

# Missouri

WOMEN IN PRISON: 2488 (12/04)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

**§566.145** - *Sexual contact with an inmate, penalty—consent not a defense*<sup>1</sup>

Missouri’s law was enacted in 2002 through 2002 S.B. 969. The new section created a specific penalty for sexual or deviate sexual intercourse. This section is located in the sexual offences chapter of Missouri’s criminal code.

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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?  | No  | §566.145 appears to cover only acts of sexual intercourse and ‘deviate intercourse.’ The section is unclear, however, because it is entitled “sexual contact with an inmate.” §566.010, which provides definitions for the purposes of chapter 566, defines the term “sexual contact” as sexual touching, and does not include penetration. |
| Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution? | No  | No: §566.145 provides that consent is not a defense.  |
| Does the statute cover all custodians and staff in contact with inmates?                              | No  | The statute covers persons employed by, or assigned to work in, a jail, prison or correctional facility. It does not appear to apply to parole officers.  |
| Does the statute cover all places where an inmate might be abused?                                    | No  | It does not appear that the definition of inmate includes those on probation and parole.  |
| Is the penalty a felony?  | Yes | Violation of §566.145 is a class D felony.  |

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

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| Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup> | The Missouri Attorney General’s Office does not compile these statistics. <sup>3</sup>   |
| Incidents reported in select media since January 2000                             | <ul style="list-style-type: none"> <li>- St. Louis Community Release Center: A guard was indicated on felony charges of deviate sexual assault and sexual contact with an inmate after allegedly forcing a female resident of the halfway house into performing oral sex. The guard pleaded not guilty. (<i>St. Louis post-Dispatch</i>, 4/13/05)</li> <li>- Cole County: A lawsuit by a former inmate against the county, jail administrator and a former Sheriff claims a jailer provided cigarettes in exchange for sex. The woman is the fifth former inmate to allege in federal lawsuits that jailers solicited nudity and sex acts in exchange for cigarettes, snack items and preferential treatment. Her lawsuit is the first to allege the sexual intercourse occurred. An attorney indicated that he plans to file similar lawsuits on behalf of five additional women, including two others alleging intercourse with jailers. (<i>AP</i>, 3/21/05)</li> </ul> |

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

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|--------------------------|--|
|                          | <ul style="list-style-type: none"> <li>- Stone County Jail: State officials have accused a former Stone County deputy sheriff with having sexual contact with a female inmate. The former officer will plead not guilty to the charges against him. (<i>Springfield News-Leader, 12/22/04</i>)</li> <li>- Webster County Jail: Three former inmates testified in court about alleged sexual abuses by a former jailer, while they were in custody, including alleged inappropriate touching and allegedly using an inmate as a lookout as he had sexual contact with another woman. In addition, the inmates alleged that a male trustee who prepared meals at the jail encouraged female prisoners to perform stripteases with the promise of getting better food. (<i>Springfield News-Leader, 8/19/04</i>).</li> <li>- Clark County: Clark county sheriff Doug Jones resigned as part of a plea bargain, admitting that he lied to a federal agent to conceal sexual relations with a female prisoner at the jail. (<i>The Associated Press and Local Wire, 06/13/03</i>)</li> <li>- Ray County Jail: A former jail guard was indicted on corruption charges for having sex with female inmates. The inmates were also charged for allegedly seducing the guard in order to attempt an escape. (<i>Kansas City Star, 07/25/00</i>)</li> <li>- Rankin County Juvenile Detention Center: An officer was arrested for allegedly sexually assaulting a minor female inmate. (<i>AP, 01/7/00</i>)</li> </ul> |
| Other Reported Incidents | <p><i>Williams v. Prudden, 67 Fed. Appx. 976, 2003 U.S. App. LEXIS 9553 (8th Cir. 2003)</i></p> <p>The Eighth Circuit Court of Appeals reversed a lower court holding that Teresa Marie Williams had not properly stated an Eighth Amendment claim. Williams alleged that while an inmate at the Women’s Eastern Reception, Diagnostic, and Correctional Center, John Lanon, a Corrections Officer, forcibly ground his pelvis against her, grabbed her breast, verbally demanded sexual favors, made sexual advances and attempted to force himself upon her. The Court further found that Lanon was not protected by qualified immunity because any reasonable corrections officer would have known that sexually assaulting an inmate would violate the inmate’s constitutional rights.</p>   |
|                          | <p><i>Ware v. Jackson County, 150 F.3d 873 (8<sup>th</sup> Cir. 1998)</i></p> <p>Jackson County Jail: The Eighth Circuit Court of Appeals held that a widespread and persistent pattern of sexual activity between the guards and prisoners of the Jackson County Missouri jail, coupled with the county’s inaction regarding allegations of sexual misconduct by the jail personnel, was the cause of a female prisoner’s rape by one of the guards. The court discussed the numerous instances of sexual activity between jail employees and female inmates. Corrections officer John Toomer was accused of sexual misconduct with various female inmates, including ordering a mentally slow prisoner to expose herself in exchange for candy bars. Toomer and other staff had sex with female inmates in the showers. Despite the reported incidents, no disciplinary action was taken against Toomer. Evidence revealed that jail employees accused of sexual misconduct were rarely disciplined or placed under stricter supervision. The Court affirmed a \$50,000 award against the county to the prisoner.</p>  |

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

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

|                              |            |  |
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| Is the current Department of | <b>Yes</b> | The policy includes direct and specific language about the nature of |
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| Corrections policy on custodial sexual misconduct language-explicit?             |            | the sexual behaviors prohibited. <sup>4</sup>   |
| Allow cross-gender pat-down searches?  | <b>Yes</b> | According to the Missouri DOC, DOC policy is to encourage searches to be conducted by a staff member of the same gender. Staff may be assigned to specific posts to ensure that they are available to uphold this policy. However, the policy provides that cross-gender searches may occur in the event of a staff shortage or of unforeseen circumstances. <sup>5</sup>   |
| What is the percentage of female officers in relation to male officers?          |            | At the Chillicothe Correctional Center, 47% of officers are female (53% male). At the Women's Eastern Reception Diagnostic and Correctional Center, 45% of officers are female (55% male). <sup>6</sup>   |
| Restrictions on the duties of male guards?                                       | <b>Yes</b> | Direct supervision of showering, urine collection and other similar posts are carried out by female staff except in emergency situations. Male officers are restricted from strip-searching female inmates except in emergencies. Non-emergency unscheduled frisk searches will usually be conducted by a female officer when possible. However, if male officers are also present and a group of inmates is being searched, the male officers may also be used. <sup>7</sup> |
| Staff training on sexual misconduct?   | <b>Yes</b> | According to a written response from the Missouri DOC, all newly hired department employees receive eight hours of pre-service training about sexual as well as other forms of harassment. An additional six hours in-service training is also available. <sup>8</sup>  |
| Inform inmates of agency policies and reporting procedures on sexual misconduct? | <b>Yes</b> | In a 2002 communication, the Missouri DOC reported that new informational brochures were being developed for inmates. <sup>9</sup>  |

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

The following is based on the Missouri 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?  | <b>Yes</b> | According to the Missouri DOC, medical care is provided by Correctional Medical Services. <sup>10</sup>   |
| Are immediate mental health services available for the victim of alleged sexual abuse?                             | <b>Yes</b> | According to the Missouri DOC, mental health services are available at each facility. DOC policy requires that any inmate who reports sexual abuse must be given mental health services for evaluation and treatment. <sup>11</sup> |
| Is counseling available for the victim of alleged sexual abuse?  | <b>Yes</b> | According to the Missouri DOC, mental health staff, the chaplain and classification staff are available. <sup>12</sup>  |
| Is a rape kit taken?   | <b>Yes</b> | According to the Missouri DOC, the inmate is transported to the local hospital for a forensic examination. <sup>13</sup>  |
| Are there special procedures for investigating allegations of sexual misconduct?                                   |            |   |
| Is there a system for reporting allegations of custodial sexual misconduct within the DOC?                         | <b>Yes</b> | The Missouri DOC has indicated that a system does exist, but further details were not provided. <sup>14</sup>   |
| 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?   | <b>Yes</b> | According to the Missouri DOC, all cases are referred to local law enforcement. However, the majority of cases are referred back to the Inspector General's office for investigation. <sup>15</sup>                                 |
| If there is an external investigation, how is it triggered?  |            | No information provided.  |

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| Are special measures taken to shield alleged victims from retaliation?  | <b>Yes</b> | According to the Missouri DOC, each case is reviewed case-by-case. Measures taken may include reassigning the involved staff member to another post or facility, placing the staff member on administrative leave, or transferring the inmate to another facility. <sup>16</sup> |
| 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 information provided.   |
| Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?                  | <b>Yes</b> | According to the Missouri DOC, the Office of the Inspector General tracks all investigations. Indictments and convictions are not tracked by the DOC, but records are kept in the court system. <sup>17</sup>  |

## ***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 | <b>No</b> | Missouri 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 Missouri Department of Corrections response to AI's surveys, please see above.

|                                      |            |   |
|--------------------------------------|------------|---|
| Use of restraints in third trimester | <b>Yes</b> | According to the Missouri DOC, wrist and leg restraints are used; the department does not use belly chains and leg irons. <sup>18</sup>   |
| Restraints during transport          | <b>Yes</b> | According to the Missouri DOC, their policy is to apply wrist restraints in the second and third trimester during transportation and escort only. The department does not use belly chains or leg irons. <sup>19</sup>  |
| Restraints during labor              | <b>No</b>  | According to the Missouri DOC, restraints are not applied during labor and delivery. One-point restraints may be applied after delivery, if necessary and with medical personnel's agreement. <sup>20</sup>   |
| Officer in delivery room             | <b>Yes</b> | According to the Missouri DOC, a female officer is present inside the room during labor and delivery. If complications occur and the inmate is moved to a special surgery room the officer remains outside the door until the child is born when she will resume her post inside with clearance from medical staff. <sup>21</sup> |

## **Contact information**

### **MISSOURI DEPARTMENT OF CORRECTIONS**

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| <b>Director Larry Crawford</b><br>P.O. Box 236<br>Jefferson City, Mo. 65102<br>Phone: (573) 751-2389; Fax: (573) 751-4099<br>TDD: (573) 751-5984 | Website:<br><a href="http://www.corrections.state.mo.us/">Http://www.corrections.state.mo.us/</a> |
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## **MISSOURI DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN**

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| <b>Chillicothe Correctional Center</b><br>Jennifer Miller, Superintendent<br>1500 Third Street<br>Chillicothe, Mo. 64601<br>Phone: (660) 646-4032<br>(C-2 to C-5 female) | <b>Women's Eastern Reception, Diagnostic and Correctional Center</b><br>Cyndi Prudden, Acting Superintendent<br>P.O. Box 300<br>1101 E. Hwy 54<br>Vandalia, Mo. 63382<br>Phone: (573) 594-6686<br>(C-2 to C-5 female) |
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## **MISSOURI EXECUTIVE**

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| <b>Governor Matt Blunt</b><br>Missouri Capitol Building, Room 216<br>Jefferson City, MO 65102-0720<br>Phone: (573) 751-3222<br>Email link: <a href="http://www.gov.mo.gov/constituentform.htm">http://www.gov.mo.gov/constituentform.htm</a> | Homepage:<br><a href="http://www.gov.state.mo.us/index.htm">Http://www.gov.state.mo.us/index.htm</a><br><br>Elected: 2004       |
| <b>Attorney General Jeremiah W. Nixon [D]</b><br>Supreme Court Building<br>207 W. High St.<br>P.O. Box 899<br>Jefferson City, MO 65102<br>Phone: (573) 751-3321; Fax: (573) 751-0774   | Homepage:<br><a href="http://www.ago.state.mo.us/index.htm">Http://www.ago.state.mo.us/index.htm</a><br><br>First elected: 1992 |

## **MISSOURI LEGISLATIVE INFORMATION**

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| <b>House:</b> 163 members, 2 years term (8 yrs limit)<br><b>Senate:</b> 34 members, 4 years term (8 yrs limit)<br><br><b>Legislative Session:</b> Meets annually from the first Wednesday after the first Monday in January until approximately June 30 on odd numbered years or May 15 in even numbered years. Bills may not carry over from the first year of the session to the next. | Legislature Homepage: <a href="http://www.moga.state.mo.us/">http://www.moga.state.mo.us/</a><br>Bill search<br><a href="http://www.house.state.mo.us/bills00/HOMESRCH.HTM">http://www.house.state.mo.us/bills00/HOMESRCH.HTM</a><br>Bill information phone number:<br>(573) 751-4666 |
| <b>Senate</b><br>State Capitol Building<br>Jefferson City, Missouri 65101  | Homepage:<br><a href="http://www.senate.state.mo.us/">http://www.senate.state.mo.us/</a>  |
| <b>House of Representatives</b><br>201 West Capitol Avenue<br>Room 308<br>Jefferson City, MO 65101   | Homepage:<br><a href="http://www.house.state.mo.us/home.htm">Http://www.house.state.mo.us/home.htm</a><br><br>Democrat Homepage: <a href="http://www.missouridems.org/">http://www.missouridems.org/</a>  |

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

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

Missouri-CURE  
P.O. Box 29041  
St. Louis, MO 63112

Missouri Association For Social Welfare  
Criminal Justice  
606 East Capitol Avenue  
Jefferson City, Missouri 65101  
Phone: 573-634-2901; Toll Free: 1-888-634-2901; Fax: 573-635-1648  
Email: CitizenVoice@masw.org  
Website: www.masw.org

ACLU of Eastern Missouri  
4557 Laclede Avenue  
St. Louis, MO 63108  
Phone: (314) 361-2111; Fax: (314) 361-3135  
Web site: www.aclu-em.org

## Missouri's Custodial Sexual Misconduct Statute

### §566.145 - *Sexual contact with an inmate, penalty—consent not a defense*

1. A person commits the crime of sexual contact with an inmate if such person is an employee of, or assigned to work in, any jail, prison or correctional facility and such person has sexual intercourse or deviate sexual intercourse with an inmate or resident of the facility.
2. Sexual contact with an inmate is a class D felony.
3. The victim's consent is not an affirmative defense.

<sup>1</sup> Missouri Department of Corrections (DOC), 2004 Annual Report, 07/22/05, available at <http://www.doc.missouri.gov/AR%202004.pdf>, as per 01/27/06.

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

<sup>3</sup> Letters from Malcolm Buxton, Attorney General's Office, 08/08/00; Paul R. Maguffee, Assistant Attorney General, 06/18/02 and Jeremiah W. Nixon, Attorney General, 8/15/05.

<sup>4</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>5</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>6</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>7</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>8</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>9</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>10</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>11</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>12</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>13</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>14</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>15</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>16</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>17</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>18</sup> Facsimile communication from Director Dora B. Schriro, Ed.D., Missouri DOC, 02/14/01.

<sup>19</sup> Facsimile communication from Director Dora B. Schriro, Ed.D., Missouri DOC, 02/14/01.

<sup>20</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.

<sup>21</sup> Letter from Gary B. Kempker, Missouri DOC, 07/02/02.