

# Minnesota

WOMEN IN PRISON: 552 (08/29/05)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

§ 609.344 – *Criminal Sexual Conduct in the third degree*<sup>i</sup>

§ 609.345 – *Criminal Sexual Conduct in the fourth degree*

Minnesota’s law was amended in 2001 to cover custodial sexual misconduct under the general law for criminal sexual conduct. The law covers “sexual contact” as well as “sexual penetration,” and does not permit “consent” by complainant as a defense.<sup>ii</sup>

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 Third Degree offense is limited to sexual penetration, and the Fourth Degree offense covers sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law does not permit “consent” on the part of the complainant as a defense.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law covers all employees, independent contractors, or volunteers of a state, county, city, or privately-operated adult or juvenile correctional system.
Does the statute cover all places where an inmate might be abused?	Yes	The law covers state, county, city, or privately-operated adult or juvenile correctional systems, and protects both residents of facilities and those under supervision of the correctional system.
Is the penalty a felony?	Yes	The maximum penalty for criminal sexual conduct in the third degree is imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000 or both. The penalty for criminal sexual conduct in the fourth degree is imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	<p>Minnesota Attorney General’s Office informed Amnesty International that it does not have jurisdiction to prosecute criminal matters, and does not compile statistics on prosecutions and convictions under the state CSM statutes. The AG referred AI to the Minnesota Sentencing Guidelines Commission and the Bureau of Criminal Apprehension.<sup>3</sup> AI also received information from the Minnesota Department of Corrections.</p> <p>AI received varying information in response to its inquiries:</p> <p>The <b>Minnesota DOC</b> provided the following information: Between the</p>
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<sup>i</sup> The relevant text of Minnesota’s statute is reprinted at the end of this section.

<sup>ii</sup> The 2005 enactment of 2005 MN H.B. 1 amended the penalty provisions of § 609.344 and § 609.345, replacing existing maximum sentences with the possibility of life imprisonment based on previous offenses.

	<p>enactment of the law on June 1, 2001 and August 2005 three individuals have been charged under the statute. One case was closed due to defendant's death; one resulted in a conviction; and the third person absconded and is still at large.<sup>4</sup></p> <p>The <b>Minnesota Sentencing Guidelines Commission</b> maintain statistics on felony level sentences and reported the following:</p> <ul style="list-style-type: none"> <li>- 2002: two cases were sentenced (involving one male victim and one female victim. Both were third degree criminal sexual conduct, which involves sexual penetration);</li> <li>- 2003: one case of third degree criminal sexual conduct was sentenced (male victim);</li> <li>- 2004: two cases of third degree criminal sexual conduct (one male victim and one female victim) and one case of fourth degree criminal sexual conduct (one male victim) were sentenced (fourth degree criminal sexual conduct involves sexual contact).<sup>5</sup></li> </ul> <p>The <b>Minnesota Bureau of Criminal Apprehension</b>, reported as follows: Between January 2001 and September 2005, two arrests were made under the custodial sexual misconduct statutes. In one instance, there was no prosecution. In the other, the individual was found guilty of fourth degree criminal sexual conduct.<sup>6</sup></p>
<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> <li>- Marion County Juvenile Justice Complex: A grand jury is investigating allegations of sexual contact between two male staffers and young female inmates at the county juvenile detention center. One of the men was employed at the center as a youth manager. He was suspended without pay after the allegations were made. The other man was no longer with the facility for other reasons. (AP, 01/12/06)</li> <li>- Delaware County Juvenile Facility: an employee accused of having sex with a young female detainee was reportedly fired. (AP, 01/12/06)</li> <li>- Douglas County Jail: Donald Buchin, a former jailer, is charged with assaulting Jacqueline Solofra while she was housed in the Douglas County Jail. The alleged assault was discovered after jail staff found letters and notes to Solofra from Buchin, who was fired after the notes were discovered. Solofra has filed a claim against the county in connection with the assault. (Duluth News Tribune, 10/16/04)</li> <li>- Anoka County Jail; Washington County Jail: According to a National Institute of Corrections consultant, the Anoka County Jail had not adequately trained employees about sexual misconduct and had no rules on reporting misconduct. A jailer was fired from Washington County last September for alleged sexual misconduct. (Star Tribune, 7/20/02)</li> <li>- Olmsted County Jail: Jail guard Steven Allen Tilton was charged with three felonies for the alleged sexual assault of a female inmate. (AP, 6/23/01)</li> </ul>
<p>Other reported incidents</p>	<p><i>Jones v. Stoneking</i>, 2005 U.S. Dist. LEXIS 3096 (D. Minn. 2005)</p> <p>Cass County civilian transport officer Robert James Stoneking pled guilty to third degree criminal sexual conduct for having sexual intercourse with Wanda Lee Jones while she was an inmate in the Cass County Jail. Jones filed a civil suit against Stoneking and Cass County. Her claim against the county under 42 U.S.C. §1983 for inadequate hiring and her state law <i>respondeat superior</i> and negligence claims survived Cass County's motion for summary judgment.</p>

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

The following is based on data provided by the Minnesota 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 sexual nature of the behaviors prohibited. Minnesota DOC policy defines sexual abuse and assault (including offensive gestures or comments and any physical conduct which is sexually suggestive) as well as sexual misconduct (any sexual behavior directed toward an offender). <sup>7</sup>
Allow cross-gender pat-down searches?	<b>No</b>	Minnesota DOC policy requires that only staff of the same sex be permitted to conduct, assist and/or witness pat searches, unclothed body searches and body cavity searches of female offenders. <sup>8</sup>
What is the percentage of female officers in relation to male officers?		As of August 29, 2005 in the entire Minnesota DOC system, approximately 24% of the officers were female. <sup>9</sup> However, in the only facility for female offenders (MCF-Shakopee), approximately 50% of the officers were female. <sup>10</sup>
Restrictions on the duties of male guards?	<b>Yes</b>	According to the Minnesota DOC, male officers are restricted from certain duties regarding female inmates, including conducting pat and unclothed body searches, collecting urine samples, and monitoring showers. <sup>11</sup>
Staff training on sexual misconduct?	<b>Yes</b>	According to the Minnesota DOC, staff receive pre-service training and follow-up training. Training addresses the prohibition, identification, reporting and prevention of sexual misconduct as well as the consequences for violating the policy on sexual misconduct. Training also addresses Minnesota's criminal sexual conduct statute and how it affects employees. <sup>12</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	--	Minnesota DOC reported that it provides such information. According to policies provided to AI by the DOC, staff provide written and verbal information, "in language easily understood by the offender," on sexual assault. This information includes issues such as sexual assault protection, intervention, self-protection, reporting, and treatment and counseling. <sup>13</sup> It is unclear whether information is provided specifically on custodial sexual misconduct.

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

The following is based on the Minnesota 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>	Minnesota DOC policy states that all alleged victims of "sexual assault" will receive psychological and medical services in addition to forensic examination. <sup>14</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	Minnesota DOC policy states that if health services staff are on duty, the victim will receive immediate treatment. If mental health staff are not on duty, the appropriate health care facility is to be contacted immediately and the alleged victim transported to the facility as soon as possible. <sup>15</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	See above.
Is a rape kit taken?	<b>Yes</b>	A sexual assault examination is taken unless the victim refuses to be examined. <sup>16</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	Minnesota DOC policy on "Interpersonal Associations and Sexual Misconduct Between Staff and Offenders" details investigation procedures. <sup>17</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	Minnesota DOC policy on CSM requires DOC employees who receive information about sexual misconduct to report it. However, there is no direct method through which inmates may contact authorities, as the reporting system is targeted towards reports made by employees, based on rumors or allegations by inmates. Furthermore, an inmate may be subject to disciplinary action if the

		investigator determines that the accusations were false and the investigation reveals that the accuser ‘could not in good faith have believed to be true.’ <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 Minnesota DOC, the inmate can report an incident directly to the police with a phone call. <sup>19</sup>
Is the investigation external?	--	According to the Minnesota DOC, investigations concerning staff misconduct are completed by the Minnesota DOC’s Office of Special Investigations (“OSI”), with assistance from local law enforcement if requested. If possible violation of state law is determined, the case is referred to local law enforcement, who may be assisted by OSI staff. <sup>20</sup>
If there is an external investigation, how is it triggered?		According to the Minnesota DOC, external investigation may be triggered either by a call from inmate or by the inmate telling a staff member, who then calls OSI or the police. <sup>21</sup> As noted above, OSI will refer cases to law enforcement if necessary.
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	Minnesota DOC Policy 103.223 mandates separation of the DOC staff member and victim inmate during the investigation and provides that this not be a form of punishment. <sup>22</sup>
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>No</b>	According to Minnesota DOC Department policy 103.223, the method of separation must not constitute “a form of punishment for the offender(s) and staff.” <sup>23</sup>
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	<b>No</b>	The Corrections Ombudsman was abolished in 2003 for budgetary reasons. <sup>24</sup>
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	<b>Yes</b>	According to the Minnesota DOC, OSI maintains a case tracking system. <sup>25</sup>

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

*None*

## **Pregnancy in Custody**

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

Legislation banning shackling in the third trimester or during labor	<b>No</b>	Minnesota 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 Minnesota Department of Corrections response to AI’s surveys, please see above.

Use of restraints in third trimester	<b>Yes</b>	According to the Minnesota DOC, the policy for Shakopee (Minnesota’s facility for adult female offenders) states that pregnant inmates will not be restrained unless there are security reasons to do so such as escape risk, danger to the inmate or to the unborn child, physical abuse of correction or medical staff, damage to property, or public safety risk. If restraints must be used, necessary precautions
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		must be taken to ensure that the fetus is not harmed. According to the Minnesota DOC, these precautions will be prescribed by qualified health services staff and they will include decisions about the manner in which the inmate is to be restrained, whether the inmate needs a qualified health services staff member present during the application of restraints, or whether the offender should be restrained at the medical facility. <sup>26</sup>
Restraints during transport	<b>Yes</b>	See above.
Restraints during labor	<b>Yes</b>	See above.
Officer in delivery room	<b>Yes</b>	According to the Minnesota DOC, "security coverage for medical special duty, including inpatient supervision, will be considered gender specific if it is anticipated that medical procedures would dictate gender-specific security supervision." <sup>27</sup>

## Contact information

### MINNESOTA DEPARTMENT OF CORRECTIONS

<b>Commissioner Joan Fabian</b> Minnesota Department of Corrections 1450 Energy Park Drive, Suite 200 St. Paul, MN 55108-5219 Phone: (651) 642-0282; Fax: (651) 642-0414 <a href="mailto:jfabian@co.doc.state.mn.us">jfabian@co.doc.state.mn.us</a>	Website: <a href="http://www.doc.state.mn.us">http://www.doc.state.mn.us</a>
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### MINNESOTA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<b>MCF-Shakopee</b> <i>#Female inmates: 475</i> <sup>28</sup> Rick Hillengass, Acting Warden 1010 West Sixth Avenue Shakopee, Minnesota 55379 Phone: (952) 496-4440; Fax: (952) 496-4476 <a href="mailto:hillengassr@shk.doc.state.mn.us">hillengassr@shk.doc.state.mn.us</a>
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### MINNESOTA EXECUTIVE

<b>Governor Tim Pawlenty [R]</b> 130 State Capitol 75 Rev. Dr. Martin Luther King Jr. Blvd. Saint Paul, MN 55155 Phone: (651) 296-3391 or (800) 657-3717 Fax: (651) 296-2089 E-mail: <a href="mailto:tim.pawlenty@state.mn.us">tim.pawlenty@state.mn.us</a>	Homepage: <a href="http://www.mainserver.state.mn.us/governor/">http://www.mainserver.state.mn.us/governor/</a>  Elected: 2002
<b>Attorney General Mike Hatch [D]</b> Minnesota Attorney General's Office 1400 Bremer Tower 445 Minnesota St. St. Paul, MN 55101 Phone: (651) 296-3353; (800) 657-3787	Homepage: <a href="http://www.ag.state.mn.us">http://www.ag.state.mn.us</a>  Elected: 1996, re-elected in 2002

## **MINNESOTA LEGISLATIVE INFORMATION**

<p><b>House:</b> 134 members, two-year term. <b>Senate:</b> 67 senators, four-year term. <b>Legislative Session:</b> The Legislature convenes in regular session each odd numbered year on the first Tuesday after the first Monday of January. In the even numbered years it convenes on a date set by the joint agreement of both bodies.</p>	<p>Legislature home page and bill search: <a href="http://www.state.mn.us/">http://www.state.mn.us/</a></p> <p>Bill information phone number: 1 (800) 657-3550</p>
<p><b>Senate</b> 120 Capitol, 75 Constitution Ave St. Paul, MN 55155-1606</p>	<p>Home page: <a href="http://www.senate.leg.state.mn.us/">http://www.senate.leg.state.mn.us/</a></p>
<p><b>House Of Representatives</b> 267 State Office Building St. Paul, Minnesota 55155</p>	<p>Home page: <a href="http://www.house.leg.state.mn.us/">http://www.house.leg.state.mn.us/</a></p>

## **WOMEN IN PRISON - NGO RESOURCES**

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

### **Minnesota-CURE**

Box 28325  
Minneapolis, MN 55428

### **Minnesota ACLU**

450 N. Syndicate, Suite 230  
St. Paul, MN 55104  
Phone: 651-645-4097; Fax: 651-647-5948  
Email: support@aclu-mn.org  
Website: www.aclu-mn.org

### **AMICUS**

Contact: Dona Woltering  
100 N. Sixth St., Ste. 529-B  
Minneapolis, MN 55403  
Phone: (612) 348-8570; Fax: (612) 348-6782  
Website: www.amicususa.org

## **Minnesota's Custodial Sexual Misconduct Statute**

§ 609.344 Criminal sexual conduct in the third degree.

Subdivision 1. Crime defined. A person who engages in sexual penetration with another person is guilty of criminal sexual conduct in the third degree if any of the following circumstances exists:

...

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

Subdivision 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than 15 years or to a payment of a fine of not more than \$30,000 or both. A person convicted under this section is also subject to conditional release under section 609.3455.

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§ 609.345 Criminal sexual conduct in the fourth degree.

Subdivision 1. Crime defined. A person who engages in sexual contact with another person is guilty of criminal sexual conduct in the fourth degree if any of the following circumstances exists:

...

(m) the actor is an employee, independent contractor, or volunteer of a state, county, city, or privately operated adult or juvenile correctional system, including, but not limited to, jails, prisons, detention centers, or work release facilities, and the complainant is a resident of a facility or under supervision of the correctional system. Consent by the complainant is not a defense.

Subdivision 2. Penalty. Except as otherwise provided in section 609.3455, a person convicted under subdivision 1 may be sentenced to imprisonment for not more than ten years or to a payment of a fine of not more than \$20,000, or both. A person convicted under this section is also subject to conditional release under section 609.3455.

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<sup>1</sup> [Minnesota](#) Department of Corrections COMS Population Report for 08/29/05.

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

<sup>3</sup> Letters from Nancy L. Helmich, paralegal, Minnesota Office of the Attorney General, 08/30/05 and David Voigt, Manager, Criminal Trial Division, 09/15/05.

<sup>4</sup> Emails from Shari Burt, Information Officer, Minnesota Department of Corrections (DOC), 08/05/02 and 08/29/05.

<sup>5</sup> Email from Anne Wall, Senior Research Analyst, MN Sentencing Guidelines Commission, 09/12/05.

<sup>6</sup> Phone call from Jay Kuechenmeister, Minnesota Bureau of Criminal Apprehension, 10/2005.

<sup>7</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. Minnesota Department of Corrections, Department Policy 103.223 "Interpersonal Associations and Sexual Misconduct Between Staff and Offenders," Effective 10/01/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=103.223.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.223.htm), as per 01/27/06.

<sup>8</sup> Shari Burt, Information Officer, Minnesota DOC, 08/05/02. Minnesota DOC, Department Policy 301.101 "Searches," 07/01/02.

<sup>9</sup> Based on numbers as of 01/01/02. Shari Burt, Information Officer, Minnesota DOC, 08/05/02.

<sup>10</sup> Shari Burt, Information Officer, Minnesota DOC, 08/05/02.

<sup>11</sup> Minnesota DOC, Department Policy 103.012, "Gender Specific Assignment," 01/01/00. Shari Burt, Information Officer, Minnesota DOC, 08/29/05.

<sup>12</sup> Minnesota DOC, Department Policy 103.223 "Interpersonal Associations and Sexual Misconduct Between Staff and Offenders," 10/01/04. Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.

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- <sup>13</sup> Minnesota DOC, Department Policy 202.057, “Prison Rape Elimination Act,” effective 10/01/05, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=202.057.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=202.057.htm), as per 01/27/06.
- <sup>14</sup> Minnesota DOC, Department Policy 500.600, “Offender Alleged Sexual Assault,” 10/01/01. Minnesota DOC, Shari Burt, Information Officer, 08/05/02.
- <sup>15</sup> Minnesota DOC, Department Policy 500.600, “Offender Alleged Sexual Assault,” 10/01/01. Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.
- <sup>16</sup> Minnesota DOC, Department Policy 500.600, “Offender Alleged Sexual Assault,” 10/01/01. Shari Burt, Information Officer, Minnesota DOC, 08/05/02.
- <sup>17</sup> Minnesota DOC, Department Policy 103.223 “Interpersonal Associations and Sexual Misconduct Between Staff and Offenders,” effective 10/01/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=103.223.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.223.htm), as per 01/27/06.
- <sup>18</sup> Minnesota DOC, Department Policy 103.223 “Interpersonal Associations and Sexual Misconduct Between Staff and Offenders,” effective 10/01/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=103.223.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.223.htm), as per 01/27/06. Shari Burt, Information Officer, Minnesota DOC, 08/05/02.
- <sup>19</sup> Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.
- <sup>20</sup> Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.
- <sup>21</sup> Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.
- <sup>22</sup> Minnesota DOC, Department Policy 103.223 “Interpersonal Associations and Sexual Misconduct Between Staff and Offenders,” effective 10/01/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=103.223.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.223.htm), as per 01/27/06.
- <sup>23</sup> Minnesota DOC, Department Policy 103.223 “Interpersonal Associations and Sexual Misconduct Between Staff and Offenders,” effective 10/01/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_Display\\_TOC.asp?Opt=103.223.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_Display_TOC.asp?Opt=103.223.htm), as per 01/27/06..
- <sup>24</sup> Minnesota Session Laws 2003, 1st Special Session - Chapter 2, Article 5. (CHAPTER 2-S.F.No. 2)
- <sup>25</sup> Shari Burt, Information Officer, Minnesota DOC, 08/05/02.
- <sup>26</sup> Minnesota DOC, Instruction 301.090SHK, “Transportation of Offenders,” Effective 10/18/04, available at [http://www.doc.state.mn.us/DocPolicy2/html/DPW\\_DisplayINS.asp?Opt=301.090SHK.htm](http://www.doc.state.mn.us/DocPolicy2/html/DPW_DisplayINS.asp?Opt=301.090SHK.htm), as per 01/27/06. Shari Burt, Information Officer, Minnesota DOC, 08/29/05.
- <sup>27</sup> Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05, citing MCF-Shakopee Inpatient Post Orders, 08/08/05.
- <sup>28</sup> Email from Shari Burt, Information Officer, Minnesota DOC, 08/29/05.