

# Massachusetts

WOMEN IN PRISON: 680 (08/05)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

*Chapter 268: Section 21A – Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.*<sup>1</sup>

Massachusetts's law is in the Criminal Code under the heading Crimes Against Public Justice.

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	Sexual conduct is broadly defined.
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 the inmate is deemed incapable of consenting to sexual relations with the officer.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law applies to employees, officers or contractors.
Does the statute cover all places where inmates might be abused?	Yes	The law specifically states that it protects individuals within or outside of penal or custodial institutions.
Is the penalty a felony?	Yes	Violation is up to five years imprisonment and \$10,000 fine.

### *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 Massachusetts Attorney General's Office in 2000 or 2002.</p> <p>In 2005, the Attorney General's Office reported that it does not compile statistics on prosecutions or convictions of the state's CSM statute. The AG referred Amnesty International to the Office of the Trial Court.<sup>3</sup> AI did not receive a response from this Office.</p>
Incidents reported in select media since January 2000	<ul style="list-style-type: none"> <li>- Work release program Framingham: Allegations of sexual relations between civilian workers at the State Police agency and inmates on work release there from the South Middlesex Correctional Center, prompted an investigation and suspension of five employees. One state official with direct knowledge of the investigations said the sexual relations between civilian workers and prisoners allegedly took place almost daily. (<i>The Boston Globe</i>, 07/17/04)</li> <li>- Un-named State Department of Corrections Facility: A mental-health employee of a contractor that provides mental-health care to inmates was suspended without pay after authorities received allegations that she had sexual relations with a prisoner. The allegations are under investigation by the Department of Corrections. (<i>The Boston globe</i>, 05/27/04) According to the DOC, the employee was terminated by the contractual medical provider.<sup>4</sup></li> </ul>

<sup>1</sup> The text of Massachusetts's statute is reprinted at the end of this section

	<ul style="list-style-type: none"> <li>- Framingham: The State Department of Correction is investigating five allegations of staff sexual misconduct against female prisoners. A DOC spokesman said the complaints represent a sharp decline from 2003, when there were 16 such complaints in the same period of time. The five employees are civilian employees, not sworn officers. (The Boston Globe, 05/25/04 and 07/17/04)</li> </ul>
	<ul style="list-style-type: none"> <li>- Suffolk County House of Correction: The Suffolk County Sheriff's Department agreed to pay \$675,000 to settle a federal civil rights suit brought by a former inmate who became pregnant in 1999 after allegedly being assaulted by an officer David Mojica. The former inmate's suite alleged that she was coerced into having sexual contact with three officers: Mojica, Robert Parise, and David DiCenso, She accused a third officer, Richard Powers, of serving as a lookout. (Boston Globe, 3/17/04) The Boston Globe described the alleged crimes occurring at the Suffolk County House of Correction as a "guard-inmate drugs-for-sex ring." The charges prompted multiple lawsuits and investigations by the FBI and the Suffolk County District Attorneys office. (<i>The Boston Globe</i>, 10/20/99; <i>Prison Legal News</i>, 04/00)</li> <li>- DOC Pre-Release Center, Lancaster: A correctional program officer, Daniel Tessier, was acquitted by a jury of charges of sexually assaulting female inmates. Tessier was accused of assaulting three female inmates in 1999. He was suspended without pay as a result of the charges, although he denied the allegations. (<i>AP State and Local Wire</i>, 1/23/02)</li> <li>- Nashua Street Jail: Sergeant Mark Sutherland was put on administrative leave following allegations of improper physical contact with a woman in custody. (<i>The Boston Globe</i>, 02/28/01)</li> <li>- Massachusetts Correctional Institute, Framingham: Former guard Anthony Maddix was reportedly sentenced to a three-year state prison term for raping two female inmates. (<i>Boston Globe</i>, 5/23/01)</li> <li>- House of Correction in South Bay: Officer Mark Vaughn admitted he gave favors to two female inmates in exchange for sex. The incidents occurred in July and October 1999 in the prison's segregation unit. Vaughn was fired in 2000. In exchange for pleading guilty to the charges he received a two-year suspended sentence and three years probation. (<i>AP &amp; LW</i> 01/17/02)</li> </ul>

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

The following is based on data provided by the Massachusetts 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>	The policy includes direct and specific language about the nature of the sexual behaviors prohibited. <sup>5</sup> The policy includes all employees, contractors and volunteers, and specifies that the inmate's consent is irrelevant in criminal prosecution of such misconduct. The policy also stipulates that all allegations must be reported, fully investigated, and treated in a confidential and serious manner. <sup>6</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	According to the Massachusetts DOC, searches are predominantly same-sex. Cross gender pat searches are done only in emergency situations, for example when there has been an inmate disturbance. <sup>7</sup>
What is the percentage of female officers in relation to male officers?		According to the Massachusetts DOC, at Massachusetts DOC female facilities, female officers represent nearly 50% of the correction officer workforce. <sup>8</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the Massachusetts DOC, male officers are prohibited from conducting urinalysis draws and from conducting strip searches and pat searches (except in emergency situations). <sup>9</sup>

Staff training on sexual misconduct?	<b>Yes</b>	According to the Massachusetts DOC, all staff receive training on female offender issues including sexual misconduct. <sup>10</sup> All staff receive training within Basic Training Classes (40-hour classes conducted for new employees), In-Service Training and Volunteer Orientation Classes. Training includes recognizing, preventing, reporting and investigating incidents. Employees who might come into contact with female inmates receive additional specialized training on-site, prior to entering service with the department. <sup>11</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	Massachusetts DOC introduced a new policy in December 1999 that stipulates that sexual misconduct must be covered in an orientation booklet, including a statement that misconduct is prohibited and all incidents must be reported to unit team staff. The policy also states that inmates should also be informed of the confidential hot-line telephone number available at the facility. In addition, all female inmates undergo training conducted during weekly orientation sessions. The sessions provide information on how to protect oneself from becoming a victim, treatment options, and methods for reporting incidents. <sup>12</sup>

## ***Custodial Sexual Misconduct - Policies and Procedures***

### ***Guiding Official Response***

The following is based on the Massachusetts 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>	Massachusetts DOC Staff Sexual Misconduct policy requires a medical evaluation to take place immediately. If deemed necessary by the Superintendent in consultation with clinical staff, offenders are transported to the Beth Israel Rape Crisis Unit for evaluation. <sup>13</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Massachusetts DOC, mental health services are available immediately. <sup>14</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Massachusetts DOC, counseling is available if deemed necessary by clinical staff. <sup>15</sup>
Is a rape kit taken?	<b>Yes</b>	According to the Massachusetts DOC, a rape kit is taken if deemed necessary by the Beth Israel Rape Crisis Unit. <sup>16</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	Massachusetts DOC policy states that failure to report an allegation of sexual misconduct may result in termination. The policy stipulates that the allegation must be reported to the Chief of Investigations, Deputy Commissioner and if the allegations involve a possible violation of state law, the District Attorney. There are specific requirements for securing any crime scene, taking the inmate for emergency medical care/mental health referral and, if warranted, taking the inmate to an outside hospital with a rape crisis unit. <sup>17</sup>  According to the Massachusetts DOC, accused staff members may be removed from inmate contact while investigations take place. Evidence used may include letters, files, records, physical evidence, lab reports and expert opinions. Retaliation for reporting complaints or assisting in making the report may result in termination. <sup>18</sup> The policy further stipulates that a database will be set up to track all allegations of sexual misconduct. Allegations will be cross-checked against the database to determine common themes including facility, shifts, alleged victim and/or alleged perpetrators. An annual report is also generated. <sup>19</sup>
Is there a system for reporting allegations of custodial sexual	<b>Yes</b>	According to the Massachusetts DOC, a facility intake form is sent directly to the Internal Affairs Division. <sup>20</sup>

misconduct within the DOC?		
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	No	In a written response, the Massachusetts DOC states that inmates have the ability to contact numerous external agencies by phone, though there is no designated channel. <sup>21</sup>
Is the investigation external?	--	The Massachusetts DOC's Office of Investigations supervises all internal investigations. If an allegation involves a possible violation of state law, the superintendent must ensure that notification is made to the respective district attorney's office for possible prosecution. <sup>22</sup>
If there is an external investigation, how is it triggered?		According to the Massachusetts DOC, the incident is reported by the superintendent to the Massachusetts state police unit assigned to the respective district attorney's office. <sup>23</sup>
Are special measures taken to shield alleged victims from retaliation?	Yes	Massachusetts DOC Staff Sexual Misconduct policy states that inmate safety is a priority and retaliation by an employee may result in discipline up to and including termination. <sup>24</sup>
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	According to the Massachusetts DOC, placement decisions are made on a case-by-case basis. Options include placement in "close custody" (segregation), the health services unit or continued placement in the general population. <sup>25</sup>
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?	Yes	Massachusetts DOC Staff Sexual Misconduct policy requires that the Office of Investigations maintain a database of all staff sexual misconduct allegations and investigations. <sup>26</sup> In addition, in a written response the Massachusetts DOC states that the reporting process for sexual misconduct is currently being automated for tracking and documentation purposes. <sup>27</sup>

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

*None*

## **Pregnancy in Custody**

### ***Pregnancy - Statute***

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

Use of restraints in third trimester	Yes	The use of restraints in the second and third trimester is restricted to the use of handcuffs only and requires that the inmate be handcuffed in the front. According to the Massachusetts DOC, policy prohibits the use of leg irons and waist restraints during the second and third trimester. These requirements are outlined in 103 DOC 530 Inmate Transportation. <sup>28</sup>
Restraints during transport	Yes	See above. <sup>29</sup>

Restraints during labor	<b>Yes</b>	However, when an inmate is in active labor, and while in the delivery room, policy prohibits the use of any restraints. <sup>30</sup>
Officer in delivery room	<b>Yes</b>	According to the Massachusetts DOC, outside hospital post orders outline the specific duties and responsibilities of the officers during outside hospital details. The officer shall maintain a visual of the inmate while in the room during labor. However, the correction officer shall be positioned unobtrusively, near the head of the bed. <sup>31</sup>

## Contact information

### MASSACHUSETTS DEPARTMENT OF CORRECTION

<b>Commissioner Kathleen M. Dennehy</b> Central Headquarters 50 Maple Street, Suite 3 Milford, MA 01757 Phone: (508) 422-3300; Fax: (508) 422-3386	Website: <a href="http://www.state.ma.us/doc/">http://www.state.ma.us/doc/</a>
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### MASSACHUSETTS DEPARTMENT OF CORRECTION FACILITIES FOR WOMEN

<b>MCI-Framingham</b> Superintendent Lynn Bissonnette Average daily population 1/05-3/05: 453 <sup>32</sup> 99 Loring Drive P.O. Box 9007 Framingham, MA 01701 Phone (508) 532-5100 (Security Level 4) (Awaiting Trial Unit Security Level 6)	<b>South Middlesex Correctional Center</b> Kelly Ryan, Superintendent Average Daily Population: 99 <sup>33</sup> P.O. Box 850 Framingham, MA 01701 Phone (508) 879-1241 (Security Level 3 and 2)	<b>Neil J. Houston House</b> <b>Average Daily Population 1/05-3/05: 5<sup>34</sup></b> Dimock Community Health Center Roxbury, MA For incarcerated pregnant substance abusers (Security Level 1)
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### MASSACHUSETTS EXECUTIVE

<b>Governor Mitt Romney [R]</b> State House Office of the Governor Room 360 Boston, MA 02133 Phone: (617) 727-6250; Fax: (617) 727-9725 Email link: <a href="http://www.mass.gov/Agovwebmail/WebMailPageControl.ser?level=101">http://www.mass.gov/Agovwebmail/WebMailPageControl.ser?level=101</a>	Homepage: <a href="http://www.state.ma.us/gov/govco.htm">http://www.state.ma.us/gov/govco.htm</a>  Elected: 2002
<b>Attorney General Tom Reilly [D]</b> One Ashburton Place Boston, MA 02108 Phone: (617) 727-2200	Homepage: <a href="http://www.ago.state.ma.us/">http://www.ago.state.ma.us/</a>  Elected: 1998, 2002

## MASSACHUSETTS LEGISLATIVE INFORMATION

<p><b>House:</b> 160 members  <b>Senate:</b> 40 members</p> <p><b>Legislative Session:</b>  Each biennial session begins in an odd-numbered year.</p>	<p>Legislature Homepage:  <a href="http://www.mass.gov/legis">http://www.mass.gov/legis</a></p> <p>Bill Search: <a href="http://www.mass.gov/legis/billsrch.htm">http://www.mass.gov/legis/billsrch.htm</a></p> <p>Bill information phone number:  (617) 722-2860</p>
<p><b>Senate</b>  State House  Boston, MA 02133  Phone: (617) 722 2500</p>	<p>Home page: <a href="http://www.mass.gov/legis/">http://www.mass.gov/legis/</a>  <a href="http://www.mass.gov/legis/memmenus.htm">http://www.mass.gov/legis/memmenus.htm</a></p>
<p><b>House Of Representatives</b>  State House  Boston, MA 02133  (617) 722 2500</p>	<p>Home page: <a href="http://www.mass.gov/legis/">http://www.mass.gov/legis/</a></p>

## WOMEN IN PRISON - NGO RESOURCES

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

<p>Massachusetts -CURE  Contact National Chapter; See District of Columbia</p>
<p>Criminal Justice Policy Coalition  563 Massachusetts Avenue  Boston, MA 02118  Phone: (617)236-1188; Fax: (617)236-4399  Email: <a href="mailto:info@cjpc.org">info@cjpc.org</a>  Website: <a href="http://www.cjpc.org">www.cjpc.org</a>  Services: Builds and supports policies that better protect our communities, promote accountability and change for offenders, and provide restitution to victims; Networking meetings on a variety of criminal justice issues, sponsor public forums and conferences, organize legislative action, and provide support and coordination to groups engaged in advocacy.</p>
<p>American Friends Service Committee Criminal Justice Program  Massachusetts Chapter  2161 Massachusetts Avenue  Cambridge, MA 02140  Phone: (617) 661-6130; Fax: 617-354-2832  Website: <a href="http://www.afsc.org">www.afsc.org</a></p>
<p>ACLU of Massachusetts  211 Congress Street  Boston MA 02110  Phone: (617)482-3170; Fax: (617)451-0009 (fax)  Web site: <a href="http://www.aclu-mass.org">www.aclu-mass.org</a></p>
<p>Massachusetts Correctional Legal Services  8 Winter St  Boston MA 02108  Phone :(617)482-2773 ext: 112</p>

### Massachusetts's Custodial Sexual Misconduct Statute

*Chapter 268: Section 21A. Officer or other employee of penal or correctional institution; sexual relations with inmate; punishment.*

Section 21A. An officer or other person who is employed by or contracts with any penal or correctional institution in the commonwealth, and who, in the course of such employment or contract or as a result thereof, engages in sexual relations with an inmate confined therein, within or outside of such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person, shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both. In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person. For purposes of this section, sexual relations

shall include intentional, inappropriate contact of a sexual nature, including, but not limited to conduct prohibited by section 22 or 24 of chapter 265 or section 2, 3, 35 or 53A of chapter 272.

<sup>1</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts Department of Correction (DOC), 08/17/05.

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

<sup>3</sup> Letter from Kurt N. Schwartz, Assistant Attorney General, Massachusetts Office of the Attorney General, 09/07/05.

<sup>4</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>5</sup> 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.

<sup>6</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.01 Policy.

<sup>7</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>8</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>9</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>10</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>11</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.06 Staff Training.

<sup>12</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.07 Inmate Training.

<sup>13</sup> Policy, 103 DOC 519. Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>14</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>15</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>16</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>17</sup> Massachusetts DOC, Staff Sexual Misconduct with Inmates. 103 DOC 519.03 General Procedures.

<sup>18</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.04 Investigation.

<sup>19</sup> Massachusetts Department of Correction, Staff Sexual Misconduct with Inmates. 103 DOC 519.05 Tracking.

<sup>20</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>21</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>22</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>23</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>24</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>25</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>26</sup> Policy, 103 DOC 519. Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>27</sup> Fax from Kelly A. Natel, Chief of Constituency Services, Massachusetts DOC, 08/17/05.

<sup>28</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>29</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>30</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02, citing 103 DOC 521 Outside Hospital Security Procedures.

<sup>31</sup> Michael T. Maloney, Commissioner, Executive Office of Public Safety, Massachusetts DOC, 07/09/02.

<sup>32</sup> Massachusetts DOC, Quarterly Report on the Status of Prison Overcrowding First Quarter of 2005, available at [www.mass.gov](http://www.mass.gov), as per 01/27/06.

<sup>33</sup> Massachusetts DOC, Quarterly Report on the Status of Prison Overcrowding First Quarter of 2005, available at [www.mass.gov](http://www.mass.gov), as per 01/27/06.

<sup>34</sup> Massachusetts DOC, Quarterly Report on the Status of Prison Overcrowding First Quarter of 2005, available at [www.mass.gov](http://www.mass.gov), as per 01/27/06.