

Georgia

WOMEN IN PRISON: 3,262 (07/05)

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§16-6-5.1 – *Sexual assault against persons in custody; person detained*¹

Georgia’s law is in the Sexual Offenses section of the Criminal Code. The law creates a special category for probation and parole officers, and has another catchall category for those in custody of law, where the subsection disallows consent.

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?	Yes	The law covers all sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	--	The law provides in §C that if a person is in custody then consent is not a defense. It is unclear if, under §B, a probation or parole officer can use the consent of the probationer or parolee as a defense.
Does the statute cover all custodians and staff in contact with inmates?	No	The law only covers those who have “supervisory or disciplinary authority” over the victim; it does not cover other employees or contractors.
Does the statute cover all places where an inmate might be abused?	Yes	The law covers any place a person who is “in custody of law” is detained, and also explicitly protects probationers or parolees.
Is the penalty a felony?	Yes	At least one and no more than three years’ imprisonment and/or fine of up to \$5,000.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ¹	Amnesty International did not receive a response from the Georgia Attorney General’s Office.
Incidents reported in select media since January 2000	<ul style="list-style-type: none"> - Walton Way Jail: Three male jailers, Stargel M. Booth, Raymond McNeary Sr., and Tommy L. Williams Sr., were fired but will not be criminally charged for allegedly repeatedly giving dollar bills to a 19 year-old inmate to show her breasts. Deputy Jaime Banda remains free on bond pending trial on charges that he sexually molested the same inmate. (<i>The Augusta Chronicle, March 10, 2003</i>) - Walker County: Correction officers Kevin Williams and Vance Hinch were arrested and charged with engaging in sexual activity with female inmates. The incidents allegedly took place late at night in a medical room, where the officers brought the inmates under pretense of giving them medicine. (<i>AP, 03/06/03</i>) - Hall County Detention Center: A grand jury indicted a former jailer on six felony counts involving sex with female inmates. Walter Anthony Fidel was charged with three counts each of sexual assault on an inmate. (<i>The Atlanta Journal and Constitution, 03/03/01</i>)

¹ The text of Georgia’s statute is at the end of this section.

	<p>- Gordon County Jail: A federal lawsuit filed against the outgoing Gordon County sheriff and his jail staff claims that guards coerced female inmates into performing sexual acts. Four women claim that, between 1996 and 1999, guards forced female inmates to perform acts ranging from striptease shows to having unprotected sex with guards and male inmates in exchange for cigarettes, phone calls and other favors. According to the suit, one inmate became pregnant after having sex with a guard and underwent an abortion. The lawsuit names Sheriff Sid Roberts, Georgia Department of Corrections Commissioner Jim Wetherington and 10 jail employees as defendants. It alleges that Sheriff Roberts and Mr. Wetherington failed to eliminate sexual abuse and harassment at the jail after they knew of the problems. The lawsuit contends that the women's right of freedom from unlawful search and seizure were violated and that the women were subjected to cruel and unusual punishment. (<i>The Augusta Chronicle</i>, 01/01/01)</p>
Other Reported Incidents	<p><i>Krauss v. The State</i>, 263 Ga. App. 488 (2003) Police officer Dennis Krauss was convicted of sexual assault against a person in custody. According to testimony, Krauss responded to a domestic violence call in which the victim told him that her husband had hit her and that she wanted her husband to leave. Krauss, however, asked the victim to go with him in his police car. In the car, he reportedly told her that he could take her to jail if he wanted to for domestic violence. The victim testified that she believed that she was in custody and was not free to leave. Krauss reportedly told her they could go to a motel or she could go to jail. He reportedly then took her to a motel where he allegedly took his gun from his gun belt and told the victim he wanted to have anal sex with her with the gun. She refused and, at his order, sat on the bed. He allegedly pushed her back, pulled off her pants, and had sex with her. He then drove her home. On appeal, Krauss's conviction was upheld.</p>
	<p><i>UN Special Rapporteur on Violence Against Women</i> (January 1999) The Special Investigations Unit of Georgia Department of Corrections reported receiving 131 cases of sexual misconduct in 1996, 137 in 1997 and 67 in the first half of 1998. Since 1996, the District Attorney had prosecuted only three cases. Warden at Washington State Prison reportedly receives 2-3 allegations of sexual misconduct per month.²</p>

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

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

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	Yes	Policy includes direct and specific language about the sexual nature of the behaviors prohibited. ³
Allow cross-gender pat-down searches?	Yes	Georgia Department of Corrections (DOC) policy mandates that frisk searches shall be conducted by an officer of the same sex when possible. ⁴
What is the percentage of female officers in relation to male officers?		No information provided.
Restrictions on the duties of male guards	Yes	Gender-specific posts have been created and restrictions on the duties of male guards do exist. ⁵ For example, Georgia DOC policy mandates that strip searches of females shall be conducted by female correctional officers. This provision may be waived in emergency situations, ⁶ which are defined as situations in which death or serious

		bodily injury is likely to result. ⁷
Staff training on sexual misconduct?	Yes	According to Georgia DOC officials, the Department has introduced mandatory staff training for employees and in-service training once a year. ⁸ Employees of the Georgia DOC must also be trained on the Permanent Injunction Order stemming from the case of Cason v. Seckinger, which prohibits sexual contact with female inmates. A block of instruction concerning sexual contact and abuse is to be presented immediately upon hiring to all new departmental employees who may come in contact with sentenced females. ⁹
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According to Georgia DOC, it has introduced a procedure by which inmates are made aware of policies during “diagnostics.” ¹⁰ Georgia DOC policy also mandates that sentenced females housed by the DOC will have explained to them the meaning and effect of court orders stemming from the case of Cason v. Seckinger, which prohibit sexual contact with and abuse of sentenced females. ¹¹

Custodial Sexual Misconduct - Policies and Procedures

Guiding Official Response

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

Is medical help available for the victim of alleged sexual abuse?	Yes	According to Georgia DOC policy, when a patient reports sexual abuse by a staff member, arrangements will be made for a medical evaluation to determine the extent of physical injuries, evaluation for sexually transmitted infections and pregnancy test. ¹²
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to Georgia DOC policy, facility managers will make arrangements for an inmate’s emotional and psychological evaluation immediately upon learning of allegations of custodial sexual misconduct. Inmates are to be evaluated by mental health staff to assess the emotional impact of the alleged incident. The evaluation session must provide the inmate/parolee the opportunity to talk freely about the experience and any feelings that have arisen. The evaluator must review relevant correctional, health, and mental health history, and be especially aware of any prior victimization that could increase the person’s psychological vulnerability. Mental health evaluators will not be involved in determining guilt or innocence, truth or falsehood. The policy specifies that the evaluator is not an investigator but performs a treatment role as a health professional. However, policy mandates that, after the evaluation, the counselor immediately notify the office of the special investigator for allegations of staff on inmate/parolee abuse stating whether or not the inmate/probationer is willing to be interviewed and if the inmate/probationer requests the counselor to be present during the interview. ¹³
Is counseling available for the victim of alleged sexual abuse?	Yes	Mental health staff will refer the person for mental health treatment and interventions as clinically indicated. Georgia DOC policy mandates that they err on the side of caution to avoid denying treatment where it may be needed. ¹⁴
Is a rape kit taken?	Yes	If the sexual abuse has been reported to have occurred in the previous 72 hours, the medical evaluation for sexual abuse will be conducted by an appropriate outside medical facility. The examination will include a rape kit. Individuals refusing to be evaluated following a report of sexual abuse will be counseled regarding the medical and legal implications of foregoing the evaluations. ¹⁵

		If the abuse occurred more than 72 hours previously, the decision as to whether the evaluation is done by a local hospital or by institutional staff will be made on a case-by-case basis by the Health Authority in consultation with the investigator. ¹⁶
Are there special procedures for investigating allegations of sexual misconduct?	Yes	According to Georgia DOC officials, the DOC has a Special Investigations Unit that handles all sexual misconduct allegations. ¹⁷
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	Georgia DOC policy indicates that sentenced females housed by the DOC should report incidents and rumors of sexual misconduct to a designated departmental authority. ¹⁸ Furthermore, Georgia DOC policy mandates that as soon as staff members become aware of an incident of sexual contact or abuse, the staff member shall immediately inform the warden or other specified officials. Failure to do so may result in disciplinary action up to and including dismissal. ¹⁹
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	Yes	No details provided.
Is the investigation external?	--	No details provided.
If there is an external investigation, how is it triggered?		According to the Georgia DOC, the DOC commissioner may request the assistance of the Georgia Bureau of Investigation. ²⁰
Are special measures taken to shield alleged victims from retaliation?	Yes	Georgia DOC policy bans department employees from retaliating against the alleged victim and details prohibited behavior. The accused staff may also be placed on suspension, subject to other alternatives as indicated by the investigation, such as temporary transfer to another institution, pending the outcome of the investigation. ²¹
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	Georgia DOC policy allows administrative segregation for up to 7 calendar days, although it can be extended beyond this period upon the specific recommendation of the Manager of the Special Investigations Unit and approval of the Director or Women's Services or other specified individuals. In segregation, the inmate shall be provided all personal belongs and have all rights and services available to the general population, including telephone, mail and visitation access. ²² Georgia DOC policy indicates that the inmate shall be informed that if administrative segregation is utilized, it will only be utilized if necessary and for the shortest period possible. The policy states that the purpose of administrative segregation will be to further the legitimate needs of the investigation, and is not to be punitive. ²³
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	Yes	According the Georgia DOC, the Office of Investigations and Compliance is an independent body with oversight. ²⁴
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	Georgia DOC policy mandates the creation of a computer-based system to number and track instances of sexual abuse, sexual contact or sexual harassment, which includes tracking alleged perpetrators. ²⁵

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	No	Georgia 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 Georgia Department of Corrections response to AI's surveys, please see above.

Use of restraints in third trimester	Yes	According to written response from Georgia DOC officials, handcuffs are used unless medical staff advise against it. It is unclear whether this is determined by policy or procedure. ²⁶
Restraints during transport	Yes	According to written response from Georgia DOC officials, inmates are transported in handcuffs unless medical staff advise against it. Two female escorts are supplied. It is unclear whether this is determined by policy or procedure. ²⁷
Restraints during labor	No	According to conversation with Georgia DOC official, no restraints are applied during labor. It is unclear whether this is determined by policy or procedure. ²⁸
Officer in delivery room	No	According to conversation with a Georgia DOC official, a female correctional officer is to be posted outside the door during labor/delivery, and returns to the room after delivery. ²⁹

Contact information

GEORGIA DEPARTMENT OF CORRECTIONS

Commissioner James E. Donald 2 Martin Luther King, Jr. Drive East Tower, 8 th Floor Atlanta, GA 30334	Home page: http://www.dcor.state.ga.us/ DOC Office of Public Information: Phone: (404) 656-9772; Fax: (404) 651-6818 Email: info@dcor.state.ga.us
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GEORGIA DEPT OF CORRECTIONS FACILITIES FOR WOMEN

Metro State Prison Female inmates: 785 (07/05) 1301 Constitution Road Atlanta, GA 30316 Phone: (404) 624-2200 Fax: (404) 624-2235 A maximum-security facility.	Pulaski State Prison Female Inmates: 1015 ³⁰ P.O. Box 839 Hawkinsville, GA 31036 Phone: (912) 783-6000 Fax: (912) 783-6008 Houses female inmates of all security levels and juveniles.	Washington State Prison Female Inmates: 892 (07/05) ³¹ P.O. Box 206 Davisboro, GA 31018 Phone: (912) 348-5814 Fax: (912) 348-5613 Co-ed facility. Close security for women, minimum and medium security men.
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GEORGIA EXECUTIVE

Governor Sonny Perdue [R] State of Georgia 203 State Capitol Atlanta, GA 30334 Phone (404) 656-1776 Fax (404) 657-7332	Homepage: http://gov.state.ga.us/ Contact page: http://gov.state.ga.us/document.asp?doc=contacts Elected: 2002
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Attorney General Thurbert E. Baker [D] 40 Capitol Square, SW Atlanta, GA 30334 Phone: (404) 656-3300 Fax: 404-657-8733	Homepage: http://www.ganet.org/ago Elected: 1997, re-elected in 2002
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GEORGIA LEGISLATIVE INFORMATION

Legislative Session: General Assembly convenes the second Monday of every January and meets for 40 legislative days. Senate: 56 members, 4-year terms, House: 180 members, 2-year terms.	Legislature home page: http://www2.state.ga.us/Legis Bill search: http://www2.state.ga.us/Legis/1999_00/senate/billno99s.html Bill Search phone numbers: House: (404) 656-5015 Senate: (404) 656-5040
Senate State Capitol Atlanta, GA 30334	Home page: http://www2.state.ga.us/Legis/1999_00/senate/index.htm
House Of Representatives State Capitol Building Atlanta GA 30334	Home page: http://www2.state.ga.us/Legis/1999_00/house/house.htm

WOMEN IN PRISON - NGO RESOURCES

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

Georgia-CURE P.O. Box 23074 Savannah, GA 31403 Phone: (912) 231-1612
Aid to Children of Imprisoned Mothers, Inc (AIM) 906 Ralph David Abernathy Blvd. SW Atlanta, GA 30310 Phone: (404) 755-3262; Fax: (404) 755-3294 Website: www.takingaim.net Services: Offers a variety of support services to the children and other family members including after school programming, summer camp, and Saturday programs for the children, transportation of children for prison visits, emergency aid for families, and information and referral for mothers and caregivers. AIM also provides consultation to legislators, judges and other professionals on child custody issues.
Prison Ministries with Women Inc P.O. Box 1911 Decatur GA 30031-1911 Phone: (404) 622-4314
Project South 9 Gammon Avenue SW Atlanta GA 30315 Phone: (404) 622-0602; Fax: (404) 622-7992 Website: www.projectsouth.org
Prison & Jail Project / Freedomways P.O. Box 6749 Americus GA 31709 Phone: (912) 924-0671; Fax: (912) 924-3227
The Prisoners Resource Clearinghouse Inc. 2103 N. Decatur Rd. Suite 113 Decatur, GA 30033 Phone: (770) 582-9801; Fax: (770) 825-0766 Website: http://expage.com/page/prisonerpage
Georgians for Equal Justice 83 Poplar Street NW

Atlanta GA 30303-2122
Phone: (404) 688-1202; Fax: (404) 688-9440
Email: GEJustice@yahoo.com
Web page: www.schr.org/equaljustice/index.html

ACLU of Georgia
70 Fairlie Street, Suite 340
Atlanta, GA 30303
Phone: (404) 523-5398
Email: info@acluga.org
Website: www.acluga.org

Georgia's Custodial Sexual Misconduct Statute

16-6-5.1. Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient

(a) As used in this Code section, the term:

- (1) "Actor" means a person accused of sexual assault.
- (2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person.
- (3) "Psychotherapy" means the professional treatment or counseling of a mental or emotional illness, symptom, or condition.
- (4) "Sexual contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.

(b) A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person. A person convicted of sexual assault shall be punished by imprisonment for not less than one nor more than three years.

(c)(1) A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is:

- (A) In the custody of law; or
- (B) Detained in or is a patient in a hospital or other institution.

(2) A person commits sexual assault when, as an actual or purported practitioner of psychotherapy, he or she engages in sexual contact with another person who the actor knew or should have known is the subject of the actor's actual or purported treatment or counseling, or, if the treatment or counseling relationship was used to facilitate sexual contact between the actor and said person.

(3) Consent of the victim shall not be a defense to a prosecution under this subsection.

(4) A person convicted of sexual assault under this subsection shall be punished by imprisonment for not less than one nor more than three years.

(d) A person who is an employee, agent, or volunteer at any facility licensed or required to be licensed under Code Section 31-7-3, relating to long-term care facilities, or Code Section 31-7-12, relating to personal care homes, or who is required to be licensed pursuant to Code Section 31-7-151 or 31-7-173, relating to home health care and hospices, commits sexual assault when such person engages in sexual contact with another person who has been admitted to or is receiving services from such facility, person, or entity. A person convicted of sexual assault pursuant to this subsection shall be punished by imprisonment for not less than one nor more than five years, or a fine of not more than \$5,000.00, or both. Any violation of this subsection shall constitute a separate offense.

¹ The information does not reflect prosecutions or convictions under rape statutes.

² U.N. Special Rapporteur on Violence Against Women, *Report of the mission to the United States of America on the issue of Violence against Women in State and Federal Prisons*, U.N. DOC. E/CN.4/1999/68/Ad.2 (Jan. 1999).

³ 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.

⁴ Georgia Department of Corrections (DOC), Standard Operating Procedures IIB01-0013, Searches, Security Inspections and Use of Permanent Logs, 08/15/01.

⁵ Georgia DOC Standard Operating Procedures IVO02-0005, Gender-Specific Post Assignments/Job Responsibilities, 09/01/01.

⁶ Georgia DOC Standard Operating Procedures IIB01-0013, Searches, Security Inspections and Use of Permanent Logs, 08/15/01.

⁷ Georgia DOC Standard Operating Procedures IVO02-0005, Gender-Specific Post Assignments/Job Responsibilities, 09/01/01.

⁸ Faxed corrections from Laura Jones and Ms. Scheree Lipscomb, Director of Women's Services, Georgia DOC, 02/14/01.

⁹ Georgia DOC Standard Operating Procedures IG01-0003, Awareness Procedures and Training Regarding the Permanent Injunction Consent Orders Issued on 03/07/94 and 11/23/94, Respectively, in *Cason v. Seckinger*, 09/01/01.

¹⁰ Faxed corrections from Laura Jones and Ms. Scheree Lipscomb, Director of Women's Services, Georgia DOC, 02/14/01.

¹¹ Georgia DOC Standard Operating Procedures IG01-0003, Awareness Procedures and Training Regarding the Permanent Injunction Consent Orders Issued on 3/07/94 and 11/23/94, Respectively, in *Cason v. Seckinger*, 09/01/01.

¹² Georgia DOC Standard Operating Procedures VH81-0001, Health Services – Physical Health, 09/01/01.

¹³ Georgia DOC Standard Operating Procedures VG01-0014, Health Services – Mental Health, 06/01/01.

¹⁴ Georgia DOC Standard Operating Procedures VG01-0014, Health Services – Mental Health, 06/01/01.

¹⁵ Georgia DOC Standard Operating Procedures VH81-0001, Health Services – Physical Health, 09/01/01.

¹⁶ Georgia DOC Standard Operating Procedures VH81-0001, Health Services – Physical Health, 09/01/01.

¹⁷ Faxed corrections from Laura Jones and Ms. Scheree Lipscomb, Director of Women's Services, Georgia DOC, 02/14/01.

¹⁸ Georgia DOC Standard Operating Procedures IG01-0003, Awareness Procedures and Training Regarding the Permanent Injunction Consent Orders Issued on 3/07/94 and 11/23/94, Respectively, in Cason v. Seckinger, 9/01/01.

¹⁹ Georgia DOC Standard Operating Procedures IK01-0006, Policy and Executive Procedure/Internal Affairs, 09/01/00.

²⁰ Fax from Georgia DOC, 09/28/05.

²¹ Georgia DOC Standard Operating Procedures IK01-0006, Policy and Executive Procedure/Internal Affairs, 09/01/00.

²² Georgia DOC Standard Operating Procedures IK01-0006, Policy and Executive Procedure/Internal Affairs, 09/01/00.

²³ Georgia DOC Standard Operating Procedures IK01-0006, Policy and Executive Procedure/Internal Affairs, 09/01/00.

²⁴ Fax from Georgia DOC, 09/28/05.

²⁵ Georgia DOC Standard Operating Procedures IK01-0006, Policy and Executive Procedure/Internal Affairs, 09/01/00.

²⁶ Faxed corrections from Ms. Laura Jones and Ms. Scheree Lipscomb, Director of Women's Services, Georgia DOC, 02/14/01.

²⁷ Faxed corrections from Ms. Laura Jones and Ms. Scheree Lipscomb, Director of Women's Services, Georgia DOC, 02/14/01.

²⁸ Phone conversation, Ms. Scheree Lipscomb, Director of Women's Services, 02/08/01.

²⁹ Phone conversation, Ms. Scheree Lipscomb, Director of Women's Services, 02/08/01.

³⁰ Georgia DOC Active Offender Population Statistics by Gender, available at <http://www.dcor.state.ga.us/GDC/OffenderStatistics/jsp/OffStatsResults.jsp>, as per 01/27/06.

³¹ Georgia DOC, Active Offender Population Statistics by Gender, available at <http://www.dcor.state.ga.us/GDC/OffenderStatistics/jsp/OffStatsResults.jsp>, as per 01/27/06.