

### Custodial Sexual Misconduct

#### *Custodial Sexual Misconduct – Statute*

##### **709.16 – Sexual misconduct with offenders and juveniles.<sup>i</sup>**

Iowa’s law is in the Sexual Abuse section of the Criminal Code. It creates a status offense that covers any officer, employee, contractor, vendor, volunteer, or agent of state or local jails and departments.

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?	No	The law prohibits penetration and some forms of sexual touching.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law does not allow the consent of the victim as a defense.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law covers goods and service providers to the inmates and facilities.
Does the statute cover all places where an inmate might be abused?	Yes	The law protects all individuals in the custody of the department of corrections or a judicial district department of correctional services as well as those incarcerated in county jails .
Is the penalty a felony?	No	Violation is an aggravated misdemeanor.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	<p>Amnesty International received no response from the Iowa Attorney General’s Office in 2000 or 2002.</p> <p>In 2005, the AG’s Office reported that they have limited criminal prosecution authority, and do not have access to information about cases initiated by county attorneys unless cases are appealed to the Iowa Supreme Court. The AG prosecuted one case of CSM involving female victims in 2003, and the corrections officer was found guilty.<sup>3</sup></p> <p>The AG also obtained the following data on prosecutions handled by county attorneys from the Division of Criminal and Juvenile Justice in the Department of Human Rights:<sup>4</sup></p> <ul style="list-style-type: none"> <li>- 2002: No charges filed;</li> <li>- 2003: 7 charges filed, 6 convictions as charged;</li> <li>- 2004: 11 charges filed, 6 convictions, 5 convictions as charged.</li> </ul>
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<sup>i</sup>The text of Iowa’s statute is reprinted at the end of this section

<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> <li>- Iowa Correctional Institution for Women (Mitchellville): Three female convicts will split \$160,000 to settle sexual abuse lawsuits against an Iowa prison guard. Kenneth Parrot, a former Mount Pleasant corrections officer, allegedly threatened female inmates and masturbated in front of them. Reportedly, the three inmates were abused in early 2003 at the Mount Pleasant Prison. One of the women reportedly lost exercise privileges after she refused to show Parrot her breasts. Two women were reportedly repeatedly groped and were the targets of sexual comments. Parrot also allegedly ordered the two women to participate in a “threesome” in a prison medical examination room, and threatened both women to get them to do what he wanted. According to a federal judge’s ruling, “Parrot’s actions were not curtailed until he eventually masturbated in front of” one of the plaintiffs. That plaintiff “prudently collected a sample of the ejaculate on a tissue and turned it over to another correctional officer. Reportedly, there are two additional lawsuits pending based on allegations of inappropriate sexual behavior by another Mount Pleasant guard. Those cases are reportedly working their way through the corrections grievance process. (<i>Des Moines Register</i>, 01/09/06)</li> <li>- Black Hawk County Jail: A Waterloo police officer was charged with having sexual acts with an inmate from the Black Hawk County Jail. Sgt. Richard Knief has been on paid administrative leave while the Iowa Division of Criminal Investigation and the attorney general’s office investigate him. (<i>A.P.</i>, 01/05/06)</li> <li>- A review by the Des Moines Sunday Register found that since the early 1990s, Iowa prison officials have been sued at least six times for alleged incidents linked to sexual misconduct involving male prison staff and female inmates. (<i>AP</i>, 05/22/00)</li> <li>- Mitchellville Prison: State officials were ordered to pay \$45,000 to a former inmate who was raped by a guard. A \$60,000 judgment stands against former officer Robert Links, who resigned and pleaded guilty to a misdemeanor. (<i>The Des Moines Register</i>, 05/21/00)</li> <li>- Polk County Sheriff’s Department: An officer resigned amid allegations that he sexually assaulted a female inmate. No charges were filed. (<i>The Des Moines Register</i>, 05/21/00)</li> <li>- A female inmate sued the state, claiming that she was sexually assaulted by a guard while at the hospital. (<i>The Des Moines Register</i>, 05/21/00) (According to Iowa Department of Corrections official Terry Boelhje, the lawsuit was dropped based on the failure of Ms. Heyer to pass a polygraph test. (02/14/01)</li> </ul>
<p>Other Reported Incidents</p>	<p><u><i>Riley v Olk-Long</i> 282 F.3d 592(2002)</u>  Riley sued the security director and warden of the Iowa Correctional Institution for Women for failing to protect her from rape and sexual assault by a prison officer who had a history of predatory and inappropriate behavior toward female inmates. The Court of Appeals for the Eighth Circuit upheld the jury’s decision at trial in favor of Riley.</p> <p><u><i>ACLU (online) 1/29/01</i></u>  Story County Sheriff’s Department: A federal jury awarded \$5,000 in damages to a woman who was stripped naked and strapped in a spread-eagle fashion upon a wooden board while in custody at a county jail. The 20 year-old woman was represented by the Iowa Civil Liberties Union, which filed the action in February 1998.</p>

## *Custodial Sexual Misconduct – Policies, Procedures and*

## ***Practices of Guarding Specific to Women***

The following is based on data provided by the Iowa 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>Yes</b>	Policy includes direct and specific language about the nature of the sexual behaviors prohibited. Iowa DOC policy on Sexual Misconduct with Offenders defines and prohibits sexual misconduct including sexual abuse, sexual contact, and all forms of intimacy between staff (including contractors) and offenders. <sup>5</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	According to the Iowa DOC, searches are predominantly same-sex. Same-sex searches are not required by policy but are generally the practice when staffing levels permit. <sup>6</sup>
What is the percentage of female officers in relation to male officers?		The Iowa DOC reports that roughly half of the officers responsible for the supervision of female inmates are women. <sup>7</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the Iowa DOC, male officers are not permitted to conduct strip searches or monitor the taking of urinalysis. <sup>8</sup>
Staff training on sexual misconduct?	<b>Yes</b>	Iowa DOC policy mandates that: (1) All staff receive training regarding custodial sexual misconduct during new employee orientation (2) All staff in positions with offender contact or with access to offenders will annual review the custodial sexual misconduct policy. <sup>9</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	According to Iowa DOC policy, inmates must be informed of their "right to be free from sexual misconduct" during admission to custody or supervision. Inmates must be provided with information about what behavior constitutes sexual misconduct and retaliation. In addition, the policy mandates that reporting guidelines and reporting procedures be explained during orientation. <sup>10</sup>

## ***Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response***

The following is based on the Iowa 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>	A written response from the Iowa DOC indicates medical consultations are required for allegations of intercourse, sodomy, or physical force. According to Iowa DOC policy, supervisory staff are required to ensure that offenders are "appropriately referred to Health Services of health provider." <sup>11</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to Iowa DOC policy, a supervisor will ensure that offenders receive appropriate psychological evaluation and support. <sup>12</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Iowa DOC, psychological evaluation and counseling will be available to offenders who are victims of staff sexual misconduct until either or both the psychologist and the victim are satisfied that sessions should be terminated. <sup>13</sup>
Is a rape kit taken?	<b>Yes</b>	According to Iowa DOC policy, an inmate will be examined by a physician who is skilled and experienced in using a rape kit for collection of forensic evidence if the inmate makes an allegation of penetration against a staff member and the most recent incident has occurred within the past 48 hours. The physician is not employed by the DOC. The rape kit will be provided with the consent of the inmate. <sup>14</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>No</b>	According to the Iowa DOC, there are currently no special procedures concerning the investigation of sexual assaults with the exception of the rape kit and the examination being competed by an outside agency. However, the Iowa DOC reports that it is currently

		developing a new policy relating to investigation of sexual assaults. <sup>15</sup>  Furthermore, Iowa DOC policy currently stipulates that interviews must be conducted “in a thorough, professional, non-abusive, and non-threatening manner consistent with the acceptable practices for potentially traumatized victims of sex crimes.” <sup>16</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to the Iowa DOC, inmates may report incidents of sexual abuse to staff, through an offender grievance process, or to the warden. <sup>17</sup> Iowa DOC policy requires the DOC to develop statewide procedures for reporting that include multiple points of reporting for inmates and staff. <sup>18</sup>
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	<b>Yes</b>	According to the Iowa DOC, inmates may alert their lawyer or the Citizen’s Aide Ombudsman office. Inmates may also call a toll free number, which will give them the option of leaving a message in the DOC sexual assault, abuse, or misconduct voicemail box or being transferred to the Statewide Sexual Assault Hotline. <sup>19</sup>
Is the investigation external?	<b>Yes</b>	Iowa DOC policy provides for the state Division of Criminal Investigation to be contacted for any allegation which, if substantiated, could result in criminal prosecution. Iowa DOC policy also provides for investigation by trained DOC investigators after receiving clearance from the Division of Criminal Investigation. <sup>20</sup>
If there is an external investigation, how is it triggered?		According Iowa DOC policy, the Division of Criminal Investigation must be contacted for any allegation which, if substantiated, could result in criminal prosecution. <sup>21</sup>
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	According to Iowa DOC policy, pending the outcome of the investigation, an inmate is separated from the staff member allegedly involved in the misconduct “through appropriate placement, segregation, transfer or leave (including suspension) options.” The policy also prohibits staff retaliation, which includes “unnecessary discipline, intimidation, unnecessary changes in work or program assignments, unjustified transfers or placements, or unjustified denials of privileges or services.” <sup>22</sup>  <i>Iowa DOC policy states that the failure of victims of sexual misconduct to report incidents or cooperate with investigations could result in discipline of the victim.<sup>23</sup> Amnesty International is concerned that this provision could be unfair as victims may be afraid to report misconduct or cooperate with an investigation and they may even be threatened for doing so.</i>
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>No</b>	According to Iowa DOC policy, supervisory staff are required to ensure that separation of the affected inmate-offender and staff is undertaken “without punishing the offender.” <sup>24</sup>
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	<b>Yes</b>	According to the Iowa DOC, the Citizens’ Aide office accepts unmonitored telephone calls and mail from offenders. <sup>25</sup>
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	<b>Yes</b>	According to the Iowa DOC, the Iowa Corrections Offender Network (ICON) <sup>26</sup> tracks disciplinary rule violations related to sexual misconduct.

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

<p><b>2005 IA S.B. 383</b>  <i>Sponsored by Senate Committee on Judiciary</i>  03/14/05 Introduced  03/23/05 Passed Senate – Sent to House  03/24/2005 To HOUSE Committee on PUBLIC SAFETY  04/11/2005 From HOUSE Committee on PUBLIC SAFETY: Recommended to pass with Amendment No. H-1349  4/14/2005 Placed on calendar under unfinished business  1/9/2006 Re-referred to Public Safety</p>	<p>Would amend §709.16 to change the penalty in subsection 1, concerning sexual misconduct with offenders, from an aggravated misdemeanor to a class D felony.</p>
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## Pregnancy in Custody

### *Pregnancy - Statute*

<p>Legislation banning shackling in the third trimester or during labor</p>	<p>No</p>	<p>Iowa has no legislation limiting the use of shackling on pregnant inmates.</p>
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### *Pregnancy - Policies, Procedures and Practices*

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

<p>Use of restraints in third trimester</p>	<p>Yes</p>	<p>During transport, see below.</p>
<p>Restraints during transport</p>	<p>Yes</p>	<p>According to the Iowa DOC, policy requires restraints but allows security discretion depending upon "offender behavior."<sup>27</sup></p>
<p>Restraints during labor</p>	<p>No</p>	<p>According to the Iowa DOC, there is no written policy. In general practice, no restraints are applied during labor or delivery.<sup>28</sup></p>
<p>Officer in delivery room</p>	<p>Yes</p>	<p>According to the Iowa DOC, the practice is that a female officer is present during labor.<sup>29</sup></p>

## Contact information

### IOWA DEPARTMENT OF CORRECTIONS

<p><b>Director Gary D. Maynard</b>  420 Watson Powell Jr. Way  Des Moines, IA 50309  Phone: (515) 242-5702</p> <p>Public Information Officer Fred Scaletta  Phone: (515) 242-5707</p>	<p>Homepage:  <a href="http://www.doc.state.ia.us">http://www.doc.state.ia.us</a></p> <p>Daily Statistics:  <a href="http://www.doc.state.ia.us/statistics.asp">http://www.doc.state.ia.us/statistics.asp</a></p>
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### IOWA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<p><b>Iowa Medical and Classification Center (Oakdale)</b>  <i>Female inmates: 60</i><sup>30</sup>  Capacity: 505  Warden: Lowell Brandt  Box A –Highway 965  Oakdale, IA 52319  Phone: (319) 626-2391 Fax: (319) 626-2141</p>	<p><b>Iowa Correctional Institution for Women (Mitchellville)</b>  <i>Female inmates: 626</i><sup>31</sup>  Capacity: 443  Guard/inmate ratio: 1: 4.9  Warden: Diann Wilder-Tomlinson  300 Elm Ave. Southwest  Box 700  Phone: (515) 967-4236</p>	<p><b>Mt. Pleasant Correctional Facility Women's Unit</b>  <i>Female inmates: 88</i><sup>32</sup>  Capacity: 100  Superintendent: Rusty Rogerson  1200 East Washington  Mt. Pleasant, Iowa 52641  Phone: (319) 385-9511  Fax: (319) 385-8828</p>
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Security level: medium	Fax: (515) 967-5347 Security level: medium	Security level: medium
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## IOWA EXECUTIVE

<b>Governor Tom Vilsack (D)</b> State Capitol, Des Moines, IA 50319-0001 Phone: (515) 281-5211; Fax: (515) 281-6611 Email: <a href="http://www.governor.state.ia.us/comments/capitol_correspond/index.html">http://www.governor.state.ia.us/comments/capitol_correspond/index.html</a>	Homepage: <a href="http://www.governor.state.ia.us/">http://www.governor.state.ia.us/</a>  Contact page: <a href="http://www.state.ia.us/government/governor/index.htm">http://www.state.ia.us/government/governor/index.htm</a>  Elected: 1998, re-elected in 2002
<b>Attorney General Tom Miller (D)</b> 1305 E. Walnut Street Des Moines, IA 50319 Phone: (515) 281-5164 Fax: (515) 281-4209 E-mail: <a href="mailto:jambroc@ag.state.ia.us">jambroc@ag.state.ia.us</a>	Homepage: <a href="http://www.iowaattorneygeneral.org/">http://www.iowaattorneygeneral.org/</a>  Elected: 1978, re-elected in 1982, 1986, 1994, 1998, 2002

## IOWA LEGISLATIVE INFORMATION

<b>Legislative Session:</b> The General Assembly convenes in regular session annually on the second Monday in January. <b>Senate:</b> 50 members, 4 year term <b>Assembly:</b> 100 representatives, 2 year term	Legislature home page: <a href="http://www.legis.state.ia.us/">http://www.legis.state.ia.us/</a>  Bill information phone number: (515) 281-5129  Bill search: For bill search, send letter for authorization: Attn: Bill Tracking, Legislative Computer Support Bureau, Lucas State Office Building, Des Moines, IA 50319, Receipt of password and user identification will permit tracking at the following web address: <a href="http://www2.legis.state.ia.us/BillTrack/index.html">http://www2.legis.state.ia.us/BillTrack/index.html</a>
<b>Senate</b> Second Floor State Capitol Des Moines, IA 50319	Home page: <a href="http://www2.legis.state.ia.us/GA/78GA/Senate/Members">http://www2.legis.state.ia.us/GA/78GA/Senate/Members</a>
<b>Assembly</b> Iowa Legislature Second Floor State Capitol Des Moines, IA 50319	Home page: <a href="http://www.legis.state.wi.us/assembly/assembly.html">http://www.legis.state.wi.us/assembly/assembly.html</a>

## WOMEN IN PRISON - NGO RESOURCES

Iowa-CURE P.O. Box 41005 Des Moines, IA 50311 Phone: (515) 277-6296
ACLU of Iowa 505 Fifth Avenue, Ste. 901 Des Moines, IA 50309 Phone: (515) 243-3576 Website: <a href="http://www.iowaclu.org">www.iowaclu.org</a>
Office of the Ombudsman, Iowa Citizens' Aide Ola Babcock Miller Building 1112 East Grand Des Moines, Iowa 50319 Phone: (515) 242-5065; Fax: (515) 242-6007

## Iowa's Custodial Sexual Misconduct Statute

### 709.16 Sexual misconduct with offenders and juveniles.

1. An officer, employee, contractor, vendor, volunteer, or agent of the department of corrections, or an officer, employee, or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the department of corrections or a judicial district department of correctional services commits an aggravated misdemeanor.
2. An officer, employee, contractor, vendor, volunteer, or agent of a juvenile placement facility who engages in a sex act with a juvenile placed at such facility commits an aggravated misdemeanor.

For purposes of this subsection, a "juvenile placement facility" means any of the following:

- a. A child foster care facility licensed under section 237.4.
  - b. Institutions controlled by the department of human services listed in section 218.1.
  - c. Juvenile detention and juvenile shelter care homes approved under section 232.142.
  - d. Psychiatric medical institutions for children licensed under chapter 135H.
  - e. Substance abuse facilities as defined in section 125.2.
3. An officer, employee, contractor, vendor, volunteer, or agent of a county who engages in a sex act with a prisoner incarcerated in a county jail commits an aggravated misdemeanor.

### 702.17 Sex act.

The term "*sex act*" or "*sexual activity*" means any sexual contact between two or more persons by: penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to chapter 148, 148C, 150, 150A, 151, or 152; or by use of artificial sexual organs or substitutes therefor in contact with the genitalia or anus.

<sup>1</sup> Iowa Department of Corrections (DOC), Daily Statistics, 10/07/05, available at <http://www.doc.state.ia.us/DailyStats.asp>, as per 01/27/06.

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

<sup>3</sup> Letter from Douglas R. Marek, Deputy Attorney General, Iowa Attorney General's Office, 08/15/05

<sup>4</sup> Letter from the Iowa Attorney General's Office, Douglas R. Marek, Deputy Attorney General, 08/15/05.

<sup>5</sup> Iowa DOC Policy and Standards PR-II-53, "Sexual Misconduct with Offenders," Effective July 2004. Emailed as attachment by Marlene Koopman, Executive Officer, Iowa DOC.

<sup>6</sup> Faxed letter from Mary Chavez, Executive Officer, Iowa DOC, 08/20/02.

<sup>7</sup> Faxed letter from Mary Chavez, Executive Officer, Iowa DOC, 08/20/02.

<sup>8</sup> Faxed letter from Mary Chavez, Executive Officer, Iowa DOC, 08/20/02.

<sup>9</sup> Iowa DOC Policy and Standards PR-II-53, "Sexual Misconduct with Offenders," Effective July 2004. Emailed as attachment by Marlene Koopman, Executive Officer, Iowa DOC.

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<sup>12</sup> Iowa DOC Policy and Standards PR-II-53, "Sexual Misconduct with Offenders," Effective July 2004. Emailed as attachment by Marlene Koopman, Executive Officer, Iowa DOC.

<sup>13</sup> Email from Marlene Koopman, Executive Officer, Iowa DOC, 09/28/05.

<sup>14</sup> Iowa DOC Policy and Standards PR-II-53, "Sexual Misconduct with Offenders," Effective July 2004. Emailed as attachment by Marlene Koopman, Executive Officer, Iowa DOC.

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<sup>27</sup> Email response from Terry Boelhje, Iowa DOC, 02/14/01.

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<sup>30</sup> Email from Marlene Koopman, Executive Officer, Iowa DOC, 09/28/05.

<sup>31</sup> Email from Marlene Koopman, Executive Officer, Iowa DOC, 09/28/05.

<sup>32</sup> Email from Marlene Koopman, Executive Officer, Iowa DOC, 09/28/05.