

Arkansas

WOMEN IN PRISON: 994 (6/04)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§ 5-14-124 – *Sexual assault in the first degree*

§ 5-14-125 – *Sexual assault in the second degree*

§ 5-14-126 – *Sexual assault in the third degree*

Arkansas's law, introduced in 2001, is in the Sexual Offenses chapter of its Criminal Code. The law states that the consent of the person under custody is irrelevant.¹

Does the statute 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	All inmates are covered for acts involving penetration, but the statute only covers sexual contact where inmates are less than 18 years old.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law states that the consent of the inmate is irrelevant.
Does the statute cover all custodians and staff in contact with inmates?	No	The statute does not cover contractors or agents.
Does the statute cover all places where an inmate might be abused?	Yes	The law covers all places where a person in custody might be.
Is the penalty a felony?	Yes	Where the victim is less than 18 years old, sexual intercourse or deviate sexual intercourse is a Class A felony. For all other victims, sexual intercourse or deviate sexual intercourse is a Class C felony. Sexual contact with a victim less than 18 years old is a Class B felony.

Custodial Sexual Misconduct – Allegations and Incidents

¹ Prior to the enactment of Sections 5-14-124 through 126 in 2001, custodial sexual misconduct in Arkansas fell under §5-14-109, Sexual Abuse in the Second Degree. Offenses under this section were classified as Class A misdemeanors. The amended statute provides for differing classifications depending on the offense. Classifications now range from Class A felony to Class A misdemeanor.

<p>Indictments/Convictions (answer to AI letter requesting information) ²</p>	<p>In 2000 the Attorney General’s Office in Arkansas provided the following information in respect of § 5-14-109 Sexual Abuse in the Second Degree: 1997: two charges filed and 12 convictions obtained; 1998: one charge filed and 3 convictions obtained; 1999: one charge filed and 5 convictions obtained. The Attorney General’s Office was unable to confirm which of these charges and convictions were in respect to custodial sexual misconduct, as they do not keep specific statistics for particular subdivisions of the code.³</p> <p>The Arkansas Attorney General’s Office did not respond to a 2002 request from Amnesty International for updated information.</p> <p>In 2005, the Attorney General’s Office reported that they do not conduct criminal prosecutions, and therefore do not maintain statistics on prosecutions or convictions under the state’s CSM statutes . The Attorney General’s Office referred AI to the Arkansas Prosecutor Coordinator’s Office, however this office did not respond to a request for information from Amnesty International.⁴</p>
<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> - Carol County Jail: A sheriff’s deputy, Darell Wayne Moss, was arrested on charges of having inappropriate sexual activity with two female inmates. Prosecutors charged the deputy with three counts of rape. Reportedly he worked at the jail for more than a year while the criminal investigation was conducted, because the Sheriff thought he had been cleared and allowed him back to work on the late night shift. Another jailer, Jimmy Rex Keeland, was convicted in November of public sexual indecency following the investigation, and was sentenced to pay a \$250 fine. Both men were placed on leave in December 2004 when a group of female inmates made allegations against them. Four women said Keeland fondled them. One victim reported she was forced to expose her breasts and vaginal area in exchange for toilet paper. Moss is accused of forcing two inmates to perform oral sex on him in exchange for him not to endanger their chances of getting out of jail. (<i>Arkansas Democrat-Gazette, 02/01/06</i>) - Pulaski County: Anthony Cole, a sheriff’s deputy assigned to guard prisoners at the county courthouse was charged with felony sexual assault against an inmate. A female prisoner filed a complaint against the deputy claiming he demanded oral sex from her. According to the arrest report, Cole admitted to engaging in sexual acts with an inmate. (<i>Arkansas Democrat-Gazette, 08/02/05</i>) In January 2006, in exchange for a guilty plea to the charge of third-degree sexual assault, a Circuit Judge ruled that Cole must register as a sex offender and spend four years on probation. He was also fined \$2000. The trial was scheduled for February 2006. (<i>Arkansas Democrat-Gazette, 01/25/06</i>) - Independence County: A former sheriff’s office jailer is accused of having sex with a female inmate while he was transferring her. The victim did not press charges but the jailer resigned after officials talked with him. (<i>Arkansas Democrat-Gazette, 12/09/03</i>)

	<p>- McPherson Unit: A nursing assistant was banned from the McPherson Unit after an inmate reported to prison officials that she was forced to perform a sexual act before a scheduled medical exam in the infirmary. "We believe her allegations had merit," said Dina Tyler, spokesman for the Arkansas Department of Correction. "That employee has been banned and can't return to the unit." The nursing assistant wasn't a prison employee, Tyler said, adding that he worked for Correctional Medical Services, a private company contracted by the state. The McPherson Unit holds the prison system's 600-plus women inmates. Thus far, no other inmates have made similar allegations, Tyler said. The case was turned over to the Arkansas State Police for investigation. Any type of sexual act with a prison inmate is against the law. (<i>The Arkansas Democrat-Gazette, 06/15/02</i>)</p>
	<p>- Pope County: A jailer was accused of having sexual contact with a female inmate. (<i>AP, 07/13/01</i>)</p>
<p><i>Other reported incidents</i></p>	<p>- McPherson Unit: A prison guard was charged with second-degree sexual abuse in connection with an encounter with a female inmate at the McPherson unit. The guard was arrested after a 29-year-old woman told nurses at a local hospital that she had been sexually assaulted. He was charged with second-degree sexual abuse. The guard who worked for a private company (Wackenhut Correctional Corp) at the McPherson Prison pleaded guilty to the sexual assault which is a misdemeanor offense. The judge accepted the guilty plea and fined the guard \$500 plus \$75 in court costs. The judge suspended the fine in lieu of the time the guard had already spent in jail awaiting the outcome of his case. (<i>Arkansas Democrat-Gazette, 09/21/00 and The Associated Press and Local Wire, 10/24/00</i>)</p> <p>- Washington County Juvenile Detention Center: Former guard Earl Guillory pleaded guilty to two counts of violation of a minor for sexually abusing two female teenage inmates and was sentenced to six years of probation. Since he was on probation during the time of the incidents, he will serve three years in prison for the probation violation. (<i>AP, 07/13/00</i>)</p> <p>- On August 27, 2004, the United States Department of Justice and the Arkansas DOC entered into a settlement agreement regarding the conditions of confinement at both McPherson and Grimes Correctional units, requiring the state to provide adequate medical and mental health care, protection from harm, and life safety and sanitation at both facilities. The settlement is in response to numerous incidents of sexual misconduct confirmed by inmates and staff. Problems identified included that DOC policies fail to prohibit sexual misconduct by all persons who have or might have contact with inmates (e.g. contractors or agents), that there are no means for victims to report allegations of custodial sexual misconduct in confidence, and that implementation of sexual misconduct policies is inconsistent. In some of the cases reviewed by DOJ, the investigations had ended prematurely when the accused officer resigned or was dismissed.⁵</p>

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

The following is based on data provided by Arkansas Department of Corrections in response to AI's surveys in 2000, 2002 and 2005. Additional information from other sources is included where available.

<p>Is the current Department of Corrections policy on custodial sexual misconduct language-</p>	<p>No information provided.</p>
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explicit?		
Allow cross-gender pat-down searches?	Yes	Searches are predominantly same-sex. Cross-gender searches conducted only in an emergency – “emergency” not defined. This practice reflects the policy of private organization Corrections Corporation of America, the operator of Arkansas’ women’s prison. ⁶
What is the percentage of female officers in relation to male officers?		No information provided.
Restrictions on the duties of male guards?		No information provided.
Staff training on sexual misconduct?	Yes	Employees receive a copy of Arkansas DOC Administrative Directive 01-15, “Sexual Misconduct With Inmates”, during mandatory pre-service training. Certified trainers on “prevention of sexual misconduct with inmates” shall conduct the training. Sexual harassment/ sexual misconduct training is also required training for all current and newly hired personnel. ⁷
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	Arkansas DOC Administrative Directive on Sexual Misconduct requires that the directive be available in the library. ⁸

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

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

Is medical help available for the victim of alleged sexual abuse?	Yes	This is mandated by DOC Administrative Directive 01-15 on Sexual Misconduct. The victim must be given immediate medical treatment and if necessary transported to an outside medical facility. ⁹
Are immediate mental health services available for the victim of alleged sexual abuse?		No information provided.
Is counseling available for the victim of alleged sexual abuse?		No information provided.
Is a rape kit taken?		No information provided.
Are there special procedures for investigating allegations of sexual misconduct?	Yes	Investigation procedures are detailed in Arkansas DOC Administrative Directive 01-15. Inmates may use the Inmate Grievance Procedure to report sexual misconduct allegations. ¹⁰ In the instance of sexual misconduct, Directive 01-15 mandates that complaints, including the identity of the informant, the respondent and the victim, shall be handled in a confidential manner and shall only be revealed on a need to know basis. ¹¹ The policy requires that the facility warden or administrator notify the Internal Affairs immediately, even if the employee resigns. ¹² Arkansas DOC regulations require an investigation to be undertaken and incident reports, statements and medical reports to be completed within ten days. ¹³
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	Inmates may use the Inmate Grievance Procedure to report sexual misconduct allegations. Arkansas DOC policy also contains reporting procedures for staff.
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?		No information provided.
Is the investigation external?	--	The facility warden or administrator notifies the Internal Affairs, which notifies the Arkansas State Police if there is sufficient evidence that a crime has taken place. ¹⁴
If there is an external investigation,		No information provided.

how is it triggered?		
Are special measures to shield alleged victims from retaliation taken?	Yes	DOC policy requires that the facility's warden or administrator take immediate action to ensure the safety of the inmate, including transferring or reassigning the alleged abuser, or placing him/her on administrative leave pending the outcome of an investigation. ¹⁵
If so, do the measures include solitary confinement or lockdown of the inmate?		No information provided.
Is there an independent body, such as a corrections ombudsman, with independent oversight of correctional facilities and the DOC?		No information provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?		No information provided.

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

Legislation banning shackling in the third trimester or during labor	No	Arkansas 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 Arkansas Department of Corrections response to AI's surveys, please see above

Use of restraints in third trimester	Yes	According to media reports, the Arkansas DOC adopted a new policy in 2004 which allows the use of restraints on some women depending on behavioral criteria. ¹⁶
Restraints during transport	Yes	According to media reports, the 2004 Arkansas DOC policy states that pregnant state prisoners who meet certain behavioral criteria will not be restrained when they are transported to the hospital to give birth. No further details were provided. ¹⁷
Restraints during labor	Yes	According to media reports, the 2004 Arkansas DOC policy stipulates that the prison system will no longer use metal shackles to restrain pregnant inmates in labor. Reportedly, those inmates who meet certain behavioral criteria will not be restrained during labor. Those with lesser disciplinary records will at times have one arm and one leg restrained by flexible nylon "soft restraints" instead of handcuffs or leg irons. ¹⁸
Officer in delivery room	Yes	Arkansas DOC policy states that at least one escorting employee must be female, and medical staff can request the guard to wait outside the delivery room. ¹⁹

Use of Restraints during Pregnancy – Allegations and Incidents

Shawana Nelson was detained at the McPherson Unit on non-violent charges when she gave birth to her 9-pound

son in September 2003. Upon arrival at the hospital, her leg was reportedly chained to a wheelchair and her hands were cuffed in front of her. She was taken to a bed, where an armed guard took off her handcuffs and secured her left leg to the bed with the 18-inch leg chain. Nelson reported that 6 months after the ordeal, she was still finding difficulty shaking feelings of despair and violation, and had vivid memories of having her leg restrained while her contractions were four to five minutes apart, waiting for a doctor to arrive and ask for the chain to be removed before she gave birth. The chain was reportedly replaced on one leg after her delivery.²⁰

According to the news report, around 20 women give birth while detained in Arkansas every year.²¹

Contact information

ARKANSAS DEPARTMENT OF CORRECTIONS

Director Larry B. Norris P.O. Box 8707 Pine Bluff, AR 71611-8707 Phone: (870) 267-6200	Home page: http://www.state.ar.us/doc/
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ARKANSAS DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

McPherson Correctional Facility <i>Female inmate capacity: 600²²</i> Managed by Wackenhut CC Warden John Maples 302 Wackenhut Way Newport, AR 72112 Phone: (870) 523-2639 Fax: (870) 523-6202	Boot Camp Program <i>Female inmate capacity: 62</i> Assistant Warden : John Craig P.O. Box 1000 Wrightsville, AR 72183 Phone: (501) 897-5806 Fax: (501) 897-1195
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ARKANSAS EXECUTIVE

Governor Mike Huckabee [R] Arkansas State Capitol Room 250 Little Rock, AR 72201 Phone: (501) 682-2345 Fax: (501) 682-3597 Email: mike.huckabee@state.ar.us	Homepage: http://www.state.ar.us/governor/ Contact page: http://www.state.ar.us/governor/contacts.html Elected: 1998, re-elected 2002
Attorney General Mike Beebe [D] 323 Center Street, Suite 200 Little Rock, Arkansas 72201 Tel: (501) 682-2007 or (800) 482-8982 Fax (501) 682-8084 Email: oag@ag.state.ar.us	Homepage: http://www.ag.state.ar.us/ Elected: 2002

ARKANSAS LEGISLATIVE INFORMATION

<p>Legislative Session: The General Assembly convenes on the second Monday of each odd-numbered year. A session lasts for 60 days unless the legislature votes to extend it. The governor can issue a call for a special session during the interims between regular sessions.</p> <p>House: 100 members, 4- year term (8- yr. max) Senate: 35 members, 2- year term (6- yr. max)</p>	<p>Legislature Homepage: http://www.arkleg.state.ar.us/</p> <p>Research Resources: http://www.arkleg.state.ar.us/data/ARresources.asp</p> <p>Bill Search: http://www.arkleg.state.ar.us/1999/data/ACSB&R.asp</p>
<p>Senate State Capitol, Little Rock, 72201 Phone: In sessions (501) 682-2902 Not in session: (501) 682-6107</p>	<p>Senate members web site: http://www.arkleg.state.ar.us/scripts/ABLR/members/rep.asp?Mtype=S</p> <p>Bill information phone numbers: House: (501) 375-7771 Senate: (501) 682-6107</p>
<p>House of Representatives State Capitol, Little Rock, AK 72201</p>	<p>Home page: http://www.state.ar.us/house/</p>

WOMEN IN PRISON - NGO RESOURCES

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

<p>Arkansas-CURE P.O. Box 56001 Littlerock, AR 72215 (501) 223-2620</p>
<p>Women's Project 2224 Main Street Little Rock, AR 72206 Phone: (501) 371-5113; Fax: (501) 372-0009</p> <p>Services: Women's Project works to educate and organize women on three primary issues: Violence against women, children and people of color; Women's economic issues, especially those affecting low-income women; Social justice issues such as racism, sexism, homophobia, ageism, ableism, classism and anti-Semitism. To achieve this vision, we work through linked grassroots projects that each address different issues of social justice. We also provide meeting space to community groups, a lending library that includes hard-to-find books with African American and lesbian content, and sponsor a variety of community events.</p> <p>Website: http://members.aol.com/wproject</p>
<p>ACLU of Arkansas 904 West 2nd Street Little Rock, AR 72201 Phone: 501-374-2660 Website: www.acluarkansas.org</p>

Arkansas's Custodial Sexual Misconduct Statute

§ 5-14-124. Sexual assault in the first degree

(a) A person commits sexual assault in the first degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, who is less than eighteen (18) years of age and:

- (1) (A) The actor is employed with:
 - (i) The Department of Correction;
 - (ii) The Department of Community Correction;
 - (iii) The Department of Human Services;
 - (iv) Any city or county jail; or
 - (v) A juvenile detention facility; and
- (B) The victim is in the custody of:

- (B) (i) (a) The Department of Correction;
- (b) The Department of Community Correction;
- (c) The Department of Human Services;
- (d) Any city or county jail; or
- (e) A juvenile detention facility; or
- (ii) Their contractors or agents;

...
(b) It is no defense to prosecution under this section that the victim consented to the conduct.
(c) Sexual assault in the first degree is a Class A felony.

§ 5-14-125. Sexual assault in the second degree

(a) A person commits sexual assault in the second degree if the person:

- ...
- (4) (A) Engages in sexual contact with another person who is less than eighteen (18) years of age and the person:
 - (i) Is employed with the Department of Correction, Department of Community Correction, any city or county jail, or any juvenile detention facility, and the minor is in custody at a facility operated by the agency or contractor employing the person;
 - (ii) Is a professional under § 12-12-507(b) and is in a position of trust or authority over the minor; or
 - (iii) Is the minor's guardian, an employee in the minor's school or school district, a temporary caretaker, or a person in a position of trust or authority over the minor.

(B) For purposes of subdivision (a)(4)(A) of this section, consent of the minor is not a defense to prosecution;

...
(b) (1) Sexual assault in the second degree is a Class B felony.
(2) Sexual assault in the second degree is a Class D felony if committed by a person less than eighteen (18) years of age with a person, not the person's spouse, who is less than fourteen (14) years of age.

§ 5-14-126. Sexual assault in the third degree

(a) (1) A person commits sexual assault in the third degree if the person engages in sexual intercourse or deviate sexual activity with another person, not the person's spouse, and the person:

(A) Is employed with the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail, and the victim is in the custody of the Department of Correction, Department of Community Correction, Department of Human Services, or any city or county jail; or

...
(b) It is no defense to prosecution under this section that the victim consented to the conduct.
(c) Sexual assault in the third degree is a Class C felony.

¹ Department of Corrections 2004 Annual Report, available at http://www.state.ar.us/doc/pdf/reports/2004_annual_report.pdf, as per 01/25/06.

² The information does not reflect prosecutions or convictions under rape statutes.

³ Letter from Sandy Moll, Assistant Attorney General, Arkansas Attorney General's Office, 07/11/00.

⁴ Letter from Dennis Hansen, Chief Deputy Attorney General, Arkansas Attorney General's Office, 08/05/05.

⁵ Settlement referenced at http://www.usdoj.gov/crt/split/documents/split_cripa04.pdf See also letter from R. Alexander Acosta Assistant Attorney General to Governor Mike Huckabee, November 2003 at http://www.usdoj.gov/crt/split/documents/mcpherson_grimes_findinglet.pdf

⁶ National Institute of Corrections Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research," Colorado, 01/1999.

⁷ Arkansas Department of Corrections (DOC) Administrative Directive No. 01-15, "Sexual Misconduct with Inmates," 08/13/01.

⁸ Arkansas DOC Administrative Directive No. 01-15, "Sexual Misconduct with Inmates," 08/13/01.

⁹ Arkansas DOC Administrative Directive No. 01-15, "Sexual Misconduct with Inmates," 08/13/01.

¹⁰ Arkansas DOC Administrative Directive No. 01-15, "Sexual Misconduct with Inmates," 08/13/01.

¹¹ Arkansas DOC Administrative Directive No. 01-15, "Sexual Misconduct with Inmates," 08/13/01.

¹² Arkansas DOC Administrative Directive No. 01-15, "Sexual Misconduct with Inmates", 8/13/01; Arkansas DOC, Administrative Regulations, Section 005, 9/23/87.

¹³ Arkansas DOC, Administrative Regulations, Section 005, 09/23/87.

¹⁴ Arkansas Department of Corrections Administrative Directive No.01-15, "Sexual Misconduct with Inmates," 08/13/01.

¹⁵ Arkansas Department of Corrections Administrative Directive No.01-15, "Sexual Misconduct with Inmates," 08/13/01.

¹⁶ *Prisons to Leave the Irons Off Convicts In Birth Labor*, Arkansas Democrat-Gazette (Little Rock), 04/16/04.

¹⁷ *Prisons to Leave the Irons Off Convicts In Birth Labor*, Arkansas Democrat-Gazette (Little Rock), 04/16/04.

¹⁸ *Prisons to Leave the Irons Off Convicts In Birth Labor*, Arkansas Democrat-Gazette (Little Rock), 04/16/04.

¹⁹ Administrative Directive 95-21, Reference: AR 403- AR404 p.4, C.2. Received by mail from Carl W. Dwyer, Policy Coordinator, Arkansas DOC, 09/27/00.

²⁰ Traci Shurley, *Prisoner challenges shackling during labor*, Arkansas Democrat-Gazette, 03/22/04

²¹ Traci Shurley, *Prisoner challenges shackling during labor*, Arkansas Democrat-Gazette, 03/22/04

²² All women's facility: Arkansas DOC, McPherson Correctional Facility, available at <http://www.state.ar.us/doc/>, as per 01/25/06.