

Hawaii

WOMEN IN PRISON: 710(02/2005)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§707-731 – *Sexual assault in the second degree.*

§707-732 – *Sexual assault in the third degree.*¹

Hawaii includes a custodial sexual misconduct provision in its statutory rape laws. The act of penetration is a second-degree offense and sexual contact is a third degree offense.

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 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	The laws are part of the “statutory rape” laws, where the victim’s consent is irrelevant to the crime. There is case law that says an imprisoned woman’s consent is “ineffective”.
Does the statute cover all custodians and staff in contact with inmates?	--	Hawaii has expanded its definition since the 2001 report. The laws cover employees of state correctional facilities, private companies providing services at a correctional facility, private providers of community-based services to persons committed to the director of public safety, and law enforcement officers. It is unclear that the laws would cover employees of public community-based services, such as emergency health care or clergy. With respect to employees of private companies providing community-based residential services, the law requires that individuals have received notice of this statute; Amnesty International does not have information confirming whether such notice is provided.
Does the statute cover all places where an inmate might be abused?	Yes	The law applies to all persons committed to the director of public safety (including parolees) and is not specific as to location.
Is the penalty a felony?	Yes	Violation of the second degree is a Class B felony; violation of the third degree is a Class C felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	Amnesty International did not receive a response from the Hawaii Attorney General’s Office.
Incidents reported in select media since January 2000	- Maui Community Correctional Center- Warden Albert K. Murashige was sentenced to one year in jail and given years’ probation for sexually assaulting a female inmate. Murashige pleaded no contest to two counts of

¹ In 2002, the Hawaii State Legislature amended sections 707-731 and 707-732 to apply to private correctional facilities. In 2004, the same sections were amended to apply to individuals committed to the director of public safety. In 2004, the Hawaii State Legislature amended section 707-700 to revise the definitions of sexual contact and sexual penetration to ensure consistency with other sexual offenses.

	<p>second-degree attempted sexual assault and second and third degree sexual assault. In return, the state dropped nine charges, including first-degree sexual assault and kidnapping, and agreed to seek only a 10-year term. However, Judge Reinette Cooper rejected the recommended sentence due to Murashige’s high senior status, pleas from community leaders and her perception that, as a first time offender, he was unlikely to committing another offense. Murashige is the first warden in Hawaii to be convicted of sexual misconduct involving an inmate. (<i>Honolulu Star-Bulletin, 06/18/04</i>)</p>
	<p>- Hawaii Youth Correctional Facility- Former corrections officer Li’a “Oli” Olione pleaded guilty to three counts of sexual assault and one count of terroristic threatening involving a teenage girl who was held in the youth prison. As part of his plea agreement, Olione agreed to a maximum 15-year prison term and agreed to serve at least nine years in prison before he would be eligible for parole. (<i>Honolulu Advertiser, 04/30/04</i>)</p>
	<p>- Central Oklahoma Correctional Facility: Three female inmates under the custody of Hawaii Department of Corrections, who were sent to an Oklahoma facility, claim they were sexually assaulted by employees of a mainland prison. (<i>Honolulu Star-Bulletin, 11/02/00</i>)</p>

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

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

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	Yes	The policy includes direct and specific language about the sexual nature of the behaviors prohibited. ³
Allow cross-gender pat-down searches?	Yes	Cross-gender searches are allowed, but the Hawaii DOC tries to assign women staff to posts where pat searches of female inmates may be required. ⁴
What is the percentage of female officers in relation to male officers?		15% of all correctional officers are female. At the Women’s Correctional Facility, around half the correctional officers are women. ⁵
Restrictions on the duties of male guards?	Yes	According to the Hawaii Department of Public Safety, select posts are designated “female only.” Further details were not provided. ⁶
Staff training on sexual misconduct?	Yes	According to the Department of Public Safety, a training sponsored by the National Institute of Corrections was offered in 2004. ⁷
Inform inmates of agency policies and reporting procedures on sexual misconduct?	No	No details provided by Department of Public Safety.

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

The following is based on the Hawaii Department of Public Safety’s response to AI’s surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	Yes	Department policy requires that the facility health care unit be immediately notified upon allegation of sexual abuse made by an inmate. The health care unit performs examinations, and makes a decision about referral to a hospital, a clinic specializing in sexual abuse cases, and/or mental health counseling. ⁸
---	------------	--

Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	See above.
Is counseling available for the victim of alleged sexual abuse?	Yes	See above.
Is a rape kit taken?	Yes	Hawaii Department of Public Safety reported that victims are sent to the nearest hospital. ⁹ AI assumes that a rape kit would be administered during an examination at a hospital.
Are there special procedures for investigating allegations of sexual misconduct?	Yes	Department policy provides that if correctional staff is the suspected perpetrator of a sexual assault, he/she may not participate in the investigation. As of 2005, this policy has not been revised to include further investigation procedures. ¹⁰
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	No details provided by the Department of Public Safety.
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	Yes	According to the Department of Public Safety, all criminal conduct is reported to state law enforcement authorities. ¹¹
Is the investigation external?	Yes	Departmental policy requires that all allegations be immediately referred to the Internal Affairs Office for investigation. As a matter of practice the local police department and the Attorney General's Investigation Unit are also notified. ¹²
If there is an external investigation, how is it triggered?	Yes	According to the Department of Public Safety, an external investigation is triggered by complaints filed by inmates.
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	No	No details provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	No	No details provided.
Are special measures taken to shield alleged victims from retaliation?	Yes	No details provided by Department of Public Safety.
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	According to the Department of Public Safety, inmates are placed in administrative segregation.

Custodial Sexual Misconduct –Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

Legislation banning shackling in the third trimester or during labor	No	Hawaii has no legislation limiting the use of shackling on pregnant inmates.
--	-----------	--

Pregnancy - Policies, Procedures and Practices

The following is based on the Hawaii Department of Public Safety's response to AI's surveys, please see above.

Use of restraints in third trimester	No	According to the Hawaii Department of Public Security, there is no
--------------------------------------	-----------	--

		policy, but practice is not to use restraints in the third trimester. ¹³
Restraints during transport	No	According to the Hawaii Department of Public Security, there is no policy, but practice is not to use restraints in the third trimester. ¹⁴
Restraints during labor	No	According to the Hawaii DPS, there is no policy, but practice is not to restrain the woman during labor. ¹⁵
Officer in delivery room	No	According to the Hawaii DPS, there is no policy. Practice is for guards to stand in the hallway and not enter the labor or delivery room. ¹⁶

Contact information

HAWAII DEPARTMENT OF PUBLIC SAFETY

Interim Director Frank J. Lopez 919 Ala Moana Boulevard, 4 th Floor Honolulu, HI 96814 Phone: (808) 587-1350 Fax: (808) 587- 1421	Department of Public Safety Website: http://www.hawaii.gov/icsd/psd/psd.html E-mail: sohpsd2@aloha.net
---	---

HAWAII CORRECTIONS FACILITIES FOR WOMEN

Women's Community Correctional Center, Kailua Inmate Population: 307 (04/05) ¹⁷ Acting Warden: Francis Sequeira 42-477 Kalaniana'ole Highway Kailua, HI 96734 Phone (808) 266-9888 Fax: (808) 266-9890 Security Level:	Kauai Community Correctional Center Inmate Population: 30 (04/05) ¹⁸ Warden Neal Wagatsuma 3-5351 Kuhio Hwy. Lihue, HI 96766 Phone: (808) 241-3057 Fax: (808) 241-3059 Security Level: Medium / minimum	Oahu Community Correctional Center Inmate Population: 118 (04/05) ¹⁹ Acting Warden: Nolan Espinda 2199 Kamehameha Hwy. Honolulu, HI 96819 Phone: (808) 832-1777 Fax: (808) 832-1412 Population: 83 (Includes pre-trial inmates) Security Level: Medium
Hawaii Community Correctional Center Female Inmates: 45 (04/05) ²⁰ Acting Warden: Pete MacDonald 60 Punahale Street – Hilo, Hawaii 96720 Phone: (808) 933-0428; Fax: (808) 933-0425	Maui Community Correctional Center Female Inmates: 54 (04/05) ²¹ Acting Warden: Alan Nouchi 600 Waiale Drive Wailuku, Hawaii 96793 Phone: (808) 243-5860; Fax: (808) 244-0128	

HAWAII EXECUTIVE

Governor Linda Lingle [R] Executive Chambers Hawaii State Capitol Honolulu, HI 96813 Phone: (808) 586-0034; Fax: (808) 586-0006 Email: gov@gov.state.hi.us	Homepage: http://www.hawaii.gov/gov Elected: 2002
Attorney General Mark J. Bennett Department of the Attorney General 425 Queen Street Honolulu, Hawaii 96813 Phone: (808) 586-1500; Fax: (808) 586-1239 Email: hawaiiag@hawaii.gov	Homepage: http://www.state.hi.us/ag/index.html

HAWAII LEGISLATIVE INFORMATION

<p>Legislative Session: The State Legislature of Hawaii convenes annually in regular session on the third Wednesday in January. Senate: 25 members, 4-year terms House: 51 members, 2-year terms.</p>	<p>Legislature home page: http://www.capitol.hawaii.gov Bill information phone number: (808) 587-0700 Bill Track Website: www.capitol.hawaii.gov/site1/docs/docs.asp?press1=docs</p>
<p>Senate State Capitol 415 South Beretania Street Honolulu, HI 96813</p>	<p>Home page: http://www.capitol.hawaii.gov</p>
<p>House Of Representatives State Capitol 415 South Beretania Street Honolulu, HI 96813</p>	<p>Home page: http://www.capitol.hawaii.gov</p>

WOMEN IN PRISON - NGO RESOURCES

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

<p>ACLU of Hawaii PO Box 3410 Honolulu, HI 96801 Phone: (808) 522-5900; Fax: (808) 522-5900 Email: office@acluhawaii.org Website: www.acluhawaii.org</p>
<p>Community Alliance on Prisons 76 North King St. Suite 203 Honolulu, HI 96817 Phone: (808) 533-3454; Fax: (808) 533-0993</p>

Hawaii's Custodial Sexual Misconduct Statute

Excerpted

§707-731 Sexual assault in the second degree.

(1) A person commits the offense of sexual assault in the second degree if:

...

(c) The person, while employed:

- (i) In a state correctional facility;
- (ii) By a private company providing services at a correctional facility;
- (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
- (iv) By a private correctional facility operating in the state of Hawaii; or
- (v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the state of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.

(2) Sexual assault in the second degree is a class B felony.

§707-732 Sexual assault in the third degree.

(1) A person commits the offense of sexual assault in the third degree if:

....

(e) The person, while employed:

- (i) In a state correctional facility;

- (ii) By a private company providing services at a correctional facility;
- (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
- (iv) By a private correctional facility operating in the State of Hawaii; or
- (v) As a law enforcement officer as defined in section 710-1000(13),

knowingly subjects to sexual contact an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody, or causes the person to have sexual contact with the actor;

....

Paragraphs... (e) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; provided further that paragraph (e)(v) shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or an exception to the warrant clause.

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

¹ Department of Public Safety, *End of Month Population Report*, available at http://www.hawaii.gov/psd/documents/population/Feb_2005_Population.pdf, as per 01/27/06.

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

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

⁵ Faxed letter from Ted Sakai, Director, Hawaii Department of Public Safety, 08/25/02.

⁶ Faxed letter from Ted Sakai, Director, Hawaii Department of Public Safety, 08/25/02.

⁷ Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

⁸ Faxed letter from Ted Sakai, Director, Hawaii Department of Public Safety, 08/25/02.

⁹ Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

¹⁰ Facsimile communication from Theodore I. Sakai, Director, Hawaii Department of Public Safety, 02/15/01. The referred to policy is "COR.10D.30: Medical Examination of Victims of Assault and Sexual Assault; Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

¹¹ Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

¹² Faxed letter from Ted Sakai, Director, Hawaii Department of Public Safety, 08/25/02.

¹³ Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

¹⁴ Letter from Frank J. Lopez, Interim Director, Hawaii Department of Public Safety, 08/31/05.

¹⁵ Facsimile communication from Theodore I. Sakai, Director, Hawaii Department of Public Safety, 02/15/01.

¹⁶ Facsimile communication from Theodore I. Sakai, Director, Hawaii Department of Public Safety, 02/15/01.

¹⁷ Department of Public Safety End of Month Population Report, 4/30/05, available at http://www.hawaii.gov/psd/documents/population/Apr_2005_Population.pdf, as per 01/27/06.

¹⁸ Department of Public Safety End of Month Population Report, 04/30/05, available at http://www.hawaii.gov/psd/documents/population/Apr_2005_Population.pdf, as per 01/27/06.

¹⁹ Department of Public Safety End of Month Population Report, 04/30/05, available at http://www.hawaii.gov/psd/documents/population/Apr_2005_Population.pdf, as per 01/27/06.

²⁰ Department of Public Safety End of Month Population Report, 04/30/05, as per 01/27/06.

²¹ Department of Public Safety End of Month Population Report, 04/30/05, as per 01/27/06.

²¹ Department of Public Safety End of Month Population Report, 04/30/05, available at http://www.hawaii.gov/psd/documents/population/Apr_2005_Population.pdf, as per 01/27/06.