate parts of the victim by the actor.
    - 2. The sexual or other intimate parts of the actor by the victim.
    - 3. The clothing covering the immediate area of the sexual or other intimate parts of the victim or actor.
  - c. Sexual intrusion. Any intrusion, however slight, by any object or any part of the body of a person into the genital, anal, or oral opening of the body of another person if that sexual intrusion can reasonably be construed as being for the purposes of sexual arousal, gratification, or abuse.

**§ 14-11-31. Prohibited Acts.**

- (a) It shall be unlawful for any employee to engage in sexual conduct with a person who is in the custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality.
- (b) It shall be unlawful for any probation or parole officer to engage in sexual conduct with a person who is under the supervisory, disciplinary, or custodial authority of the officer engaging in the sexual conduct with the person.
- (c) Any person violating subsection (a) or (b) shall, upon conviction, be guilty of custodial sexual misconduct.
- (d) Custodial sexual misconduct is a Class C felony.
- (e) For purposes of this article, the consent of the person in custody of the Department of Corrections, the Department of Youth Services, a sheriff, a county, or a municipality, or a person who is on probation or on parole, shall not be a defense to a prosecution under this article.

**§ 14-11-32. Construction with other laws.**

This article shall not be construed to repeal other criminal laws. Whenever conduct proscribed by any provision of this article is also proscribed by any other provision of law, the provision which carries the more serious penalty shall be applied.

Effective July 1, 2004.

<sup>1</sup> Alabama Department of Correction, *Monthly Statistical Report*, 05/2005, page 7 available at <http://www.doc.state.al.us/docs/MonthlyRpts/2005-05.pdf>, as per 01/24/2006.

<sup>2</sup> Letter from Keith S. Miller, Chief Deputy Attorney General, Alabama Office of the Attorney General, 08/08/05.

<sup>3</sup> *Sherill v. City of Prattville*; Slip Copy, 2005 WL 3277979. M.D.Ala.,2005.

<sup>4</sup> Email from Kay Hope, Alabama DOC, 09/06/05.

<sup>5</sup> Email from Kay Hope, Alabama DOC, 09/06/05.

<sup>6</sup> Email from Kay Hope, Alabama DOC, 09/06/05.

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- <sup>7</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>8</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
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<sup>19</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>20</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>21</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>22</sup> H.B. 48, 2003 Reg. Sess. (Al. 2003).  
<sup>23</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>24</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>25</sup> Phone Conversation with Mr. Sandine, Classification Supervisor, 10/2000.  
<sup>26</sup> Email from Kay Hope, Alabama DOC, 09/06/05.  
<sup>27</sup> Alabama DOC, Julia Tutwiler Prison For Women , available at <http://www.doc.state.al.us/facilities/tutwiler.htm>, as per 01/25/06.  
<sup>28</sup> Alabama DOC, *Monthly Statistical Report*, 05/2005, available at <http://www.doc.state.al.us/docs/MonthlyRpts/2005-05.pdf>, as per 01/25/06.