

Michigan

WOMEN IN PRISON: 2,039 (08/18/05)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§750.520c – *Criminal sexual conduct in the second degree; felony.*ⁱ

Michigan’s law is in the criminal code under the general heading of rape. The law was amended in 2000 to make the crime a felony, and further amended to make the purposes of sexual touching to include revenge and humiliation.

Apparently, while the law protects pretrial detainees held in local facilities, it only protects post-conviction detainees in the same institution if they are juveniles.

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 law covers all forms of sexual abuse.
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 the statutory rape provisions, and the defendant cannot claim the inmate consented.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law applies to employees and contractors with the department of corrections or a facility in which the victim is detained or to which the victim has been committed. AI is concerned, however, that the statute requires, for a finding of guilt, that an employee or contractor “knows” that the alleged victim is in custody.
Does the statute cover all places where an inmate might be abused?	Yes	The law protects convicted inmates detained in local institutions, as well as pretrial detainees and probationers.
Is the penalty a felony?	Yes	Violation is a felony punishable by up to 15 years.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	Michigan Attorney General’s Office does not maintain statistics on prosecutions or convictions under the state CSM statute. In 2005 the Attorney General reported that the Office still does not maintain such statistics. ³ The Michigan DOC reported the following information: <ul style="list-style-type: none"> - 2001: 14 allegations of sexual misconduct. Five were not sustained, seven were determined to be unfounded and two were pending at the date of the communication from the Michigan DOC. - 2002: two allegations of sexual misconduct. One was determined to be an unfounded allegation and the other case was still pending at the time of the communication from the Michigan DOC.⁴
Indictments/Convictions: other sources	According to a series of articles by the Detroit News: “...[W]hile Michigan law offers stiff penalties for guards who sexually abuse inmates, this remains largely an empty threat. Most cases are plea-bargained to lesser offenses, and sentences rarely include jail time. Of the 31 prison employees

¹ The text of Michigan’s law is excerpted at the end of this section.

	<p>convicted of sex-related crimes in the state, all but three ended with misdemeanor records. At least four cases started with criminal sexual conduct charges but ended with assault and battery convictions, ensuring the men didn't end up on the state's sex offender registry. Although a 2000 state law makes even consensual sex between guards and inmates a 15-year felony, no one has been charged with this crime..."</p> <p>The Detroit News also reported that the problem of CSM "...is compounded by the low priority given to the prosecution of guards charged with sexually abusing prisoners. And the responsibility for doing so is increasingly left to the Attorney General's Office, the same agency fighting lawsuits against the department by women victimized by guards." The Detroit News noted that, according to its analysis of Corrections records turned over in a class-action lawsuit against the department, "...the number of sexual abuse complaints against guards by female inmates is slightly higher than it was a decade ago when federal officials first identified Michigan's prisons as a problem."</p> <p>Reportedly, one day after the Detroit News published its investigation, the Michigan House Judiciary Committee announced a hearing to look into the newspapers reports. (<i>Detroit News</i>, 5/22-24/05, <i>AP</i>, 5/24/05)</p> <p>In a response to the articles, Patricia Caruso, Director of the Michigan Department of Corrections noted that the DOC 'in no way tolerates any form of abuse of prisoners.' She stated that since sexual abuse problems were brought to light in the 90's, new policies, procedures and screening criteria were introduced for employees. She also claimed that since 2000, the number of sexual misconduct allegations dropped 92% and said that an attempted process of removing male officers from female housing units has been stalled due to litigation, which may be considered by the Supreme Court. (<i>The Detroit News</i>, 06/10/05)</p>
<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> - St. Clair County Jail: Corrections officer Scott Andrews was charged with fourth-degree criminal sexual conduct for allegedly inappropriately touching two female inmates. Sanders was sentenced to six months in jail and three years probation for sexually abusing the inmates. Scott Andrews, a second officer at St. Clair County Jail, was also under investigation regarding a charge of sexual misconduct for having inappropriate sexual contact with a female county jail inmate. Andrews pleaded guilty to a charge of fourth-degree criminal sexual conduct and was sentenced to three years probation. (<i>Times Herald</i>, 3/1/05, 06/14/05, 06/21/05) - Livingston County Jail: A settlement was reached in a 2000 lawsuit filed by the American Civil Liberties Union against the Livingston County Jail and other county officials. The suit claimed, <i>inter alia</i>, that female inmates were subjected to a hostile environment. The terms of the settlement included a payment for \$850,000 to class action plaintiffs and attorneys, as well as the provision of shower curtains to ensure privacy in the shower area, a privacy wall surrounding the toilet area in the holding area, and a prohibition on different-gender pat-downs when a same-gender corrections officer is on shift. (<i>The Detroit News</i>, 2/11/04). - Dearborn Jail: A 38-year-old women alleged that she was raped by a corrections officer. He took her from her cell and led her into another cell in the women's section of the jail, where she was sexually assaulted. Police arrested the part-time officer. (<i>Detroit Free Press</i>, 02/19/01) - Eaton County Jail: The Eaton County Sheriffs Department fired a corrections officer accused of having sex with a female inmate. An Eaton County Prosecutor is considering charging the former corrections offer with fourth-degree sexual assault. (<i>Lansing State Journal</i>, 04/22/00)

Other Reported Incidents	<p><i>People v. Johnson, 2004 Mich. App. LEXIS 1916 (Mich. Ct. App.2004)</i> Reginald Johnson, a former Wayne County corrections officer, was convicted of second-degree criminal sexual conduct and sentenced to ten months to fifteen years' imprisonment. At trial, evidence was presented that Johnson, while on duty, removed inmate Tara Hamed from a jail cell and directed her to an unoccupied office where he began to kiss her and place his hands on her body. Hamed reportedly resisted and Hamed pushed her against a desk, digitally penetrated her and attempted to have intercourse with her. He reportedly did not succeed because she was struggling too much, but he did force her to her knees and ejaculated on her. He then gave her some toilet paper and told her to go back to her cell. Hamed was released four days later and filed a report, providing the clothes she had been wearing at the time of the assault. DNA evidence established that Johnson's seminal fluid was on her shirt. Johnson's conviction was upheld on appeal.</p>
	<p><i>Ford v. County of Oakland, 35 Fed. Appx. 393 (6th Cir. 2002)</i> The Court of Appeals for the Sixth Circuit upheld a summary judgment ruling against a former prisoner, Ford, who had allegedly been raped by a police deputy supervising her at the Oakland County Jail. Ford alleged that the county was liable as a municipality for maintaining a custom and policy of ignoring sexual harassment and assault claims and creating an atmosphere that facilitated rape. The Court held that Ford had failed to satisfy all the elements necessary to establish municipal liability.</p>
Litigation	<p>On March 10, 1997, the United States Department of Justice initiated litigation against the state of Michigan, alleging that the state was violating the constitutional rights of inmates incarcerated in Michigan women's prisons to be free from sexual misconduct and unlawful invasions of privacy. The two parties negotiated a settlement in which Michigan agreed to revise DOC policies to ensure better measures to prevent custodial sexual misconduct, to inform inmates of their rights, to investigate allegations of misconduct, and to respond to incidents that occur. Michigan later revised its policies in accordance with the settlement and the federal government agreed to drop the suit. However, recent media reports indicate that implementation has fallen short.</p>

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

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

Is the current Department of Corrections policy on custodial sexual misconduct language explicit?	Yes	Michigan DOC policy 03.03.140 contains explicit language on sexual misconduct. ⁵
Allow cross-gender pat-down searches?	Yes	Michigan DOC policy 03.03.140 provides that pat-down searches of female inmates will be performed only by female staff except in an emergency or where a reasonable suspicion exists that the prisoner is in possession of contraband. ⁶
What is the percentage of female officers in relation to male officers?		Approximately 49% of officers are female (51% male). ⁷
Restrictions on the duties of male guards?	Yes	Michigan DOC policy provides that male staff are not permitted to be alone with female prisoners in areas of the facility not clearly visible to other prisoners or staff except in an emergency situation, or when providing medical care or counseling, conducting interviews during an investigation or when reporting sexual abuse, harassment

		or retaliation. Male staff are required to verbally announce their presence prior to entering an area of the facility where women prisoners could be in a state of undress, and are not permitted in an examination room where a woman prisoner is fully or partially nude except in specified circumstances. Male staff must log in whenever they enter an area of the facility where a log is maintained. ⁸
Staff training on sexual misconduct?	Yes	Michigan DOC training includes 40 hours of pre-service training on critical issues in managing women offenders for new staff assigned to women's facilities. Staff members in women's facilities receive an annual 6-hour seminar on staff/prisoner interactions. ⁹
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According to the Michigan DOC, all women prisoners are required to attend a class as part of the reception and orientation process for all women newly committed. The class covers appropriate and inappropriate staff and prisoner interactions and, at the orientation, women are given a brochure on reporting misconduct and the support and services available to prisoner-victims. ¹⁰

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

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

Is medical help available for the victim of alleged sexual abuse?	Yes	According to the Michigan DOC, medical services are available at each facility and if necessary inmates may also be treated at a local hospital. ¹¹
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to the Michigan DOC, policy requires staff to offer mental health services. ¹²
Is counseling available for the victim of alleged sexual abuse?	Yes	According to the Michigan DOC, ongoing mental health services are available at each facility. ¹³
Is a rape kit taken?	Yes	According to the Michigan DOC, a rape kit is taken under the supervision of the Michigan State Police at a local hospital nearest the facility. ¹⁴
Are there special procedures for investigating allegations of sexual misconduct?	Yes	Detailed procedures for investigating allegations of sexual assault are contained in Michigan DOC policy document 03.03.140 "Prohibited Conduct in Facilities Housing Female Prisoners." ¹⁵ Michigan DOC policy mandates that investigators personally interview the alleged victim, the alleged perpetrator and sufficient witnesses to establish the facts. ¹⁶
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	Prisoners may report allegations of sexual misconduct to any employee verbally, in writing or through the grievance process. A minimum of one secure locked box has been installed in each facility in which prisoners may deposit complaints alleging sexual misconduct. ¹⁷
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	According to the Michigan DOC, all allegations of sexual misconduct are referred to the Michigan State Police. The Internal Affairs Division of the Michigan DOC conducts a parallel investigation. ¹⁸
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	Yes	According to the Michigan DOC, a Retaliation Review Committee has been established at each prison. The committee investigates all allegations of retaliation and reports findings to the Warden within a

		specified time frame. The Warden may take any appropriate action. ¹⁹
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	Michigan previously had an ombudsman but the legislature eliminated it two years ago.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	Michigan DOC policy mandates that information on allegations of sexual misconduct, whether sustained, not sustained, or determined to be unfounded, be entered into the Department's computerized tracking system. ²⁰ The system is to be searched at least quarterly to identify any staff members who have been the subject of more than two allegations, who may face evaluation or disciplinary actions. The Internal Affairs Division tracks the status of convictions. ²¹

Custodial Sexual Misconduct –Pending Legislative Proposals

<i>None</i>

Pregnancy in Custody

Pregnancy - Statute

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

Use of restraints in third trimester	Yes	The Michigan DOC reports that no belly chains or leg irons are used during third trimester. ²² Handcuffs may be used. ²³
Restraints during transport	Yes	According to the Michigan DOC, prisoners are handcuffed during transfer. ²⁴
Restraints during labor	No	According to the Michigan DOC, no restraints are used during labor. ²⁵
Officer in delivery room	Yes	According to the Michigan DOC, a female officer is present in the delivery room. ²⁶

Contact information

MICHIGAN DEPARTMENT OF CORRECTIONS

Director Patricia L. Caruso 206 E. Michigan Avenue Grandview Plaza P.O. box 30003 Lansing, MI 48909 Phone: (517) 373-4467; Toll Free: (877) 886-5401 Fax: (517) 335-0287	Website: http://www.michigan.gov/corrections
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MICHIGAN DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

Huron Valley Complex - Women Warden Susan Davis 3511 Bemis Road Ypsilanti, MI 48197 Phone: (734) 434-5888 Security Levels: I and II	Camp Brighton (Operates under director of Huron Valley Complex) ADW: Tom DeSantis 7200 Chambers Road Pinckney, MI 48169 Phone: (734) 878-6623	Robert Scott Correctional Facility Warden Clarice Stovall 47500 Five Mile Road Plymouth, MI 48170 Phone: (734) 459-7400 Security Levels: I, II, IV and V and Reception Center
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MICHIGAN EXECUTIVE

Governor Jennifer M. Granholm [D] P.O. Box 30013 Lansing, Michigan 48909 Phone: (517) 373-3400 Fax: (517) 335-6863	Homepage: http://www.michigan.gov/gov Elected: 2002
Attorney Mike Cox [D] G. Mennen Williams Building, 7th Floor 525 W. Ottawa St. P.O. Box 30212 Lansing, MI 48909 Phone: (517) 373-1110; Toll Free: (877) 765-8388 Fax: (517) 373-3042 Email: mjag@michigan.gov	Homepage: http://www.ag.state.mi.us/ Elected: 2002

MICHIGAN LEGISLATIVE INFORMATION

Legislative Session: Legislative Sessions: 2-year term. Starts second Wednesdays in Jan. every year. Bills carry-over. House: 110 members, 2 year term (6 yr limit) Senate: 38 members, 4 year term (8 yr limit) All legislative elections held in even-years	Legislature Homepage: http://MichiganLegislature.org/ Bill Search: on Legislative Homepage Bill information phone number: (517) 373-0169
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Senate State Capitol P.O. Box 30036 Lansing, MI 48909-7536	Home Page: http://www.senate.michigan.gov
House of Representatives State Capitol P.O. Box 30014 Lansing, MI 48909-7514	Home Page: http://www.house.michigan.gov

WOMEN IN PRISON - NGO RESOURCES

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

Michigan-CURE P.O. Box 2736 Kalamazoo, MI 49003-2736 Phone: 269-383-0028; Fax: 269-373-2545
ACLU of Michigan 60 W. Hancock Detroit, MI 48201-1342 Phone: (313) 578-6800; Fax: (313) 578-6811 Website: www.aclumich.org
American Friends Service Committee Criminal Justice Program 1414 Hill Street Ann Arbor MI 48104 Phone: (734) 761-8283; Fax: (734) 761-6022 Website: www.prisoneradvocacy.org Services: Advocates for the rights and privileges of over 1,500 Michigan prisoners each year. The principle motives behind their work include: Ensuring that prisoners and their families are able to obtain their rights and privileges, Eroding the barriers between those inside and outside of prison; Advocating for humane conditions and treatment of prisoners housed by the State of Michigan. In addition, they produce educational materials and facilitate workshops for prisoners and their families to aid in their own advocacy, particularly around parole and health issues.

Michigan's Custodial Sexual Misconduct Statute

Excerpt
 Act 328 of 1931

750.520c *Criminal sexual conduct in the second degree; felony.*

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exist:

...

(i) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, the department of corrections who knows that the other person is under the jurisdiction of the department of corrections.

(j) That other person is under the jurisdiction of the department of corrections and the actor is an employee or a contractual employee of, or a volunteer with, a private vendor that operates a youth correctional facility under section 20g of 1953 PA 232, MCL 791.220g, who knows that the other person is under the jurisdiction of the department of corrections.

(k) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county or the department of corrections who knows that the other person is under the county's jurisdiction.

(l) The actor knows or has reason to know that a court has detained the victim in a facility while the victim is awaiting a trial or hearing, or committed the victim to a facility as a result of the victim having been found responsible for committing an act that would be a crime if committed by an adult, and the actor is an employee or contractual employee of, or a volunteer with, the facility in which the victim is detained or to which the victim was committed.

(2) Criminal sexual conduct in the second degree is a felony punishable by imprisonment for not more than 15 years.

¹ Letter from Nancy L. Zang, Special Administrator, Michigan Department of Correction (DOC), 08/27/05.

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

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- ³ Letter from Jennifer M. Granholm, Attorney General, State of Michigan Department of Attorney General, 09/29/00; Letter from Robert Ianni, Assistant in Charge, Criminal Division, 07/10/02; Letter from Mike Cox, Attorney General, 8/17/05.
- ⁴ Letter from the State of Michigan DOC, Nancy Zang, Special Administrator, 06/27/02.
- ⁵ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners,” 12/11/00.
- ⁶ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners.”
- ⁷ Nancy L. Zang, Special Administrator, Letter from Michigan DOC, 06/27/02.
- ⁸ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners”; Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ⁹ 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.
- ¹⁰ Michigan DOC, “Women Prisoners' Guide to Identify and Address Gender-Based Misconduct”, February 2002.
- ¹¹ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ¹² Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ¹³ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ¹⁴ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ¹⁵ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners”, 12/11/00.
- ¹⁶ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners”, 12/11/00, citing Policy document 03.03.140
- ¹⁷ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02; Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners,” 12/11/00.
- ¹⁸ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02; see also Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners,” 12/11/00.
- ¹⁹ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ²⁰ Michigan DOC policy 03.03.140 “Prohibited Conduct in Facilities Housing Female Prisoners,” 12/11/00.
- ²¹ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ²² Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 06/27/02.
- ²³ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 08/27/05.
- ²⁴ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 08/27/05.
- ²⁵ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 08/27/05.
- ²⁶ Letter from Nancy L. Zang, Special Administrator, Michigan DOC, 08/27/05.