

Illinois

WOMEN IN PRISON: 2806 (6/04)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

720 § 5/11-9.2ⁱ – Custodial sexual misconduct.ⁱⁱ

Illinois' law is part of the Sexual Offenses chapter of the criminal code. It creates a specific status offense that covers all persons from arrest through release. A person in custody is deemed incapable of sexual consent only in relation to consenting to a custodian.

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	There is no differentiation in the law.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law specifically states that an inmate cannot legally consent to sexual acts with a custodian.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law covers employees of the penal system (defining employee to include contractual employees) and probation officers. AI is concerned, however, that the statute requires, for a finding of guilt, that alleged perpetrator “knows” or “has reason to believe” that the alleged victim is in custody.
Does the statute cover all places where an inmate might be abused?	Yes	The law is concerned with the status of the person, not the place of confinement.
Is the penalty a felony?	Yes	Violation is a Class 3 felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	<p>In 2000, Illinois Attorney General's Office responded that they do not compile such statistics.³ Amnesty International received no reply to its further request for information in 2002.</p> <p>In 2005, Illinois Attorney General's Office responded that they still do not compile such statistics. The AG Office referred Amnesty International to the Illinois Department of Corrections.⁴ AI did not receive a response from the Illinois DOC on this issue.</p>
Incidents reported in select media since January 2000	<p>- Kane County Jail: Former Sheriff's correctional officer, Frederick B. Shead was charged with one count of official misconduct and one count of custodial sexual misconduct, as well as one count of attempted custodial sexual misconduct. (<i>Chicago Tribune</i>, 10/01/04)</p>

ⁱ §720 ILCS 5/11-9.2 was amended in 2001 by P.A. 90-655, which broadened the number of actors to which the statute applies to include employees of treatment and detention facilities and surveillance agents. It also broadened the category of those protected by the statute to include individuals in the custody of treatment and detention facilities and individuals serving terms of conditional release.

ⁱⁱ The text of Illinois's statute is included at the end of this section.

	<p>- Livingston County: a former correctional officer, David Klein, who had been accused of sexually touching a female inmate who consented to the action, pleaded guilty to one count of custodial sexual misconduct. He was sentenced to serve 15 weekends in jail, pay about \$300 in fines and join the state's sex offender registry. Circuit Judge Harold Frobish also gave Klein a stayed sentence of 150 days of jail time, which Klein will only serve if he violates his probation. His probation will last two years. According to Judge Frobish, Klein was given the work release sentence so he can continue working at his two jobs to support his family, which includes 3 young children. (<i>The Pantagraph</i>, 6/29/04; <i>the Pantagraph</i>, 11/2/04)</p>
	<p>- Markham Courthouse in Cook County: Sheriff's Deputy Bobby Pheloan was charged with aggravated criminal sexual abuse and official misconduct for allegedly fondling a female inmate who was in his custody at the courthouse in December. Pheloan is alleged to have put his hands down the pants of a 25-year old female detainee who was in a holding cell by herself, and then to have put his mouth to her chest area and kissed her on the lips. He allegedly told her not to forget him. The deputy was allegedly linked to the crime by DNA taken from saliva on the inmate's body. (<i>Chicago Tribune</i>, 06/04/04)</p>
	<p>- Cook County: Kenneth Swearnigen, one of three sheriff's deputies accused of trading cash for sex inside the jail last year was acquitted of official misconduct and custodial sexual misconduct. The alleged victim's testimony remained uncorroborated; Swearnigen resigned from his post last year. Cook County prosecutors are continuing the cases against the other two men charged. (<i>Chicago Tribune</i>, 6/2/04)</p>
	<p>- Warrenville Juvenile Detention Center: An Illinois Department of Corrections guard, Larry Johnson, was charged with having sexual relations with a 17-year-old female inmate. Specific charges against him included custodial sexual misconduct. (<i>Chicago Tribune</i>, 5/27/04) In December 2005 Johnson was cleared of the charges due to insufficient evidence. (<i>Chicago Daily Herald</i>, 12/32/05)</p>
	<p>- Stateville Correctional Center: Former guard Tanya Flowers was sentenced to 39 months in a federal prison for engaging in sex with inmates and smuggling marijuana into the facility. Flowers had faced up to 9 years in prison, but allegedly cooperated against another corrupt correctional officer. (<i>Chicago Tribune</i>, 01/25/04)</p>
	<p>- Dwight Correctional Center: Former guard Amos Eckelberry faces 5 counts of custodial sexual misconduct for actions he allegedly undertook while employed as a correctional officer at the Dwight Correctional Center. Three of the charges alleged that Eckelberry fondled an inmate's breast and made her perform oral sex and touch his genitals through his clothing. The two other charges allege that Eckelberry fondled another inmate's breast and made her touch his genitals through his clothing. (<i>The Pantagraph</i>, 10/18/01, 08/11/01)</p>

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

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

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	No	The policy does not contain specific language about the nature of the sexual behaviors prohibited. ⁵
Allow cross-gender pat-down	Yes	According to the Illinois DOC, cross-gender pat down searches are

searches?		only allowed in emergency situations . ⁶
What is the percentage of female officers in relation to male officers?		Illinois DOC staff is 85.1% male and 14.9% female. ⁷
Restrictions on the duties of male guards?	Yes	According to the Illinois DOC, cross-gender pat down searches are only allowed in emergency situations, cross-gender strip searches are never permitted, and staff escorts of opposite gender inmates are permitted to the shower and bathroom areas with no physical viewing of inmates allowed. ⁸
Staff training on sexual misconduct?		No information provided.
Inform inmates of agency policies and reporting procedures on sexual misconduct?		No information provided.

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

The following is based on the Illinois Department of Corrections response to AI's surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	Yes	The Illinois DOC indicates that medical help is available for victims of alleged sexual abuse. No details were provided. ⁹
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	The Illinois DOC indicates that immediate mental health services are available for victims of alleged sexual abuse. No details were provided. ¹⁰
Is counseling available for the victim of alleged sexual abuse?	Yes	The Illinois DOC indicates that counseling is available for victims of alleged sexual abuse. No details were provided. ¹¹
Is a rape kit taken?	Yes	The Illinois DOC indicates that a rape kit is taken. ¹²
Are there special procedures for investigating allegations of sexual misconduct?		No information provided.
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?		No information provided.
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?	Yes	The Illinois Department of State Police, Division of Internal Investigations, has jurisdiction over investigations of suspected employee misconduct. According to the Illinois DOC, internal investigations should not be conducted by Illinois DOC staff nor should outside agencies be contacted unless so requested by the State Police. Internal action is limited to inquiries to determine the existence of a real or apparent incident involving staff misconduct. ¹³
If there is an external investigation, how is it triggered?		Illinois DOC is required to notify the Division of Internal Investigation of the State Police when an investigation is initiated; State Police then decides on the level of its involvement in the case. ¹⁴
Are special measures taken to shield alleged victims from retaliation?		No information provided.
If so, do the measures include solitary confinement or lock-down 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		No information provided.

investigations, indictments and convictions for custodial sexual misconduct?		
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Custodial Sexual Misconduct –Pending Legislative Proposals

<i>None</i>

Pregnancy in Custody

Pregnancy – Statute

Legislation banning shackling in the third trimester or during labor	Yes	Illinois law provides that no handcuffs, shackles, or restraints of any kind may be used during the transport of a pregnant female prisoner to a medical facility for the purpose of delivering her baby. It also provides that under no circumstances may leg-irons, shackles or waist shackles be used during labor. ¹⁵
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Pregnancy: Policies, Procedures and Practices

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

Use of restraints in third trimester	Yes	An Illinois DOC administrative directive stipulates that pregnant women who are moved within the facility when restraints would usually be used, are to be restrained in front with handcuffs. The directive bans all other forms of restraints. ¹⁶
Restraints during transport	Yes	An Illinois DOC directive states that pregnant women may be restrained in front with handcuffs. No other restraints may be used. The policy further stipulates that when women are transported to hospital to give birth, no restraints may be applied. ¹⁷
Restraints during labor	Yes	Women may be restrained during labor. However, an Illinois DOC directive stipulates that women who enter into “active labor” (as determined by medical personnel) may not be restrained. ¹⁸
Officer in delivery room	No	An Illinois DOC directive stipulates that a guard must be posted outside the delivery room. ¹⁹

Contact information

ILLINOIS DEPARTMENT OF CORRECTIONS

Director Roger E. Walker, Jr. Chief of Communications Sergio Molina 1301 Concordia Court, Springfield, IL 62794 Phone: (217) 522-2666 ext. 2008 Email: Director@idoc.state.il.us	Homepage: http://www.idoc.state.il.us/ Women and Family Services Deputy Director Debbie Denning Phone: (815) 584-2806, ext. 2291
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ILLINOIS DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

Dwight Correctional Center <i>Female inmates:1,039 (average)</i>	Kankakee Minimum Security Unit (Satellite facility of Dwight)	Decatur Correctional Center <i>Female inmates: 517 (average daily)</i>
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<i>daily population, 2003</i> ²⁰ Capacity: 858 Warden: Mary Sigler Route 17 West P.O. Box 5001 Dwight, IL 60420-5001 Phone: (815) 584-2806 Fax: (815) 584-1432 Maximum security adult	Correctional Center) <i>Female inmates: 100 (2003)</i> ²¹ Capacity: 200 Rte. 102 & Warner Bridge Rd. Manteno, IL 60914 Phone: (815) 476-5201 Minimum security female	<i>population, 2003</i> ²² Capacity: 500 Warden: Mary C. Kepler 2310 East Mound Road P.O. Box 3066 Decatur, Illinois 62524-3066 Phone: (217) 877-0353 Medium security female
Lincoln Correctional Center <i>Female inmates: 885 (average daily population, 2003)</i> ²³ Capacity: 500 Warden: Carolyn Robertson 1098 1350th Street P.O. Box 549 Lincoln, Illinois 62656 Phone: (217) 735-5411 Medium security female	ATC <i>Female inmates 182 (07/02)</i> ²⁴ Capacity: 182 Various locations around the state	Mother and Child Program <i>Female inmates: 5 (07/02)</i> ²⁵ Capacity: 15 For inmates who have just given birth

ILLINOIS EXECUTIVE

Governor Rod R. Blagojevich (D) 207 Statehouse, Springfield, IL 62706 Phone/TDD: (217) 782-0244 Toll free TTY access number: (888) 261-3336 Email: governor@state.il.us	Homepage: http://www.state.il.us/gov/ Elected: 2002
Attorney General Lisa Madigan (D) James R. Thompson Ctr. 100 W. Randolph St. Chicago, IL 60601 Phone: (312) 814-3000 Toll free TTY access number: (800) 243-0618	Homepage: http://www.ag.state.il.us/ Contact page: http://www.ag.state.il.us/ag_email.htm Elected: 2002

ILLINOIS LEGISLATIVE INFORMATION

Legislative Session: The General Assembly convenes each year on the second Wednesday of January. Senate: 59 members, 2 to 4-year terms Assembly: 118 representatives, 2-year terms	Legislature home page: http://www.ilga.gov Bill search: http://www.ilga.gov/legislation/default.asp
Senate Senate Post Office Capitol Building Springfield, IL 62706	Home page: http://www.ilga.gov/senate
Assembly House Post Office Capitol Building Springfield, IL 62706	Home page: http://www.ilga.gov/house

WOMEN IN PRISON - NGO RESOURCES

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

Illinois -CURE 3134 East 92 nd Street Chicago, IL 60617 (773) 933-7919
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<p>Chicago Legal Advocacy for Incarcerated Mothers 220 South State Street, Suite 830 Chicago, IL 60604 Phone: 312-675-0911; Fax: 312-675-0915 Website: http://www.claim-il.org/ Services: Provides legal services to enable women prisoners to maintain contact with children; offers parental rights classes; administers volunteer programs to provide free representation for child custody matters; publishes handbook. Offers a peer support group for formerly incarcerated women.</p>
<p>ACLU of Illinois 180 North Michigan Avenue, Suite 2300 Chicago, IL 60601 Phone: (312) 201-9740; Fax: 312-201-9760 E-mail: acluofillinois@aclu-il.org Web site: www.aclu-il.org</p>
<p>Institute of Women Today 7315 South Yale Avenue Chicago, IL 60621 Phone: (773) 651-8372 Services: Prison health care and counseling.</p>
<p>Safer Foundation Contact: Ewing A. Foulks 571 West Jackson Blvd. Chicago, IL 60661-5701 Phone: (312)- 922-2200; Fax: 312- 922- 0839 Website: www.saferfoundation.org Services: Assist prisoners with the transition to employment, family and community prior to their release; Advocate for policy and legislative changes to support the successful transition of returning offenders to the community, with a particular emphasis on removing barriers to offender employment; Offers a range of education, employment and support services to ex-offenders and offenders.</p>

Illinois's Custodial Sexual Misconduct Statute

(720 ILCS 5/11-9.2) **Sec. 11-9.2. Custodial sexual misconduct.**

- (a) A person commits the offense of custodial sexual misconduct when:
- (1) he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system or
 - (2) he or she is an employee of a treatment and detention facility and engages in sexual conduct or sexual penetration with a person who is in the custody of that treatment and detention facility.
- (b) A probation or supervising officer or surveillance agent commits the offense of custodial sexual misconduct when the probation or supervising officer or surveillance agent engages in sexual conduct or sexual penetration with a probationer, parolee, or releasee or person serving a term of conditional release who is under the supervisory, disciplinary, or custodial authority of the officer or agent so engaging in the sexual conduct or sexual penetration.
- (c) Custodial sexual misconduct is a Class 3 felony.
- (d) Any person convicted of violating this Section immediately shall forfeit his or her employment with a penal system, treatment and detention facility, or conditional release program.
- (e) For purposes of this Section, the consent of the probationer, parolee, releasee, or inmate in custody of the penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.] shall not be a defense to a prosecution under this Section. A person is deemed incapable of consent, for purposes of this Section, when he or she is a probationer, parolee, releasee, or inmate in custody of a penal system or person detained or civilly committed under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.].
- (f) This Section does not apply to:
- (1) Any employee, probation, or supervising officer, or surveillance agent who is lawfully married to a person in custody if the marriage occurred before the date of custody.
 - (2) Any employee, probation or supervising officer, or surveillance agent who has no knowledge, and would have no reason to believe, that the person with whom he or she engaged in custodial sexual misconduct was a person in custody.
- (g) In this Section:
- (1) "Custody" means:
 - (i) pretrial incarceration or detention;
 - (ii) incarceration or detention under a sentence or commitment to a State or local penal institution;
 - (iii) parole or mandatory supervised release;
 - (iv) electronic home detention;
 - (v) probation;

- (vi) detention or civil commitment either in secure care or in the community under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.].
- (2) "Penal system" means any system which includes institutions as defined in Section 2-14 of this Code [720 ILCS 5/2-14] or a county shelter care or detention home established under Section 1 of the County Shelter Care and Detention Home Act [55 ILCS 75/1].
- (2.1) "Treatment and detention facility" means any Department of Human Services facility established for the detention or civil commitment of persons under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.].
- (2.2) "Conditional release" means a program of treatment and services, vocational services, and alcohol or other drug abuse treatment provided to any person civilly committed and conditionally released to the community under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.];
- (3) "Employee" means:
- (i) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system or persons detained or civilly committed under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.];
 - (ii) a contractual employee of a penal system as defined in paragraph (g)(2) of this Section who works in a penal institution as defined in Section 2-14 of this Code [720 ILCS 5/2-14];
 - (iii) a contractual employee of a "treatment and detention facility" as defined in paragraph (g)(2.1) of this Code or a contractual employee of the Department of Human Services who provides supervision of persons serving a term of conditional release as defined in paragraph (g)(2.2) of this Code.
- (4) "Sexual conduct" or "sexual penetration" means any act of sexual conduct or sexual penetration as defined in Section 12-12 of this Code [720 ILCS 5/12-12].
- (5) "Probation officer" means any person employed in a probation or court services department as defined in Section 9b of the Probation and Probation Officers Act [730 ILCS 110/9b].
- (6) "Supervising officer" means any person employed to supervise persons placed on parole or mandatory supervised release with the duties described in Section 3-14-2 of the Unified Code of Corrections [730 ILCS 5/3-14-2].
- (7) "Surveillance agent" means any person employed or contracted to supervise persons placed on conditional release in the community under the Sexually Violent Persons Commitment Act [725 ILCS 207/1 et seq.].

Illinois's Pregnant Female Inmate Statute

§ 55 ILCS 5/3-15003.6. *Pregnant female prisoners*

Sec. 3-15003.6. Pregnant female prisoners. Notwithstanding any other statute, directive, or administrative regulation, when a pregnant female prisoner is brought to a hospital from a County Department of Corrections facility for the purpose of delivering her baby, no handcuffs, shackles, or restraints of any kind may be used during her transport to a medical facility for the purpose of delivering her baby. Under no circumstances may leg irons or shackles or waist shackles be used on any pregnant female prisoner who is in labor. Upon the pregnant female prisoner's entry to the hospital delivery room, a county correctional officer must be posted immediately outside the delivery room. The Sheriff must provide for adequate personnel to monitor the pregnant female prisoner during her transport to and from the hospital and during her stay at the hospital.

¹ Illinois Department of Corrections (DOC), *2004 Department Data Report*, June 2004, available at <http://www.idoc.state.il.us/subsections/reports/default.shtml>, as per 01/27/06.

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

³ Letter from Robert Kleeman, Chief Criminal Division, Office of the Attorney General, 08/17/00.

⁴ Emails from Jennifer Welch, Women's Policy Advisor, Office of the Attorney General, 09/19/05, and Cara Smith, 09/07/05.

⁵ 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.

⁶ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

⁷ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

⁸ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

⁹ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

¹⁰ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

¹¹ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

¹² Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

¹³ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

¹⁴ US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996.

¹⁵ Illinois Counties Code S 55ILCS 5/3 -15003: 6 Pregnant Female Prisoners.

¹⁶ Illinois DOC, Administrative Directives, Operations, Inmate Management and Movement, Movement and Transportation of Pregnant Inmates (05.03.130. I.F.6.)

¹⁷ Illinois DOC, Administrative Directives, Operations, Inmate Management and Movement, Movement and Transportation of Pregnant Inmates (05.03.130. I.F.7. and 05.03.130. I.B.)

¹⁸ Illinois DOC, Administrative Directives, Operations, Inmate Management and Movement, Movement and Transportation of Pregnant Inmates (05.03.130. I.F.6.)

¹⁹ Illinois DOC, Administrative Directives, Operations, Inmate Management and Movement, Movement and Transportation of Pregnant Inmates (05.03.130. I.F.9.b.)

²⁰ Illinois DOC, available at <http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=dwi>, as per 01/27/06. Citing 2003 Annual Report.

²¹ Illinois DOC, available at <http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=dwi>, as per 01/27/06. Citing 2003 Annual Report.

²² Illinois DOC, available at <http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=dct>, as per 01/27/06. Citing 2003 Annual Report.

²³ Illinois DOC, available at <http://www.idoc.state.il.us/subsections/facilities/information.asp?instchoice=lin>, as per 01/27/06. Citing 2003 Annual Report.

²⁴ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.

²⁵ Robert J. Jones, Research Scientist III, Planning and Research Unit, Illinois DOC, 07/22/02.