

# Montana

WOMEN IN PRISON: 547 (06/30/05)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

§45-5-502 – *Sexual assault.*

§45-5-503 – *Sexual assault without consent.*<sup>i</sup>

Montana’s law is part of the Sexual Offenses category of the Criminal Code. It states that the consent of an inmate is ineffective, so any sexual contact with an inmate is, by legal definition, without consent.

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 abuse.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law considers this “statutory rape,” an officer can’t avoid prosecution by a claim that the inmate consented.
Does the statute cover all custodians and staff in contact with inmates?	No	The offender must have supervisory or disciplinary authority over the victim. The law provides different standards of who is covered for each offense.
Does the statute cover all places where an inmate might be abused?	No	The law applies to places of incarceration, so does not appear to protect those on parole or probation.
Is the penalty a felony?	Yes	A finding of sexual intercourse without consent is punishable by up to five years imprisonment and \$50,000 fine. A finding of sexual assault is punishable by up to 6 months imprisonment and \$500 fine.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	In 2002, the Montana Attorney General’s Department stated that such statistics are not currently compiled by any department or agency in Montana. <sup>3</sup>  Amnesty International did not receive a response to its 2005 follow up inquiry with the Montana Attorney General’s Office.
Incidents reported in select media since January 2000	- Custer County Jail: Former jailer Rodolfo Furigay is charged with eight counts of rape, four misdemeanor counts of sexual assault and one count of official misconduct relating to an alleged sexual relationship with a female inmate. Former Undersheriff Tom Frank pleaded guilty to two misdemeanor charges involving his handling of allegations of misconduct against Furigay. (AP, 5/10/05)

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

<sup>i</sup> The text of Montana’s statute is reprinted at the end of this section.

The following is based on data provided by the Montana Department of Corrections in response to AI's survey in 2002 and 2005. AI did not receive data from the Montana 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?	<b>Yes</b>	Montana Department of Corrections (DOC) Policy 1.3.52 reiterates the content of §45-5-502 and §45-5-503, indicating that it is a crime for any person having supervisory or disciplinary authority over an offender to engage in sexual contact, sexual assault, or sexual intercourse with the offender. <sup>4</sup> Montana DOC Policy 1.3.52 mandates that an employee found to have committed abuse, mistreatment or sexual assault of an offender, or sexual intercourse with an inmate shall be subject to discipline up to and including termination. <sup>5</sup> Employees terminated for any of the above violations shall not be eligible for re-employment into any position within the Montana DOC.
Allow cross-gender pat-down searches?	<b>Yes</b>	Searches are predominantly same-sex. Cross-gender searches are done only in emergency, where there is an immediate risk to the inmate or the institution. <sup>6</sup>
What is the percentage of female officers in relation to male officers?		According to the Montana DOC, 45% of officers are women. The Montana DOC further states that it has had difficulty recruiting female correction officers, and that it has assigned a full-time staff person to recruitment of women. <sup>7</sup>
Restrictions on the duties of male guards?		No information provided.
Staff training on sexual misconduct?	<b>Yes</b>	No details provided. <sup>8</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	According to the Montana DOC, information is provided in the inmate handbook. <sup>9</sup>

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

The following is based on the Montana 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>	Montana DOC Policy 1.3.52 mandates that each Montana facility and program administrator will develop written procedures for addressing abuse, mistreatment, sexual assault or sexual intercourse with an offender including immediate medical assessment and/or treatment by appropriate medical staff for offenders who are reported to have been physically abused or assaulted or have engaged in sexual intercourse. <sup>10</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Montana DOC, a mental health services provider is on call. <sup>11</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	No details provided. <sup>12</sup>
Is a rape kit taken?	<b>Yes</b>	No details provided. <sup>13</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	Montana DOC Policy 1.3.52 mandates that each Montana facility and program administrator will develop written procedures for addressing abuse, mistreatment, sexual assault or sexual intercourse with an offender including an investigation procedure for alleged instances of abuse, sexual assault, or sexual intercourse. <sup>14</sup> According to the Montana DOC, two full-time commissioned law enforcement officers monitor investigations. <sup>15</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	Employees who had knowledge of another employee engaging in the above violations and who did not report these actions will be subject to disciplinary action up to and including termination. <sup>16</sup> No further details provided.

Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?		No information provided.
Is the investigation external?	<b>Yes</b>	Montana DOC Policy 1.3.52 mandates that each Montana facility and program administrator will develop written procedures for addressing abuse, mistreatment, sexual assault or sexual intercourse with an offender. The policy must include the provisions that appropriate legal authorities will be contacted when the alleged conduct might constitute a criminal offense and that authorities will be notified whenever sexual assault or sexual intercourse is alleged.
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	Although according to the Montana DOC, special measures are taken, none were specified. <sup>17</sup>
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>Yes</b>	According to a written response from the Montana DOC, administrative segregation may be ordered 'for inmate safety.' <sup>18</sup>
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>	No details provided.

## ***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>	Montana 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 Montana Department of Corrections response to AI's surveys, please see above.

Use of restraints in third trimester	<b>Yes</b>	Montana DOC policy does not specifically refer to use of restraints during the third trimester, indicating that this is permissible. Policy mandates that when pregnant offenders must be restrained, necessary precautions determined by medical staff shall be taken to ensure the fetus is not harmed. <sup>19</sup>
Restraints during transport	<b>Yes</b>	According to the Montana DOC, accommodations are made "where necessary." <sup>20</sup>
Restraints during labor	<b>No</b>	According to the Montana DOC, no restraints are used. <sup>21</sup>
Officer in delivery room	<b>No</b>	According to the Montana DOC an officer is outside the room. <sup>22</sup>

# Contact information

## MONTANA DEPARTMENT OF CORRECTIONS

<p><b>Director Bill Slaughter</b>          Department of Corrections          P.O. Box 201301          Helena, MT, 59620-1301          Phone: (406) 444-3930          Fax: 406-444-4920</p>	<p>Website: <a href="http://www.cor.state.mt.us/">http://www.cor.state.mt.us/</a></p>
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## MONTANA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<p><b>Montana Women's Prison</b>          Female Inmates: 294<sup>23</sup>          Jo Acton, Warden          701 South 27th          Billings, MT 59101          Phone: (406) 247-5100          Fax: (406) 247-5161</p>	<p><b>Missoula County Pre-Release and Transitional</b>          Female Inmates: 21<sup>24</sup>          Sue Wilkins, Director          2340 Mullan Road          Missoula MT, 59808          Phone: (406) 541-9200          Fax: (406) 541-921          Pre release center (Male and Female)</p>	<p><b>Alternatives Inc. Pre-Release and Transitional</b>          Female Inmates: 26<sup>25</sup>          (Women's Comm. Correctional Facility/WCCF)          David Armstrong, Administrator          3109 1<sup>st</sup> Avenue North          Billings, MT 59101          Phone: (406) 259-29695          Pre-release center and transitional</p>
<p><b>Community Counseling and Correctional Services</b>          Female inmates: 52<sup>26</sup>          Steve McArthur, Director          66 West Broadway          Butte, MT 59701          Phone: (406) 782-2316          Fax: (406) 782-1170          Pre release center (Male and Female)</p>	<p><b>Great Falls Transition Center</b>          Female inmates: 30<sup>27</sup>          Paul Cory, Director          1019 15<sup>th</sup> Street North          Great Falls, MT 59401          Phone: (406) 727-0944          Fax: (406) 727-0961          Pre release center (Male and Female)</p>	<p><b>Watch East (1)</b>          Female inmates: 25<sup>28</sup>          (new facility for offenders convicted of driving under the influence. No address available)          Glendive, MT</p>

## MONTANA EXECUTIVE

<p><b>Governor Brian Schweitzer</b>          Office of the Governor          The State Capitol          P.O. Box 200801          Helena, MT, 59620-0801.          Phone: (406) 444-3111          Fax: (406) 444-5529</p>	<p>Homepage: <a href="http://governor.mt.gov/">http://governor.mt.gov/</a>          Elected: 2004</p>
<p><b>Attorney General Mike McGrath [D]</b>          Department of Justice          215 North Sanders Street, 3<sup>rd</sup> Floor          Helena, MT 59620- 1401          Phone: (406) 444-2026          Fax: 406-444-3549          Email: <a href="mailto:contactdoj@mt.gov">contactdoj@mt.gov</a></p>	<p>Homepage: <a href="http://www.doj.state.mt.us/">http://www.doj.state.mt.us/</a>          Elected 2000; 2004</p>

## MONTANA LEGISLATIVE INFORMATION

<p><b>Legislative Session:</b> Legislative sessions occur every odd-numbered year, beginning at noon on the first Monday in January, with the following exception: if the first Monday is January 1, the Legislature then begins on the first Wednesday of January. The length of a regular session is 90 legislative days. Sessions may be extended if required to complete the work of the Legislature. In addition, under unusual Circumstances, the Legislature may be called into Special Session by the Governor to deal with a specific problem.</p> <p><b>House:</b> 100 members, 2-yr. term; leadership is elected every two years.</p> <p><b>Senate:</b> 50 members, 4-yr. term; leadership is elected every two years..</p>	<p>Legislature Homepage: <a href="http://leg.state.mt.us/">http://leg.state.mt.us/</a></p> <p>Bill Search on Legislative Homepage</p> <p>Bill information phone number: (406) 444-4853</p>
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<p><b>Senate</b> State Capitol, P.O. Box 201702, Helena, MT 59620-1702</p>	<p>Homepage: <a href="http://leg.state.mt.us/senate/index.htm">http://leg.state.mt.us/senate/index.htm</a></p>
<p><b>House of Representatives</b> State Capitol, P.O. Box 201701, Helena, MT 59620-1701</p>	<p>Homepage: <a href="http://www.house.state.mt.us/">http://www.house.state.mt.us/</a></p>

## WOMEN IN PRISON - NGO RESOURCES

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

<p>ACLU of Montana P.O. Box 3012 Billings, MT 59103 Phone: (406) 248-1086 Web site: <a href="http://www.aclumontana.org">www.aclumontana.org</a></p>
<p>Montana CURE 15655-4 E. Mullan Rd. Clinton, MT 59825 Phone: (406) 825-3403</p>

<p><b>Montana's Custodial Sexual Misconduct Statute</b> <i>Excerpted</i></p> <p><b>§45-5-502. Sexual assault</b></p> <p>(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.</p> <p>(2) A person convicted of sexual assault shall be fined not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.</p> <p>...</p> <p>(5) Consent is ineffective under this section if:</p> <p style="padding-left: 20px;">(a) the victim is incarcerated in an adult or juvenile correctional, detention, or treatment facility and the perpetrator is an employee, contractor, or volunteer of the facility and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;</p> <p>...</p> <p><b>§45-5-503. Sexual intercourse without consent</b></p> <p>(1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(b)(iii).</p> <p>(2) A person convicted of sexual intercourse without consent shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 2 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222.</p> <p>...</p> <p>(3) (d) If the victim was incarcerated in an adult or juvenile correctional, detention, or treatment facility at the time of the offense and the offender had supervisory or disciplinary authority over the victim, the offender shall be punished by imprisonment in the state prison for a term of not more than 5 years or fined an amount not to exceed \$50,000, or both.</p> <p>(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable medical and counseling</p>
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costs that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244.

(5) As used in subsection (3), an act "in the course of committing sexual intercourse without consent" includes an attempt to commit the offense or flight after the attempt or commission.

<sup>1</sup> This number includes 70 women held in county jails. Fax from Dewey Hall, Lead Statistician, Montana Department of Corrections (DOC), 08/23/05, citing Daily Population Report for 6/30/05.

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

<sup>3</sup> Letter from Matthew Dale, Director, Office of Victim Services and Restorative Justice, Montana Attorney General's Department, 06/19/02.

<sup>4</sup> Montana Department of Corrections Policy 1.3.52, Offender Abuse/Mistreatment, Effective June 1, 1998. Submitted by Bill Slaughter, Director, Montana DOC, 11/07/02.

<sup>5</sup> Montana DOC Policy 1.3.52, Offender Abuse/Mistreatment, Effective June 1, 1998. Submitted by Bill Slaughter, Director, Montana DOC, 11/07/02.

<sup>6</sup> Fax from Dewey Hall, Montana DOC, Statistics Bureau, 08/23/02.

<sup>7</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>8</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>9</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>10</sup> Montana DOC Policy 1.3.52, Offender Abuse/Mistreatment, Effective June 1, 1998. Submitted by Bill Slaughter, Director, Montana DOC, 11/07/02.

<sup>11</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>12</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>13</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>14</sup> Montana DOC Policy 1.3.52, Offender Abuse/Mistreatment, Effective June 1, 1998. Submitted by Bill Slaughter, Director, Montana DOC, 11/07/02.

<sup>15</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>16</sup> Montana DOC Policy 1.3.52, Offender Abuse/Mistreatment, Effective June 1, 1998. Submitted by Bill Slaughter, Director, Montana DOC, 11/07/02.

<sup>17</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>18</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>19</sup> Montana DOC Policies and Procedures, Security and Control Doc. 3.1.8 Use of Force and Restraints. Effective April 1, 1997. Submitted by Bill Slaughter, Director, Montana DOC, 10/07/02.

<sup>20</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>21</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>22</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.

<sup>23</sup> Montana DOC, *Daily Population Report*, 7/25/05, available at <http://www.cor.state.mt.us/resources/dailypopulation.asp>, as per 01/27/06.

<sup>24</sup> Montana DOC, *Daily Population Report*, 7/25/05, available at <http://www.cor.state.mt.us/resources/dailypopulation.asp>, as per 01/27/06.

<sup>25</sup> Montana DOC, *Daily Population Report*, 7/25/05, available at <http://www.cor.state.mt.us/resources/dailypopulation.asp>, as per 01/27/06.

<sup>26</sup> Montana DOC, *Daily Population Report*, 7/25/05, available at <http://www.cor.state.mt.us/resources/dailypopulation.asp>, as per 01/27/06.

<sup>27</sup> Montana DOC, *Daily Population Report*, 7/25/05, available at <http://www.cor.state.mt.us/resources/dailypopulation.asp>, as per 01/27/06.

<sup>28</sup> Fax from Dewey Hall, Lead Statistician, Montana DOC, 08/23/05.