

# Alaska

WOMEN IN PRISON: 392 (12/03)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

§ 11.41.425(a) 2 *Sexual Assault in the Third Degree*<sup>i</sup>

§ 11.41.427(a) 1 *Sexual Assault in the Fourth Degree*

Alaska’s custodial sexual misconduct legislation is in the Criminal Code in the Offenses Against the Person section. The laws were enacted in 2000, and are an addition to Alaska’s “statutory rape” provisions. If an offender penetrates the victim it is a third degree assault; assaults involving sexual contact are fourth degree.

Does the statute impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the law cover all relevant forms of sexual abuse?	Yes	The laws cover all sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	As part of the ‘statutory rape’ laws, the consent of the protected person is irrelevant to the crime.
Does the statute cover all custodians and staff in contact with inmates?	--	The law prohibits only those “employed in” a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners from engaging in CSM. It unclear whether the law prohibits service providers and contractors who are not directly employed in facilities.
Does the law cover all places where an inmate might be abused?	Yes	Alaska’s law protects all individuals under the care of the Department of Corrections regardless of where the misconduct or abuse takes place.
Is the penalty a felony?	Yes	Sexual Assault in the third degree (penetration) is a Class C felony. Sexual Assault in the fourth degree (contact) is a Class A misdemeanor.

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

<sup>i</sup> The text of Alaska’s statute is provided at the end of this section.

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	<ul style="list-style-type: none"> <li>- 2000: The Attorney General's office prosecuted 4 cases under §11.41.425. One was later dismissed, one was acquitted at trial, one resulted in a conviction for misdemeanor assault and one resulted in a felony conviction.</li> <li>- 2001: The Attorney General's office prosecuted 2 cases under §11.41.425. One case resulted in a conviction for the felony crime of coercion and the other case was still pending at the time of the Office of the Attorney General's communication to AI.<sup>3</sup></li> <li>- 2003: According to the Alaska DOC, an officer at Lemon Creek Correctional Center was prosecuted and convicted of custodial sexual misconduct, a felony, after engaging in sexual activity with a female inmate.<sup>4</sup></li> <li>- 2005: Amnesty International did not receive a response from the Alaska Attorney General's Office.</li> </ul>
Incidents reported in select media since January 2000	<ul style="list-style-type: none"> <li>- Cordova House: A former security manager for Cordova House, a halfway house run by private company under a contract with the state, was arrested on charges that he lured a female inmate into his office at the Center and coerced her into having sex with him. He was charged with 3rd degree sexual assault. (<i>Anchorage Daily News</i>, 8/5/04 and <i>Prison Legal News</i> 11/2004)</li> <li>- Anchorage Correctional Complex: An Anchorage jail chaplain was arrested on charges that he promised inmates contact visits with their children in exchange for sexual favors. He was charged with 3rd degree assault, a felony, and two counts each of fourth-degree sexual assault and official misconduct, all misdemeanors. (<i>Anchorage Daily News</i>, 3/24/04)</li> <li>- Juneau: A former employee at a Juneau halfway house was charged with felony coercion after allegations that he had engaged in sexual relations with a female inmate. (<i>AP</i> 09/22/01)</li> <li>- Cordova Center (private halfway house): Five women who were sexually assaulted will receive \$1,000,000 in punitive damages from Allvest, Inc., for negligent hiring. Alaska's Department of Corrections (DOC) settled for \$45,000, and the women received compensatory damages ranging from \$10,000 to \$25,000. (<i>AP</i> 01/22/01)</li> </ul>
Other reported incidents	<p><i>Galvan v Carothers</i> 855 F. Supp. 285, U.S. Dist. LEXIS 8094 (1994); U.S. App. LEXIS 22879 (1997)</p> <p>Cindy Galvan brought a lawsuit against the officials of the Lemon Creek Correctional Center. She had been placed in an all-male tier of a maximum security prison and complained of verbal sexual harassment from the male prisoners. She also complained of having to shower in front of male guards and not having been afforded privacy when using the toilet in her cell. The court granted summary judgment in favor of the defendants on the basis that the officials were entitled to qualified immunity. This was upheld on appeal.</p>

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

The following is based on data provided by the Alaska Department of Corrections in response to AI's survey in 2002 and 2005. AI did not receive data from the Alaska Department of Corrections in 2000. 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>	The policy includes direct and specific language about the sexual nature of the behaviors prohibited. <sup>5</sup>
Allow cross-gender pat-down	<b>Yes</b>	According to the Alaska DOC, officers of the same sex as inmates

searches?		conduct searches unless exigent circumstances are present. <sup>6</sup>
What is the percentage of female officers in relation to male officers?	--	As of 2002, at the women's facility 54% of officers were women. Overall, 20.5% of Alaska's DOC officers were female. <sup>7</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the Alaska DOC, restrictions exist on the duties of male guards. No details of these restrictions were provided. <sup>8</sup>
Staff training on sexual misconduct?	<b>Yes</b>	According to a written response from the Alaska DOC, correctional officers receive specific training in their basic training academy, which is followed up during initial on-the-job training. <sup>9</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	The Alaska DOC states that inmates are informed of agency policies and reporting procedures on sexual misconduct.

## ***Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response***

The following is based on the Alaska 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 Alaska DOC medical help is available. No details were provided. <sup>10</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Alaska DOC mental health services are immediately available. No details were provided. <sup>11</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to a written response from the Alaska DOC, counseling is available to victims of sexual abuse through both mental health clinicians in all facilities and through local therapists 'as indicated.' <sup>12</sup>
Is a rape kit taken?	<b>Yes</b>	According to the Alaska DOC, a rape kit is taken as part of the Alaska State Trooper investigation. <sup>13</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	According to the Alaska DOC, the Alaska State Troopers have investigators with specialized training in this area.
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to a written response from the Alaska DOC, any misconduct of any type can be reported via confidential grievance and complaint forms, which are logged. <sup>14</sup>
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	<b>Yes</b>	In a written response, the Alaska DOC states that it, in addition to the procedure noted above, inmates may call the Alaska State Troopers directly via any of the telephones in their living units to report any incident. They may also call the Office of the Ombudsman, the Office of Human Rights, local police departments, any of the women's advocacy centers, rape trauma centers and their families to report any incident. <sup>15</sup>
Is the investigation external?	<b>Yes</b>	According to the Alaska DOC, investigations are undertaken by Alaska State Troopers. <sup>16</sup>
If there is an external investigation, how is it triggered?		The Alaska DOC reports that external investigations may be triggered in a number of ways. Most often, the DOC states that officials from the DOC call the Alaska State Troopers in to investigate the incident. However, the Alaska State Troopers also respond to calls made directly by prisoners and to complaints filed by family members. <sup>17</sup>
Are special measures to shield alleged victims from retaliation taken?	<b>Yes</b>	According to a written response from the Alaska DOC, measures may include placing the alleged victim in protective custody or transferring the inmate to another facility. <sup>18</sup>
If so, do the measures include solitary confinement or lockdown of	<b>Yes</b>	According to the DOC, an alleged victim may be placed in protective custody, a type of administrative segregation where prisoners are

the inmate?		housed away from the general population with “similar amenities.” <sup>19</sup>
Is there an independent body, such as a corrections ombudsman, with independent oversight of correctional facilities and the DOC?	Yes	The DOC reports that the Office of the Ombudsman routinely investigates complaints, and has oversight and investigative authority over all executive branch agencies, including the DOC. <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 DOC states that the Office of the Director of Institutions tracks all incidents of misconduct. <sup>21</sup>

## ***Custodial Sexual Misconduct – Pending Legislative Proposals***

*None*

## **Pregnancy in Custody**

### ***Pregnancy - Statute***

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

The following is based on the Alaska Department of Corrections response to AI’s surveys, please see above

Policy on use of restraints in third trimester	Yes	The Alaska DOC does not provide detailed information on such policies for security reasons. <sup>22</sup>
Restraints during transport	Yes	According to the Alaska DOC, it is not routine to restrain pregnant inmates during transportation. An individual determination to use restraints must be made. Further details are unavailable for security reasons. <sup>23</sup>
Restraints during labor	Yes	According to the Alaska DOC, an individual determination to use restraints is made based on medical requirements and limitations. Further details are not available for security reasons. <sup>24</sup>
Officer in delivery room	No	According to the Alaska DOC, it is not standard practice to have an officer present in the delivery room, but this may be required in individual cases. <sup>25</sup>

## **Contact information**

### **ALASKA DEPARTMENT OF CORRECTIONS**

<b>Commissioner: Marc Antrim</b> <i>Juneau Central Office</i> 802 3rd Street Douglas, Alaska 99824 Phone: (907) 465-4652	Homepage: <a href="http://www.correct.state.ak.us/">http://www.correct.state.ak.us/</a> <i>Anchorage Central Office</i> 4500 Diplomacy Drive Suite 109 Anchorage, Alaska 99508-5927 Phone: (907) 269-7397
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### **ALASKA Department of Corrections FACILITIES FOR WOMEN**

<b>The Hiland Mt. Facility Correctional Center</b>	<b>Fairbanks Correctional Center</b> <i>Female inmates: 14 (8/26/02)<sup>27</sup></i>	<b>Wildwood Pre-trial Facility</b> <i>Female inmates: 10 (8/26/02)<sup>28</sup></i>
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<p><i>Female inmates: 192 (8/26/02)<sup>26</sup></i>          Superintendent: L. Dean Marshall          PO Box 600          Eagle River, AK 99577          Phone: (907) 694-9511          Fax: (907) 694-4507</p>	<p>Superintendent: Charles Stevenson          1931 Eagan Avenue          Fairbanks, AK 99701          Phone: (907) 458-6700</p>	<p>Superintendent: Garland H. Armstrong          5 Chugach Avenue          Kenai, AK 99611-7098          Phone: (907) 260-7200          Fax: (907) 260-7208</p>
<p><b>The Lemon Creek Correctional Center</b>  <i>Female inmates: 9(8/26/02)<sup>29</sup></i>          Acting Superintendent: Scott Wellard          2000 Lemon Creek Road          Juneau, AK 99801          Phone: (907) 465-6200          Fax: (907) 465-6224</p>	<p><b>Anvil Mountain Correctional Center</b>  <i>Female inmates: 13 (8/26/02)<sup>30</sup></i>          Superintendent: Rita Anderson          Mile 3.5 Center Creek Road          PO Box 730          Nome, AK 99762          Phone: (907) 443-2241          Fax: (907) 443-5195</p>	<p><b>Yukon-Kuskokwim Correctional Center</b>  <i>Female inmates: 3(02/15/01)<sup>31</sup></i>          Superintendent: Rob Dahl          1000 Chief Eddie Hoffman Highway, PO Box 400          Bethel, AK 99559          Phone: (907) 543-5245          Fax: (907) 543-3097</p>
<p><b>Anchorage Correctional Complex</b>  <i>Female Inmates: 15(8/26/02)<sup>32</sup></i>          Superintendent: Leitoni Tupou          1400 E 4<sup>th</sup> Ave.          Anchorage AK 99501          Phone: (907) 269-4100          Fax: (907) 269-4208</p>	<p><b>Ketchikan Correctional Center</b>  <i>Female Inmates: 8 (8/27/05)</i>          Superintendent: Alan Bailey          1201 Schoenbar Road          Ketchikan, AK 99901-6270          Phone: (907) 225-2828          Fax: (907) 225-7031</p>	<p><b>Mat-Su Pretrial Facility</b>  <i>Female Inmates: 6 (8/27/05)</i>          Superintendent: Marc Okuley          339 East Dogwood Road          Palmer, AK 99645          Phone: (907) 745-0943          Fax: (907) 746-0501</p>

## ALASKA EXECUTIVE

<p><b>Governor Frank Murkowski [R]</b>          P.O. Box 110001          Juneau, AK 99811-0001          Phone (907) 465-3500; Fax (907) 465-3532          State Information line: (907) 465-2111</p>	<p>Homepage: <a href="http://www.gov.state.ak.us/">http://www.gov.state.ak.us/</a>          Contact page: <a href="http://www.gov.state.ak.us/phone.html">http://www.gov.state.ak.us/phone.html</a>          Elected: November 2002</p>
<p><b>Attorney General David W. Marquez</b>          P.O. Box 110300          Juneau, AK 99811-0300          Phone: (907) 465-2133; Fax: (907) 465-2075          Email: <a href="mailto:Attorney_General@law.state.ak.us">Attorney_General@law.state.ak.us</a></p>	<p>Homepage: <a href="http://www.law.state.ak.us/">http://www.law.state.ak.us/</a>          Appointed: March 31, 2005</p>

## LEGISLATIVE INFORMATION

<p><b>Legislative Session:</b> The Legislation convenes on the second Monday in January. Following the election of the governor, the Legislature convenes on the third Tuesday in January. A Legislature must adjourn from a regular session no later than 120 consecutive calendar days from the day it convenes. The session may be extended once for up to 10 days by a 2/3 vote of each house. Special sessions are called by the Governor or the Legislature and are limited to 30 calendar days.</p> <p><b>House:</b> 40 members, 2-year terms  <b>Senate:</b> 20 members, four-year terms – one-half of the membership stands for election every two years</p>	<p>Legislative home page  <a href="http://www.legis.state.ak.us/">http://www.legis.state.ak.us/</a>          Legislative information search  <a href="http://www.legis.state.ak.us/folhome.htm">http://www.legis.state.ak.us/folhome.htm</a>          Bill Search  <a href="http://www.legis.state.ak.us/basis21.htm">http://www.legis.state.ak.us/basis21.htm</a>          Bill information phone number          (907) 465-4648</p>
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<b>Senate</b> State Capitol Juneau, AK 99801-1182	Senate Home Page: <a href="http://www.legis.state.ak.us/senate/senate.htm">Http://www.legis.state.ak.us/senate/senate.htm</a>
<b>House of Representatives</b> State Capitol Juneau, AK 99801-1182	Home Page: <a href="http://www.legis.state.ak.us/house/house.htm">http://www.legis.state.ak.us/house/house.htm</a>

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

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

Alaska-CURE P.O. Box 70252 Fairbanks, AK 99709-0252 Phone: (907) 479-6782; Fax: (907) 479-6782
Alaska Civil Liberties Union P.O. Box 201844 Anchorage, AK 99520 Phone: (907) 276-2258; Fax: (907) 258-0288 E-mail: <a href="mailto:akclu@alaska.net">akclu@alaska.net</a> Website: <a href="http://www.akclu.org">www.akclu.org</a>
Alaska Legal Services Corporation 1016 West Sixth Avenue, Suite 200 Anchorage, Alaska 99501 Phone: (907) 272-9431; Toll-Free (888) 478-2572; Fax: (907) 279-7417 Website: <a href="http://www.alsc-law.org">www.alsc-law.org</a>
Native American Rights Fund 420 L Street, Suite 505 Anchorage, AK 99501 Phone (907) 276-0680; Fax (907) 276-2466 fax Website: <a href="http://www.narf.org">www.narf.org</a> Services: Provides legal representation and technical assistance to Indian tribes, organizations and individuals nationwide - a constituency that often lacks access to the justice system. NARF focuses on applying existing laws and treaties to guarantee that national and state governments live up to their legal obligations.

### **Alaska's Custodial Sexual Misconduct Statute**

Sec. 11.41.425. Sexual assault in the third degree.

(a) An offender commits the crime of sexual assault in the third degree if the offender

....

(2) While employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, engages in sexual penetration with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment...

(b) Sexual assault in the third degree is a class C felony.

Sec. 11.41.427. Sexual assault in the fourth degree.

(a) An offender commits the crime of sexual assault in the fourth degree if

(1) While employed in a state correctional facility or other placement designated by the commissioner of corrections for the custody and care of prisoners, the offender engages in sexual contact with a person who the offender knows is committed to the custody of the Department of Corrections to serve a term of imprisonment or period of temporary commitment...

(b) Sexual assault in the fourth degree is a class A misdemeanor.

<sup>1</sup> Bureau of Justice Statistics, *Prisoners in 2003*, NCJ205335, 11/2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>, as per 01/25/06.

<sup>2</sup> The information does not reflect prosecutions or convictions under rape statutes.

<sup>3</sup> Letter from Bruce M. Bothelo, State of Alaska Attorney General, 08/07/02.

<sup>4</sup> Letter from Mark Antrim, Commissioner, Alaska Department of Corrections (DOC), 08/27/05.

<sup>5</sup> US Department of Justice National Institute of Corrections Information Center, "*Sexual Misconduct in Prisons: Law, Remedies, and Incidence*," National Institute of Corrections, Colorado, 05/2000.

<sup>6</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.

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- <sup>7</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>8</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>9</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>10</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>11</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>12</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>13</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>14</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>15</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>16</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>17</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>18</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>19</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>20</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>21</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>22</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>23</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>24</sup> Letter from Mark Antrim, Commissioner, Alaska DOC, 08/27/05.
  - <sup>25</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>26</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>27</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>28</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>29</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>30</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.
  - <sup>31</sup> Facsimile from Bruce Richards, Commissioner's Office, Alaska DOC, 02/15/01.
  - <sup>32</sup> Email from Bruce Richards, Special Assistant, Alaska DOC, 08/26/02.