

Nebraska

WOMEN IN PRISON: 346 (06/04)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§ 28-322 - *Sexual Abuse of an inmate or parolee, terms, defined.*ⁱ

§ 28-322.01 - *Sexual Abuse of an inmate or parolee.*ⁱⁱ

§ 28-322.02 – *Sexual abuse of an inmate or parolee in the first degree; penalty.*

§ 28-322.03 – *Sexual abuse of an inmate or parolee in the second degree; penalty.*ⁱⁱⁱ

Nebraska’s law is in the criminal code. The prohibited acts include sexual penetration or sexual contact. It covers employees of the Department of Correctional Services (DCS), contractors, and those the DCS has authorized or delegated control over inmates. It is a status offense, and the law specifically states an inmate’s consent is not a defense. Violation is a felony.

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 both penetration and contact.
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 consent of an inmate is not a defense.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The law covers employees of the Office of Parole Administration and employees, contract employees and agents, other than an inmate’s spouse, of the Nebraska DCS and city or county correctional or jail facilities. It also covers employees of the Office of Probation Administration who perform official duties within any facility operated by the DCS or a city or county correction or jail facility.
Does the statute cover all places where an inmate might be abused?	Yes	The law is not concerned with location.
Is the penalty a felony?	Yes	Sexual abuse by penetration is a Class III felony, punishable by imprisonment up to 20 years and a fine of up to \$25,000 or both. ² Sexual abuse by contact is a Class IV felony, punishable by imprisonment of up to five years and a fine of up to \$10,000 or both.

Custodial Sexual Misconduct – Allegations and Incidents

ⁱ §28-322 was amended by the 2001 enactment of Nebraska LB 155, which broadened the scope of individuals to which Nebraska’s CSM statute applies to include not just employees or those contracting with or receiving delegated authority from the Department of Correctional Services or the Officer of Parole Administration, but also individuals employed by city or county correction or jail facilities. §28-322 was amended again in 2004 with the enactment of Nebraska LB 943, which, *inter alia*, added a definition of inmate or parolee to the statute and broadened coverage of the statute to include certain individuals employed by the Office of Probation Administration.

ⁱⁱ §28-322.01 was also amended by the 2001 enactment of Nebraska LB 155, which broadened coverage of the section to individuals confined in a city or county correctional or jail facility. This section was amended again with the 2004 enactment of Nebraska LB 943, which, without limiting the breadth of the statute, replaced certain terms to harmonize the text of the section to reflect the definition of inmate or parolee added to §28-322.

ⁱⁱⁱ The text of Nebraska’s statute is reprinted at the end of this section.

Indictments/Convictions (answer to AI letter requesting information) ³	<p>Amnesty International received no response from the Nebraska Attorney General's Office in 2000 or 2002.</p> <p>In 2005, the Nebraska Attorney General's Office informed AI that it does not compile statistics on prosecutions and convictions under the state CSM statutes. The AG referred AI to the Nebraska Correctional Services.⁴ AI did not receive a response to its inquiries with this office.</p>
Incidents reported in select media since January 2000	<p>- Omaha Correctional Facility: Officer Burrell allegedly raped a woman being held at a men's prison. He was charged with first-degree sexual assault but the charges were later dropped. Burrell did admit to consensual sex with her just weeks before it was made a felony for a correctional officer to have consensual sex with an inmate. (<i>Omaha World Herald</i>, 08/07/99, 08/17/04; 08/18/04)</p>
	<p>- Nebraska Correctional Center for Women: A former guard was sentenced to 18 months to three years on his conviction of attempted sexual abuse of an inmate. The guard was originally charged with sexual abuse of an inmate. (<i>AP</i>, 9/18/02).</p>

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

The following is based on data provided by the Nebraska Department of Correctional Services in response to AI's survey on 2002 and 2005. AI did not receive data from the Nebraska Department of Correctional Services 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	Nebraska DCS policy includes direct and specific language about the sexual nature of the behaviors prohibited. The policy prohibits all behavior of a sexual nature by staff or contractors directed toward an inmate. ⁵
Allow cross-gender pat-down searches?	Yes	According to the Nebraska DCS, cross-gender pat searches of female inmates are allowed. ⁶
What is the percentage of female officers in relation to male officers?		Facility custody staff system-wide is 18% female and 82% male. ⁷
Restrictions on the duties of male guards?	Yes	According to the Nebraska DCS, there are restrictions in policy, procedure, and practice. No details were provided on the type of restrictions applied. ⁸
Staff training on sexual misconduct?	Yes	According to Nebraska DCS policy, staff training includes pre-service and in-service classes that focus on the prevention and detection of sexual abuse/assaults on inmates. Trainings also deals with the proper reporting and follow-up for all allegations or incidents of sexual abuse/assaults on inmates. ⁹
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According to Nebraska DCS policy, upon arrival at the facility, inmates are informed orally and in writing, "in language clearly understood by the inmate," of sexual assault reporting procedure. Specifically, inmates must be informed that they have the option of reporting an incident of sexual abuse/assault to supervisory as well as line staff. ¹⁰

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

The following is based on the Nebraska Department of Correctional Services response to AI's surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	Yes	According to Nebraska DCS policy, inmate victims are immediately referred to a community facility for initial medical treatment and gathering of evidence. ¹¹
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Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	Nebraska DCS policy states that upon the inmate victim's return from the community facility (where the inmate victim is taken to immediately after reporting), the inmate is placed on "15 minute checks" until a mental health staff person does an evaluation to assess the need for crisis intervention counseling and long-term follow-up. ¹²
Is counseling available for the victim of alleged sexual abuse?	Yes	See above.
Is a rape kit taken?	Yes	When the inmate victim is transferred to the community facility, the initial medical examination includes a rape kit. Inmate consent to the rape kit is required. ¹³
Are there special procedures for investigating allegations of sexual misconduct?	No	According to a written communication from the Nebraska DCS, the Nebraska State Patrol – not the DCS – handles investigations of custodial sexual misconduct. The Nebraska DCS further stated that it is in the process of updating its policies on sexual assault and on investigations of felonies / referral for prosecution to reflect this. ¹⁴
Is there a system for reporting allegations of custodial sexual misconduct within the DCS?	--	According to Nebraska DCS policy, inmates who have been subjected to sexual assault may report this to correctional staff. The Nebraska DCS states that it is in the process of updating its policies on sexual assault and on investigations of felonies / referral for prosecution to correct inconsistencies regarding reporting and investigation. Nebraska DCS investigators do not handle or investigate sexual abuse or assault cases. ¹⁵
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DCS?	Yes	According to the Nebraska DCS, the Nebraska State Patrol handles investigations of sexual abuse or assault cases. DCS reports that its policies are currently being updated to reflect this. ¹⁶
Is the investigation external?	Yes	As noted, according to the Nebraska DCS, investigations are conducted by the state patrol, an independent law enforcement agency. ¹⁷
If there is an external investigation, how is it triggered?		Nebraska DCS policy provides that DCS will notify the Nebraska State Patrol who will then determine their involvement in the subsequent investigation. ¹⁸
Are special measures taken to shield alleged victims from retaliation?		No information provided.
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 DCS?	Yes	Nebraska's Ombudsman (technically known as Public Counsel) includes a Deputy Public Council for Corrections who has responsibility for investigating prison-related complaints.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	According to Nebraska DCS policy, DCS investigators shall maintain statistics regarding allegations of sexual abuse and assault for at least five years and shall convey their statistics to the Planning, Research, and Accreditation Section. In addition, each facility will maintain a record of verified instances of sexual abuse or assault. ¹⁹

Custodial Sexual Misconduct – Pending Legislative Proposals

2005 NE L.B. 747 <i>Sponsored by Senator Synowiecki</i> Introduced 01/19/2005 Carried over to Second Regular Session 06/03/2005	Would amend §28-222 to extend coverage of Nebraska CSM statute to employees, contract employees and agents of the Department of Probation and Parole Services.
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Pregnancy in Custody

Pregnancy - Statute

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

Use of restraints in third trimester	Yes	Maximum and medium-custody inmates may wear handcuffs and belts, but no leg restraints. There are no restraints used for minimum custody inmates. ²⁰
Restraints during transport	Yes	See above.
Restraints during labor	No	Security restraints are not used during labor. ²¹
Officer in delivery room	No	Security officers are not used as security in the delivery room. The birthing mother is accompanied by a parenting birthing coach. On rare occasions, an officer might substitute as the birthing coach, but would then be in the delivery room in a supportive or coaching capacity, and not as a security measure. ²²

Contact information

NEBRASKA CORRECTIONAL SERVICES

Director Robert P. Houston P.O. Box 94661 Lincoln, NE 68509-4661 Phone: (402) 471-2654; Fax: (402) 479 5623	Homepage: http://www.corrections.state.ne.us/
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NEBRASKA CORRECTIONAL SERVICES FACILITIES FOR WOMEN

Nebraska Correctional Center for Women <i>Female inmates: 308 (7/05)²³</i> Warden John Dahm 1107 Recharge Road, York, Nebraska 68467-8003 Phone: (402) 362-3317 http://www.corrections.state.ne.us/institutions/index.html
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NEBRASKA EXECUTIVE

<p>Governor Dave Heineman Office of the Governor P.O. Box 94848 Lincoln, NE 68509-4848 Phone: (402) 471-2244; Fax: (402) 471-6031</p>	<p>Home page: http://gov.nol.org Elected: 2004</p>
<p>Attorney General Jon Bruning [R] Office of the Attorney General 2115 State Capitol Lincoln, NE 68509. Phone: (402) 471-2682 or (800) 727-6432 Fax: (402) 471-3297</p>	<p>Home page: http://www.nol.org/home/ago Elected: 2002</p>

NEBRASKA LEGISLATIVE INFORMATION

<p>Legislative Session: Nebraska's legislature is unique among all state legislatures in the nation because it has one legislative house called a unicameral. Every annual session of the Legislature has started on the first Wednesday following the first Monday in January. It meets for 60 days in even-numbered years and 90 days in odd-numbered years. Most bills are introduced during the first 10 days of the legislative session. With the exception of a few bills, most bills introduced into the Legislature must receive a public hearing by a legislative committee. A nine-member Reference Committee determines which bills will be heard by each of the 14 standing committees. At hearings, Nebraska citizens have a chance to express their opinions to committee members.</p> <p>Legislature: 49 members, two 4-year term No more than half of the Legislature is up for election every two years.</p>	<p>Legislative information home page: http://www.unicam.state.ne.us/index.htm</p> <p>Bill Search: http://www.unicam.state.ne.us/Bills.htm</p> <p>Bill information phone number: (402) 471-0770</p>
<p>LEGISLATURE (Unicameral) Nebraska State Legislature State Capitol Building P.O. Box 94604 Lincoln, NE 68509-4604</p>	

WOMEN IN PRISON - NGO RESOURCES

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

<p>Nebraska-CURE P.O. Box 6624 Lincoln, NE 66506</p>
<p>ACLU of Nebraska 941 O Street, Suite 706 Lincoln, NE 68508 Phone: (402) 476-8091 Web site: www.aclunebraska.org</p>

Nebraska's Custodial Sexual Misconduct Statute

§ 28-322. Sexual abuse of an inmate or parolee; terms, defined

For purposes of sections 28-322 to 28-322.03:

(1) Inmate or parolee means any individual confined in a facility operated by the Department of Correctional Services or a city or county correctional or jail facility or under parole supervision; and

(2) Person means (a) an individual employed by the Department of Correctional Services or by the Office of Parole Administration, including any individual working in central administration of the department, any individual working under contract with the department, and any individual, other than an inmate's spouse, to whom the department has authorized or delegated control over an inmate or an inmate's activities, (b) an individual employed by a city or county correctional or jail facility, including any individual working in central administration of the city or county correctional or jail facility, any individual working under contract with the city or county correctional or jail facility, and any individual, other than an inmate's spouse, to whom the city or county correctional or jail facility has authorized or delegated control over an inmate or an inmate's activities, and (c) an individual employed by the Office of Probation Administration who performs official duties within any facility operated by the Department of Correctional Services or a city or county correctional or jail facility.

§ 28-322.01. Sexual abuse of an inmate or parolee. A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318. It is not a defense to a charge under this section that the inmate or parolee consented to such sexual penetration or sexual contact.

28-322.02. Sexual abuse of an inmate or parolee in the first degree; penalty. Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree. Sexual abuse of an inmate or parolee in the first degree is a Class III felony.

28-322.03. Sexual abuse of an inmate or parolee in the second degree; penalty. Any person who subjects an inmate or parolee to sexual contact is guilty of sexual abuse of an inmate or parolee in the second degree. Sexual abuse of an inmate or parolee in the second degree is a Class IV felony.

¹ Nebraska Department of Correctional Services (DCS), *Statistics: Inmate Population*, 06/2004, available at <http://www.corrections.state.ne.us/administration/statistics/inmate.html>, as per 01/27/06.

² See R.R.S. Neb. § 28-105 Felonies; classification of penalties; sentences; where served; eligibility for probation (2004).

³ The information does not reflect prosecutions or convictions under rape statutes.

⁴ Email from Paulette Merrell, Assistant Attorney General, Criminal Bureau, 08/29/05.

⁵ Nebraska Correctional Services, Administrative Regulation Number 203.11 on Sexual Assault, revised 08/31/05.

⁶ Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

⁷ Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

⁸ Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

⁹ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹⁰ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹¹ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹² Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹³ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹⁴ Letter from Steve King, Manager, Planning Research and Accreditation, Nebraska DCS, 08/22/05.

¹⁵ Letter from Steve King, Manager, Planning Research and Accreditation, Nebraska DCS, 08/22/05.

¹⁶ Letter from Steve King, Manager, Planning Research and Accreditation, Nebraska DCS, 08/22/05.

¹⁷ Letter from Steve King, Manager, Planning Research and Accreditation, Nebraska DCS, 08/22/05.

¹⁸ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

¹⁹ Nebraska DCS Administrative Regulation 203.11 "Sexual Assault." Effective 03/31/05. Revised 08/31/05.

²⁰ Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

²¹ Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

²² Letter from Steve King, Planning and Research Manager, Nebraska DCS, 07/03/02.

²³ Nebraska DCS, *Statistics: Inmate Population*, 07/12/05, available at <http://www.corrections.state.ne.us/administration/statistics/inmate.html>, as per 01/27/06.