

# Delaware

WOMEN IN PRISON: 508<sup>(12/03)</sup><sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

**11 § 1259** – *Sexual relations in detention facility; class G felony.*<sup>i</sup>

Delaware’s law is in its Criminal Code under Offenses Against Public Administration, and in the subpart Escape and Other Offenses Relating to Custody. Delaware considers the inmate guilty of the same offense as the custodian. The law is limited in its application to those who are employed to work at detention facilities.

Does the law impose a criminal penalty on the inmate?	<b>Yes</b>	An inmate would be guilty of the same offense. <sup>ii</sup>
Does the statute cover all relevant forms of sexual abuse?	<b>No</b>	The law only covers sexual intercourse and deviate sexual intercourse.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	<b>No</b>	The law specifically prohibits using “consent” as a defense.
Does the statute cover all custodians and staff in contact with inmates?	<b>No</b>	The law does not appear to cover contractors.
Does the statute cover all places where an inmate might be abused?	<b>No</b>	The law only criminalizes sexual conduct “on the premises of a detention facility,” not conduct off premises such as at a hospital or when an individual is on probation or parole.
Is the penalty a felony?	<b>Yes</b>	Violation is a Class G felony.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	Amnesty International did not receive a response from the Delaware Attorney General’s Office.
Incidents reported in select media since January 2000	- A correctional officer from the state boot camp at Georgetown was charged with the felony offense of having sexual relations in a detention facility. He allegedly had had sex three times with a female inmate two years earlier. ( <i>The News Journal</i> , 07/13/02)
Other Reported Incidents	<i>Valerie Daniels, et al. v. State Of Delaware, et al.</i> , 120 F. Supp. 2d 41 (2000); <i>Daniels v. Delaware</i> , 2002 WL 31716422 (3rd Cir.(Del.) Dec 04, 2002); <i>Daniels v. Hawkins</i> , 2004 WL 1375298 (D.Del. Jun 15, 2004) (NO. CIV.A. 96-009 JJF) Women’s Correctional Institution: Former inmate Valerie Daniels brought a lawsuit alleging that she was raped and impregnated by Rudolph Hawkins, a prison official. Following several appeals, Daniels was awarded \$7,500 in compensatory damages and \$50,000 in punitive damages, as well as partial attorney fees. <i>Phillips v. Bird</i> , Not Reported in F.Supp.2d, 2003 WL 22953175

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

<sup>ii</sup> Amnesty International considers correction of this problem to be of paramount importance. The retaliation against inmates who report being the victims of custodial sexual misconduct has been reported by AI as well as Human Rights Watch and the US Federal Government. The imposition of criminal liability against an inmate for sexual conduct with a custodian creates an official avenue for such retaliation.

	<p>D.Del. Dec.1, 2003.</p> <p>Plaintiff, a former inmate of the state boot camp program in Georgetown, claimed that agreed to sexual relations with a correctional officer were a violation of her Eight Amendment right to be free of cruel and unusual punishment. The court held that “consensual sex between two adults does not constitute cruel and unusual punishment simply because it occurs within the walls of a prison.”</p> <p><i>Carrigan v Delaware</i> 957 F. Supp. 1376, U.S. Dist. LEXIS 2131 (1997); <i>Dorothy Carrigan v. Peter Davis</i>, 70 F. Supp. 2d 448 (1999)</p> <p>Women’s Correctional Institution: Dorothy Carrigan claimed that on March 6, 1995, correctional Officer Davis entered her room while she was taking an afternoon nap. Davis pulled her to the end of the bed, placed a condom on his penis and engaged in vaginal intercourse against her will. Davis threw the condom on the bed and told her to dispose of it; however, Carrigan kept the condom and told another inmate about the incident. An investigation followed. Davis claimed that Carrigan seduced him and consented to fellatio. Davis was arrested on charges of engaging in sex in a detention facility and resigned from his position as a correction officer. He was subsequently found not guilty in criminal proceedings.</p> <p>Carrigan’s suit against the state of Delaware and prison officials was dismissed on summary judgment. The Court found that the officials were entitled to qualified immunity and had not violated constitutional rights. It held that Carrigan had offered insufficient evidence that the prison officials had acted negligently.<sup>3</sup></p> <p>In the civil suit filed by Carrigan, Davis was found liable for a violation of Carrigan’s civil rights under the Eighth Amendment. The Court commented that even if Carrigan had consented to the sexual act, “it does not alter Defendant Davis’s special responsibilities toward the Plaintiff [Daniels] based on his control and supervision of her.”<sup>4</sup></p>
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## ***Custodial Sexual Misconduct – Policies, Practices and Procedures of Guarding Specific to Women***

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

Is the current Department of Corrections policy on custodial sexual misconduct language-explicit?	<b>No</b>	The policy does not contain specific language about the sexual nature of the behaviors prohibited. <sup>5</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	According to a written response from the Delaware Department of Correction (DOC), policy restricts cross-gender pat-down searches to emergency situations. <sup>6</sup> “Emergency” is not defined.
What is the percentage of female officers in relation to male officers?		According to Delaware DOC statistics, 66% of officers are female and 34% are male. <sup>7</sup>
Restrictions on the duties of male guards?		No response provided.
Staff training on sexual misconduct?	<b>Yes</b>	According to the Delaware DOC, this occurs during pre-service academy training. <sup>8</sup>
Inform inmates of agency policies and reporting procedures on sexual	<b>Yes</b>	According to the Delaware DOC, inmates are informed of these procedures by counseling staff and a toll-free number for reports of

misconduct?		sexual misconduct is posted. <sup>9</sup>
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## ***Custodial Sexual Misconduct - Policies and Procedures***

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

The following is based on the Delaware 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 Delaware DOC, medical care for victims of sexual abuse is included in its contract with a medical service provider. <sup>10</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Delaware DOC, immediate mental health services for victims of sexual abuse are included in its contract with a medical service provider. <sup>11</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Delaware DOC, counseling for victims of sexual abuse is included in its contract with a medical service provider. <sup>12</sup>
Is a rape kit taken?	<b>Yes</b>	According to the Delaware DOC, the inmate is taken to a local hospital. <sup>13</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	According to the Delaware DOC, the Internal Affairs office conducts administrative investigations and takes statements. The results of the administrative investigations are forwarded to the state's Attorney General's Office. <sup>14</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to the Delaware DOC, a toll-free number is posted at the women's institution which is a direct line to the Internal Affairs Office. In addition, facility management may also initiate an investigation with Internal Affairs. <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>	There is no formal system.
Is the investigation external?	--	According to the Delaware DOC, an investigation would be conducted by State Police if it is a criminal investigation. <sup>16</sup>
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	<b>No</b>	The Delaware DOC does not appear to have a mandatory procedure in place. According to the Delaware DOC, there may be special measures if the inmate requests such measures or if "it is deemed appropriate to take action" (no details provided as to what would be deemed appropriate). <sup>17</sup>
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>Yes</b>	According to the Delaware DOC, these could be available options. <sup>18</sup>
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	<b>No</b>	No details provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	--	The Delaware DOC states that it would track investigations up to arrest or the employees leaving employment. It does not track indictments or convictions.

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

<i>None</i>
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## **Pregnancy in Custody**

## ***Pregnancy - Statute***

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

Policy on use of restraints in third trimester	<b>Yes</b>	According to the Delaware DOC, policy generally restricts the type and use of restraints on pregnant offenders. <sup>19</sup> Delaware DOC does not make policies publicly available for security reasons. <sup>20</sup>
Restraints during transport	<b>Yes</b>	See above.
Restraints during labor	<b>Yes</b>	See above.
Officer in delivery room	--	No information provided.

## **Contact information**

### **DELAWARE DEPARTMENT OF CORRECTIONS**

<b>Commissioner Stanley W. Taylor, Jr.</b> Administration Building 245 McKee Road Dover, DE 19904 Phone: (302) 739-5601 Email: <a href="mailto:gail.stallings@state.de.us">gail.stallings@state.de.us</a>	Website: <a href="http://www.state.de.us/correct/default.shtml">http://www.state.de.us/correct/default.shtml</a>
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### **DELAWARE DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN**

<b>DELORES J. BAYLOR WOMEN'S CORRECTIONAL INSTITUTION</b> Female inmates: 340 (2004) <sup>21</sup> Warden: Patrick Ryan 660 Baylor Boulevard New Castle, DE 19720 Phone: (302) 577-3004	<b>BOOT CAMP<sup>22</sup></b> Camp Commander: Rick Tabler Route One, Box 500 Georgetown, DE 19947 Phone No: (302) 856-5280
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### **DELAWARE EXECUTIVE**

<b>Governor Ruth Ann Minner [D]</b> Dover Office: Legislative Hall Dover, DE 19901 Phone (302) 739-4101 Fax: (302) 739-2775	Homepage: <a href="http://www.state.de.us/governor/index.htm">http://www.state.de.us/governor/index.htm</a>  Email: <a href="mailto:gcarper@state.de.us">gcarper@state.de.us</a> Elected in 2000
<b>Attorney General M. Jane Brady [R]</b> Carvel State Office Building 820 N. French Street Wilmington, DE 19801 Civil Division: (302) 577-8400; Fax: (302) 577-6630 Criminal Division: (302) 577-8500; Fax: (302) 577-2496 Email: <a href="mailto:Attorney.General@State.DE.US">Attorney.General@State.DE.US</a>	Homepage: <a href="http://www.state.de.us/attgen/">http://www.state.de.us/attgen/</a>  Elected: 1994, re-elected 1998, 2002

### **DELAWARE LEGISLATIVE INFORMATION**

<p><b>House:</b> 41 members, 2-year term  <b>Senate:</b> 21 members, 4-year term  All legislative elections held in even years</p> <p><b>Legislative Session:</b> Two-year terms . Starts 2<sup>nd</sup> Tuesday in January and ends June 30. Bills carry-over.</p>	<p>Legislature home page:  <a href="http://www.legis.state.de.us/Legislature.nsf/?Opendatabase">http://www.legis.state.de.us/Legislature.nsf/?Opendatabase</a>  <b>Bill Search</b> on legislative homepage</p> <p><b>Bill Info. Phone Numbers for State Legislatures:</b>  (302) 739-4129</p>
<p><b>Senate</b>  P.O. Box 1401  Legislative Hall  Dover DE 19903</p>	<p>Home page:  <a href="http://www.state.de.us/research/senate/senate.htm">http://www.state.de.us/research/senate/senate.htm</a></p>
<p><b>House Of Representatives</b>  P.O. Box 1401  Legislative Hall  Dover DE 19903</p>	<p>Home page:  <a href="http://www.state.de.us/research/house/house.htm">http://www.state.de.us/research/house/house.htm</a></p>

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

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

<p>Delaware -CURE  P.O. Box 7986  Newark, DE 19714-7986</p>
<p>ACLU of Delaware  100 W. 10<sup>th</sup> Street, Ste. 309  Wilmington, DE 19801  Phone: (302) 654-3966; Fax: (302) 654-3689  Email: <a href="mailto:aclu@acludelaware.org">aclu@acludelaware.org</a>  Web site: <a href="http://www.aclu-de.org">www.aclu-de.org</a></p>
<p>Delaware Center for Justice, Inc.  100 West 10<sup>th</sup> Street, Ste 905  Wilmington, DE 19801  Phone: (302) 658-7174; Fax: (302) 658-7170  E-mail: <a href="mailto:center@dcjustice.org">center@dcjustice.org</a>  Website: <a href="http://www.dcjustice.org">www.dcjustice.org</a>  Services: DCJ focuses on issues and actions related to several areas of concern in our criminal justice system including: Conditions of confinement; Alternatives to incarceration; Reentry initiatives for incarcerated populations; More cost-effective and efficient use of limited corrections resources; Legislative reform as it pertains to creating a higher quality of justice; Meeting the needs of victims of crime; Crime prevention programs.</p>
<p>American Association of University Women  Delaware Chapter  P.O. Box 204  Dover, DE 19903  Website: <a href="http://www.aauwdelaware.org">www.aauwdelaware.org</a></p>

League of Women Voters of Delaware League of Women Voters of New Castle County Delaware League of Women Voters Education Fund 225 N. King Street, lower level Wilmington, DE 19801-2521 Phone: (302) 571-8948
National Coalition Against Domestic Violence PO Box 847 Wilmington, DE 19899 Phone: (302) 658-2958
NOW Legal Defense & Education Fund Phone: (302) 731-7316
Planned Parenthood Federation of America 625 Shipley Street Wilmington, DE 19801 Phone: (302) 655-7296
United Methodist Church 2200 Baynard Blvd Wilmington, DE 19802 Phone: (302) 571-1471
YWCA of the U.S.A. 233 King Street Wilmington, DE 19801 Phone: (302) 658-7161
National Association of Social Workers Phone: (302) 792-0646
American Association of Retired Persons 1 Commerce Center Wilmington, DE 19801 Phone: (302) 884-6710

## Delaware's Custodial Sexual Misconduct Statute

§ 1259. *Sexual relations in detention facility; class G felony.*

A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility. It shall be no defense that such conduct was consensual. Violation of this section shall be a class G felony.

<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 01/26/05.

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

<sup>3</sup> Carrigan v. Delaware, 957 F. Supp 1376 (D.Del. 1997).

<sup>4</sup> Carrigan v. Davis, 70 F. Supp. 2d 448 (D.Del. 1999).

<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 Carl Danberg, Office of the Commissioner, Delaware Department of Correction (DOC), 02/15/01.

<sup>7</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>8</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>9</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>10</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>11</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>12</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>13</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>14</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>15</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>16</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>17</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

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<sup>18</sup> Fax from Deborah Craig, Research Department, Delaware DOC, 10/03/05.

<sup>19</sup> Email from Carl Danberg, Office of the Commissioner, Delaware DOC, 02/15/01 and 02/16/01.

<sup>20</sup> Phone conversations with Ms. Beth Welch, Media Relations, Department of Correction, 10/2000 and Mr. Stuart Drowos, Attorney General's Office, 12/2000.

<sup>21</sup> Delaware DOC, Profile of Total Inmate Population, available at <http://www.state.de.us/correct/pdfs/PopulationFactSheet2004.pdf>, as per 01/25/06.

<sup>22</sup> Delaware DOC, The Sussex Boot Camp, available at <http://www.state.de.us/correct/BOP/BootCamp.shtml>, as per 01/25/06.