

# New Hampshire

WOMEN IN PRISON: 106 (06/04)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

§ 632-A:2 – *Aggravated Felonious Sexual Assault.*

§ 632-A:3<sup>i</sup> – *Felonious Sexual Assault.*<sup>ii</sup>

New Hampshire’s laws are part of the Sexual Assault and Related Offenses category of the criminal code. The laws require that the person be in a position of authority and “use” this position to accomplish the sexual assault.

Does the law impose a criminal penalty on the inmate?	<b>No</b>	The law does not penalize the inmate.
Does the statute cover all relevant forms of sexual abuse?	<b>Yes</b>	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?	<b>Yes</b>	The Supreme Court of New Hampshire rejected a State argument that coercion is implied by virtue of the positions of the two parties because the inmate-officer relationship is inherently coercive – i.e. that the element of coercion can be proven simply by a showing that the defendant was a corrections officer and the victim an inmate under the defendant’s supervisory authority. See <i>State v. Foss, 148 N.H. 209, 804 A.2d 462 (2002)</i> Consequently, if, in a prosecution, the State fails to prove coercion, consent may be used as a defense.
Does the statute cover all custodians and staff in contact with inmates?	<b>No</b>	The law only protects against: 1) employees of correctional institutions, secure psychiatric units or juvenile detention facilities who have direct supervisory or disciplinary authority over the victim and 2) probation or parole officers or juvenile probation and parole officers who have direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probations. Thus, it does not apply to contractors or employees who do not have direct supervisory or disciplinary authority.
Does the statute cover all places where an inmate might be abused?	<b>No</b>	The law covers correctional institutions, secure psychiatric units and juvenile detention facilities. However, the statute does not explicitly cover jails and other facilities that are distinct from “correctional institutions.”  The law covers victims who are on parole or probation or under juvenile probation regardless of their location.
Is the penalty a felony?	<b>Yes</b>	Violation is a felony.

<sup>i</sup> §632-A:2 and §632-A:3 were amended by the enactment of 2003 NH HB 105, which broadened the sections’ coverage to include victims incarcerated in secure psychiatric units and to apply to juvenile probation and parole officers. The amended sections also now require, *inter alia*, that for a finding of guilt, an actor must have direct supervisory or disciplinary authority over the victim and, in instances in which the victim is incarcerated in a correctional institution, secure psychiatric unit or juvenile detention facility, an actor must be employed by the facility in question. In addition to these changes, the amended §632-A:3 now mandates that consent of the victim shall not be considered a defense.

<sup>ii</sup> The text of New Hampshire’s statute is reprinted at the end of this section.

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

<p>Indictments/Convictions (answer to AI letter requesting information)<sup>2</sup></p>	<p>The New Hampshire Attorney General’s Office reported in 2000 that it does not maintain statistics. However the Office stated that it has conducted “a number of investigations and prosecutions.”<sup>3</sup></p> <p>Amnesty International did not receive a response to its 2002 or 2005 follow up inquiries with the New Hampshire Attorney General’s Office.</p>
<p>Incidents reported in select media since January 2000</p>	<ul style="list-style-type: none"> <li>- Shea Farm Halfway House: Three former female inmates filed a class action lawsuit against a former corrections sergeant accused of repeatedly raping them, on behalf of 125 former inmates of the halfway house. The suit also named the Department of Corrections. The women claim they suffered emotional pain, humiliation, embarrassment, anguish and possible delay in being released and rehabilitated. According to the lawsuit, the women were detained in 2004 and 2005, and the corrections sergeant used his authority to demand oral sex and intercourse without condoms. Reportedly, he forced himself on them with threats of punishment. The suit claims that the sergeant was accused of sexual harassment of a female corrections officer at the prison in Concord, and was transferred by the DOC to Shea Farm. (<i>The Union Leader</i>, 01/18/06)</li> <li>- Strafford County Jail: Former corrections officers Duane Foss and Russell Solsky were sued by a former inmate who claims they had sexual relations with her while she was in jail. Solsky was found innocent of assaulting her, but was convicted of sexually assaulting another female inmate. Foss was convicted on a single felony sex charge involving the woman and served six months. After his release, Foss successfully appealed his conviction on the grounds that prosecutors had failed to establish that he had coerced the inmate. (<i>AP</i> 07/24/02, <i>AP</i> 8/16/02)</li> <li>- Hillsborough County Jail: Three guards were charged for allegedly coercing three female inmates to perform oral sex on them. The charges against one officer were dropped, and two separate juries failed to convict the charges against the other two officers. (<i>The Boston Globe</i>. 12/31/00; <i>The Union Leader</i> 11/10/01)</li> <li>- Hillsborough County Jail: Former inmate Lorraine Sullivan alleges she was grossly mistreated and subjected to sexual abuse by officers. She believes that she was targeted because of her frequent complaints about prison conditions. An internal investigation found no wrongdoing. (<i>AP</i> 07/05/00; 07/23/01)</li> <li>- Manchester Jail: US Attorney investigated charges of sexual abuse against female inmates by guards. Two officers pleaded guilty to the beating of an inmate. (<i>The Union Leader (Manchester, NH)</i>. 06/07/00)</li> <li>- Goffstown Women’s Prison: Former inmate raped by Officer Martin Mullen received \$140,000 settlement. (<i>AP</i>. 02/08/00)</li> <li>- Hillsborough County Jail: INS pulled their inmates out of county jail to protect them against alleged sexual abuse. A federal and state investigation ensued as a result. (<i>New Hampshire Sunday News</i>. 01/30/00; <i>The Union Leader</i> 11/10/01)</li> </ul>

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

The following is based on data provided by the New Hampshire Department of Corrections in response to AI’s survey in 2002. AI did not receive data from the New Hampshire Department of Corrections in 2000 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. <sup>4</sup>
Allow cross-gender pat-down searches?	<b>Yes</b>	According to the New Hampshire DOC, all searches are same sex, unless there is an emergency. <sup>5</sup>
What is the percentage of female officers in relation to male officers?		According to the New Hampshire DOC, 10% of officers statewide are female (90% male). <sup>6</sup>
Restrictions on the duties of male guards?		No information provided.
Staff training on sexual misconduct?		No information provided.
Inform inmates of agency policies and reporting procedures on sexual misconduct?		No information provided.

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

The following is based on the New Hampshire Department of Corrections response to AI's survey in 2002, please see above.

Is medical help available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the New Hampshire DOC, medical help is available. <sup>7</sup> However no details were provided.
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the New Hampshire DOC, immediate mental health services are available. <sup>8</sup> However no details were provided.
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the New Hampshire DOC, counseling is available. <sup>9</sup> However no details were provided.
Is a rape kit taken?	<b>Yes</b>	A rape kit is available off site at the local hospital. <sup>10</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>	Inmates may report custodial sexual misconduct by use of grievance and request slip procedures. <sup>11</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 New Hampshire DOC, an external investigation is carried out. <sup>12</sup> However no details were provided.
If there is an external investigation, how is it triggered?		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?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	According to the New Hampshire DOC, measures are taken to prevent retaliation. <sup>13</sup> However no details or examples of such measures were provided.

If so, do the measures include solitary confinement or lock-down of the inmate?		No information provided.
---	--	--------------------------

## ***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	New Hampshire has no legislation limiting the use of shackling on pregnant inmates.
--	----	---

### ***Pregnancy - Policies, Procedures and Practices***

The following is based on the New Hampshire Department of Corrections response to AI's survey in 2002, please see above.

Use of restraints in third trimester	Yes	There are no policies and procedures dealing with the use of restraints on third trimester pregnant inmates. Security will not use "belly chains" during this period but will use leg irons and regular cuffs. <sup>14</sup>
Restraints during transport	Yes	See above.
Restraints during labor	Yes	Not usually if there is a correctional officer present; however, if the inmate was classified as a dangerous inmate (C4 or C5 status) the correctional officer may shackle one foot to the bed. <sup>15</sup>
Officer in delivery room	Yes	See above.

## **Contact information**

### **NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS**

<b>Commissioner Stephen J. Curr</b> State Office Park South 105 Pleasant Street PO Box 1806 (Mailing) Concord, NH 03302-1806 Phone: (603) 271-5600; Fax: (603) 271-5643	Homepage: <a href="http://www.state.nh.us/nhdoc/">http://www.state.nh.us/nhdoc/</a>
--	---

### **NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN**

<b>New Hampshire State Prison for Women</b> Richard M. Gerry, Warden 317 Mast Road Goffstown, NH 03045 Phone: (603) 668-6137	<b>Lakes Region Facility</b> (Co-correctional facility) Jane Coplan, Warden Summit House Program Lakes Region Facility 1 Right Way Path Laconia, NH 03246
--	--

	Phone: (603) 528-9203
<b>Calumet House</b> Frank McKone, Unit Manager 126 Lowell Street Manchester, NH 03104 Phone: (603) 627-4194	<b>North End Halfway House</b> Grady Alexander, Unit Manager 281 North State Street Concord, NH 03301 Phone: (603) 271-1878

## NEW HAMPSHIRE EXECUTIVE

<b>Governor John Lynch</b> Office of the Governor 25 Capitol Street Concord, New Hampshire 03301-4990 Phone: (603) 271-2121; Fax: (603) 271-5686	Home page: <a href="http://www.nh.gov/governor/">http://www.nh.gov/governor/</a>  Elected: 2004
--	---

<b>Attorney General Kelly A. Ayotte</b> Office of the Attorney General 33 Capitol Street Concord, NJ 03301 Phone: (603) 271-3658; Fax: (603) 271-2110	Home page: <a href="http://doj.nh.gov/">http://doj.nh.gov/</a>  Elected:
---	--

## NEW HAMPSHIRE LEGISLATIVE INFORMATION

<b>Legislative Session:</b> Sessions are held every year from early January to the end of June. Elections for all positions are held in even numbered years. <b>Senate:</b> 24 members, 2-year term <b>House:</b> 400 representatives, 2-year term	Bill Search: <a href="http://gencourt.state.nh.us/ie/billstatus/quickbill.html">http://gencourt.state.nh.us/ie/billstatus/quickbill.html</a>  Bill information phone number: (603) 271-2239/ 2144
<b>Senate</b> State House 107 North <u>Main</u> Street Concord, New Hampshire 03301	Senate homepage: <a href="http://www.gencourt.state.nh.us/house/default.html">http://www.gencourt.state.nh.us/house/default.html</a>
<b>House of Representatives</b> State House 107 North <u>Main</u> Street Concord, New Hampshire 03301 Phone: (603) 271-3661	House home page: <a href="http://gencourt.state.nh.us/house/default.html">http://gencourt.state.nh.us/house/default.html</a>

## WOMEN IN PRISON - NGO RESOURCES

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

CURE New Hampshire P.O. Box 3594 Nashua, NH 03061-3594
Mettanokit Outreach 173 Meriam Hill Road Greenville NH 03048
ACLU of New Hampshire Prisoners' Rights 18 Low Avenue Concord, NH 03301 Phone:(603) 225-3080; Fax: (603) 226-0203 Website: <a href="http://www.nhclu.org">www.nhclu.org</a>

New Hampshire's Custodial Sexual Misconduct Statute \*\* Amendments in pursuing text box.  
*Excerpted*

**§ 632-A:2 Aggravated Felonious Sexual Assault.** –

A person is guilty of the felony of aggravated felonious sexual assault if such person engages in sexual penetration with another person under any of the following circumstances:

...

(n) When the actor is in a position of authority over the victim and uses this authority to coerce the victim to submit under any of the following circumstances:

- (1) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
- (2) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in subparagraph (n) shall not be considered a defense.

**§ 632-A:3 Felonious Sexual Assault.** –

A person is guilty of a class B felony if such person:

.....

IV. Engages in sexual contact with the person when the actor is in a position of authority over the person and uses that authority to coerce the victim to submit under any of the following circumstances:

- (a) When the actor has direct supervisory or disciplinary authority over the victim by virtue of the victim being incarcerated in a correctional institution, the secure psychiatric unit, or juvenile detention facility where the actor is employed; or
- (b) When the actor is a probation or parole officer or a juvenile probation and parole officer who has direct supervisory or disciplinary authority over the victim while the victim is on parole or probation or under juvenile probation.

Consent of the victim under any of the circumstances set forth in paragraph IV shall not be considered a defense.

<sup>1</sup> State of New Hampshire Department of Corrections (DOC). *The Annual Report for the Fiscal Year of July 1<sup>st</sup> 2003-June 30 2004*, available at <http://www.state.nh.us/nhdcc/documents/annual2004.pdf>, as per 01/27/06.

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

<sup>3</sup> Letter from T. Putnam, Bureau Chief, Criminal Justice Bureau, New Hampshire Attorney General's Office, 08/07/00.

<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> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>6</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>7</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>8</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>9</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>10</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>11</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>12</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>13</sup> Email from Jeffrey Lyons, Public Information Officer, New Hampshire DOC, 09/13/02.

<sup>14</sup> Letter from Daniel A. Baillargeon, Nurse Coordinator, New Hampshire DOC, 02/25/01.

<sup>15</sup> Letter from Daniel A. Baillargeon, Nurse Coordinator, New Hampshire DOC, 02/25/01.