

Maine

WOMEN IN PRISON: 124 (12/03)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

17-A § 253(2) E – Gross Sexual Assault

17-A § 255-A(1)I-J – Unlawful Sexual Contact

17-A § 260 – Unlawful sexual touchingⁱ

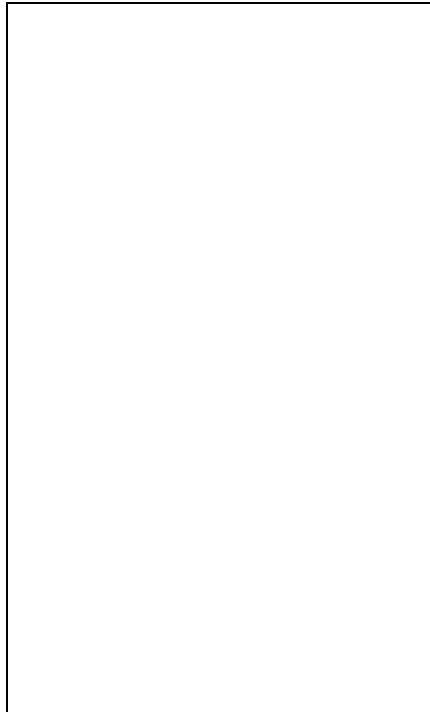
Maine’s law is contained in three provisions in the sexual assaults chapter of its criminal code. It prohibits a person with “supervisory or disciplinary authority” from engaging in sexual acts, sexual contact, sexual contact including penetration, and sexual touching with those in official custody.

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| 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 three laws in conjunction cover sexual acts, sexual contact and sexual touching. |
| Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution? | No | The law is part of Maine’s statutory rape law, and does not allow an officer to avoid prosecution with a claim that the inmate consented. |
| Does the statute cover all custodians and staff in contact with inmates? | No | The law only covers those with “supervisory or disciplinary authority” over the victim. |
| Does the statute cover all places where inmates might be abused? | Yes | The law is not concerned with the location of the abuse, and explicitly protects probationers, parolees, and those in hospitals . |
| Is the penalty a felony? | Yes | Sexual acts or sexual contact other than penetration are class B crimes. Sexual contact including penetration is a class C crime. Sexual touching is a Class D crime |

Custodial Sexual Misconduct – Allegations and Incidents

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| Indictments/Convictions (answer to AI letter requesting information) ² | The Maine Attorney General’s Office does not compile statistics on prosecutions or convictions under the state’s CSM statute. ³ |
| Incidents reported in select media since January 2000 | <ul style="list-style-type: none"> - Androscoggin County Jail: a grand jury indicted a jail guard on a gross sexual assault charge for allegedly having a female inmate perform oral sex on him while on duty. The guard was placed on administrative leave after the alleged incident. (<i>AP</i>, 12/04/03) - Maine Correctional Center: Two former guards, Robert Shepard and Scott Durgin, pled guilty to unlawful sexual conduct with penetration. The charges were based on allegations that Shepard and Durgin each had sex with separate prisoners in the prison laundry on April 24, 2001. Shepard also was charged with having sex with a third female inmate in her cell a month later. Both men resigned once they were formally summoned to court on the charges, as did a third corrections officer who was aware of the conduct and did not come forward voluntarily. Through a plea agreement the two guards were both sentenced to one month in jail and one year on probation. (<i>The Portland Press Herald</i>, 09/17/02 and 10/04/02) |

¹ The relevant portion of Maine’s law is excerpted at the end of this section



- Kennebec County Jail: A former guard was indicted on charges that he sexually assaulted a female inmate. The guard was sentenced to 364 days in jail and one year of probation. (*AP 06/27/02 and 01/27/03*)
- Washington County Jail: Washington County and Sheriff Joseph Tibbetts were found not liable in U.S. District court in the alleged 2001 sexual assault of a former jail inmate by a former prison guard. (*Bangor Daily News, 5/21/03*). The accused former guard, William Sinford, was charged with two counts each of unlawful sexual contact and assault. (*Bangor Daily News, 2/6/04*). The former guard pleaded guilty to reduced counts of attempted gross sexual assault and unlawful conduct. He reportedly received lenient sentences of 2 and ½ years for each count, however the sentencing judge suspended both sentences completely and placed the former guard on three years probation with no special conditions. The judge reportedly determined that the Sinford had been set up by a former inmate who intended to sue him for unlawful sexual conduct. (*Bangor Daily News, 09/24/02*)
- Androscoggin County Jail: A female inmate claimed that the supervising officer forced her to have sexual relations with him over a weeklong period. (*Bangor Daily News, 08/14/00*)
- Charleston Correctional Facility: A former inmate filed suit against the Department of Corrections for violating her human rights, alleging that (now retired) officer Ralph Collins subjected her to sexually harassing comments and acts on a regular basis. (*Bangor Daily News, 06/22/00*)

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

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

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| Is the current Department of Corrections policy on custodial sexual misconduct language-explicit? | Yes | Policy includes direct and specific language about the nature of the sexual behaviors prohibited. ⁴ |
| Allow cross-gender pat-down searches? | Yes | Searches are predominantly same-sex. Cross-sex searches conducted only in emergency - “emergency” not defined. ⁵ |
| What is the percentage of female officers in relation to male officers? | | No information provided. |
| Restrictions on the duties of male guards? | | No information provided. |
| Staff training on sexual misconduct? | | No information provided. |
| Has staff training been developed 1996-2002? | | 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 Maine Department of Corrections response to AI’s surveys, please see above.

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| Is medical help available for the victim of alleged sexual abuse? | | No information provided. |
| Are immediate mental health services available for the victim of | | No information provided. |

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| alleged sexual abuse? | | |
| Is counseling available for the victim of alleged sexual abuse? | | No information provided. |
| Is a rape kit taken? | | No information provided. |
| 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? | | No information provided. |
| If there is an external investigation, how is it triggered? | | 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 investigations, indictments and convictions for custodial sexual misconduct? | | No information provided. |
| 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. |

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

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| Legislation banning shackling in the third trimester or during labor | No | Maine 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 Maine Department of Corrections response to AI's surveys, please see above.

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| Use of restraints in third trimester | Yes | An inmate may be restrained; Maine DOC has no specific policy for pregnant women. ⁶ |
| Restraints during transport | Yes | See above. |
| Restraints during labor | Yes | See above. |
| Officer in delivery room | -- | Not known. ⁷ |

Contact information

MAINE DEPARTMENT OF CORRECTIONS

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| Commissioner Martin A. Magnusson Tyson Building 25 Tyson Dr. AMHI Campus, SHS #111 Augusta, ME 04333 Phone: (207) 287-2711 | Website: http://www.state.me.us/corrections/ |
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MAINE DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

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| Maine Correctional Center <i>Female inmates: 115 (9/04)⁸</i> Superintendent Scott Burnheimer P.O. Box 260 Windham, ME 04082 Phone: (207) 893-7000 Homepage: http://www.state.me.us/corrections/Facilities/mcc.htm Medium/minimum security co-ed facility. |
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MAINE EXECUTIVE

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| Governor John Elias Baldacci [D] Office of the Governor 1 State House Station Augusta, ME 04333-0001 Phone: (207) 287-3531; Fax: (207) 287-1034 (207) 287-6548 (TTY) Email: governor@maine.gov | Homepage: http://www.state.me.us/governor/ Elected: 2002 |
| Attorney General G. Steven Rowe [D] Water Street, Burton M. Cross Building, 6 th floor Augusta, ME 04333 Mailing Address: 6 State House Station, Augusta, ME 04333 Phone: (207) 626-8800; TTY (207) 626-8865 | Homepage: http://www.state.me.us/ag/ Elected: 2000 |

MAINE LEGISLATIVE INFORMATION

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| Legislative Session: The Legislature convenes in regular session on the first Wednesday in December in the first year of the biennium and on the first Wednesday after the first Tuesday of January in the second year. The First Regular Session must adjourn no later than the third Wednesday in June, and the Second Regular Session must adjourn no later than the third Wednesday in April. The Legislature may meet in special session if called in by the Governor or if called in by the presiding officers. House: 151 members, 2-year term (8-year limit) Senate: 35 members, 2-year term (8-year limit) | Legislature Homepage: http://janus.state.me.us/legis/ Legislative information Maine http://janus.state.me.us/legis/ljo/ Bill search: http://janus.state.me.us/legis/session |
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| Senate Senate of Maine 3 State House Station, Augusta, Maine 04333-0003 Phone: (207) 287-1540; (In state): (800) 423-6900 | Home page: http://janus.state.me.us/senate/homepage.htm |
| House Of Representatives House of Representatives 2 State House Station Augusta, Maine 04333-0002 Phone: (207) 287-1400 Phone: (800) 423-2900 (In state) | Home page: http://janus.state.me.us/house/rep.htm http://www.house.state.me.us/ |

WOMEN IN PRISON - NGO RESOURCES

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

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| Maine-CURE 842 Prince Point Yarmouth, ME 04096 |
| Maine Civil Liberties Union 401 Cumberland Avenue, Suite 105 Portland, ME 04101 Phone: (207) 774.5444 Email: info@mclu.org Website: www.mclu.org |

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| Maine's Custodial Sexual Misconduct Statute § 253. Gross sexual assault <i>Excerpt</i> 2. A person is guilty of gross sexual assault if that person engages in a sexual act with another person and: ... E. The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class B crime;... § 255-A. Unlawful sexual contact <i>Excerpt</i> 1. A person is guilty of unlawful sexual contact if the actor intentionally subjects another person to any sexual contact and: ... I. The other person, not the actor's spouse, is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; J. The other person, not the actor's spouse, is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person and the sexual contact includes penetration. Violation of this paragraph is a Class C crime;... § 260 – Unlawful sexual touching <i>Excerpt</i> ... 1. A person is guilty of unlawful sexual touching if the actor intentionally subjects another person to any sexual touching and: E. The other person, not the actor's spouse, is in official custody as a probationer or parolee or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary authority over the other person. Violation of this paragraph is a Class D crime; § 251. Definitions and general provisions <i>Excerpt</i> |
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1. In this chapter the following definitions apply.

C. "Sexual act" means:

(1) Any act between 2 persons involving direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other;

(2) Any act between a person and an animal being used by another person which act involves direct physical contact between the genitals of one and the mouth or anus of the other, or direct physical contact between the genitals of one and the genitals of the other; or

(3) Any act involving direct physical contact between the genitals or anus of one and an instrument or device manipulated by another person when that act is done for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact. A sexual act may be proved without allegation or proof of penetration.

D. "Sexual contact" means any touching of the genitals or anus, directly or through clothing, other than as would constitute a sexual act, for the purpose of arousing or gratifying sexual desire or for the purpose of causing bodily injury or offensive physical contact.

G. "Sexual touching" means any touching of the breasts, buttocks, groin or inner thigh, directly or through clothing, for the purpose of arousing or gratifying sexual desire.

¹ Bureau of Justice Statistics Bulletin, *Prisoners in 2003*, NCJ205335, November 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>, as per 01/27/06.

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

³ Letter from N. Paul Gauvreau, Deputy Attorney General, Office of the Attorney General, 06/30/00; Email from Brian MacMaster, Director of Investigations, Maine Attorney General's Office, 09/11/02; Facsimile from Brian MacMaster, Director of Investigations, 08/29/05.

⁴ 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.

⁵ Facsimile from Ellis King, Correctional Planning Analyst, the Maine Department of Corrections (DOC), 02/26/01.

⁶ Phone conversation with Denise Lord, Associate Commissioner, Maine DOC, 02/07/01.

⁷ Phone conversation, with Denise Lord, Associate Commissioner, Maine DOC, 02/07/01.

⁸ Maine Department of Corrections, Institutions: Main Department of Corrections, available at <http://www.state.me.us/corrections/Facilities/mcc.htm>, as per 01/27/06; *Adult Institutions*, May 2003, available at <http://www.state.me.us/corrections/Facilities.htm>, as per 01/27/06.