

New Jersey

WOMEN IN PRISON: 1138 (01/05)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§2C: 14-2 – *Sexual assault*

§2C: 14-3 – *Aggravated criminal sexual contact; criminal sexual contact*ⁱ

New Jersey’s law is in the Sexual Offences area of the Criminal Code. These are statutory rape provisions.

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 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 is not concerned with the consent of the inmate.
Does the statute cover all custodians and staff in contact with inmates?	No	The law requires that the person have “supervisory or disciplinary authority” over the inmate.
Does the statute cover all places where an inmate might be abused?	Yes	The law is not concerned with place of detention. The law protects victims on probation or parole or detained in a hospital, prison or ‘other institution.’ (Amnesty International assumes ‘other institution’ covers those held in jails and detained off premises.)
Is the penalty a felony?	Yes	Violation is a felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	<p>The New Jersey Attorney General’s Department reported in 2002 that it does not compile statistics on the prosecution or convictions under the state’s CSM statutes.³</p> <p>Amnesty International did not receive a response to its 2005 follow up inquiry with the New Jersey Attorney General’s Office.</p>
Incidents reported in select media since January 2000	<p>- Ocean County: Richard O., Peterson Jr. a veteran Ocean County corrections officer, was arrested after reports that he sexually assaulted two female inmates. He was charged with two counts each of sexual assault, criminal sexual misconduct and official misconduct. One of the victims brought an allegation of sexual assault to the jail personnel, and an investigation by the Internal Affairs Unit and the Prosecutor’s Office Sex Crime Unit was undertaken. Peterson was reportedly suspended without pay. (<i>Ocean County Observer</i>, 07/20 and 07/28/05)</p>

ⁱ The text of New Jersey’s statute is reprinted at the end of this section.

- Corrections Work Release Center, Pemberton Township: A woman contends in a lawsuit that while held at the Center, a corrections officer made sexual advances, forced her to remove some clothing and touched her breasts. The lawsuit alleges that another detainee was forced to undress and to show the officer provocative lingerie. The lawsuit also states that prison officials did not take appropriate action after the misconduct against the woman was reported: despite an internal investigation, the officer continued to have duties in the section in which she was housed, and attempts to file a grievance were discouraged. (*Courier Post*, July 9, 2005)
- Union County: A jail guard has been indicted on rape and misconduct charges, accused of sexually assaulting five female inmates while on duty. He was also charged with groping himself or 11 other women in exchange for cigarettes, candy or commissary items at the Union County Jail. The guard faces 5 sexual assault counts, 19 official misconduct charges, and 15 counts of sexual contact. (*AP*, 3/31/05)
- Monmouth County- Corrections officer Sgt. Rory Morris was suspended without pay pending an investigation into his alleged “inappropriate conduct” with a female inmate. He had previously been found guilty of harassing his former wife and simple assault on her sister. Morris was reinstated to position as Sergeant in the Monmouth County Sheriff’s Office. In 2002, Sgt. Kenneth Noland and officer Michael Breen faced allegations of inappropriate conduct with a female prisoner. Those charges were not substantiated and no charges were filed. In 2004, Michael J. Sweet resigned after allegations of sexual misconduct and inappropriate touching. In 2000, Rodney Jenkins pleaded guilty to official misconduct and admitted he had solicited sex from female inmates. He was charged with molesting seven inmates. (*Asbury Park Press*, 03/16/2005; *Lexis Nexus Lawyers.com: Darryl Saunders profile*)
- Edna Mahan Correctional Facility for Women: Ralph W. Grier faced sexual assault and misconduct charges after allegedly asking inmates for nude photos, as well as having and soliciting sex from them. He was exonerated of sexual assault charges, but received a five year sentence in state prison for taking nude photographs. A former borough councilman and corrections officer, Stewart Sella, was sentenced to three years in prison in 2001 for sexually assaulting an inmate. Regina Dozier, also a former corrections officer was charged with misconduct and improper sexual contact in 2000 for alleged sexual contact with four inmates. (*Courier News*, 10/24/03; *AP State and Local*, 04/27/04)
- Juvenile Medium Security Facility, Bordertown: Former corrections officer William Bell was convicted of having sexual contact with two female inmates. He maintains his innocence. (*Courier-Post*, 06/21/03)
- Camden County: A corrections officer pleaded guilty to forcing a female inmate to perform a sex act. (*Courier-Post*, 10/3/02)
- Bergen County- A court supervision officer was indicted on charges of sexually assaulting a female convict under his guard. (*The Record*, 07/31/02)
- Union County Jail: A corrections officer was charged with sexual assault and sexual misconduct against several female inmates. Prosecutors claimed he would allegedly extend privileges to inmates in exchange for sex with them. (*Asbury Park Press*, 05/12/00; *Prison Legal News*, 06/00)
- Monmouth County Jail: Officer Jenkins was sentenced to probation after he pleaded guilty to official misconduct. He was charged in a 23-count indictment with molesting seven female inmates. (*Asbury Park Press*, 03/18/00)

Other Reported Incidents

Heggenmiller v. Edna Mahan Corr. Inst. for Women, 128 Fed. Appx. 240, 2005 U.S. App. LEXIS 6067 (3rd Cir., 2005)

Jacqueline Heggenmiller and Tammy Davis alleged that former prison guard, Stewart Sella, sexually assaulted them over a period of time in 1997 through 1999 and that the institution and its commissioner and superintendent were deliberately indifferent to a risk that such assaults would occur and that they had failed to have adequate privacy training and guard/inmate interaction polices and rules in place at the time of their assaults.

A federal district court granted the defendants’ motion for summary judgment and, on appeal, this decision was affirmed. The court found that there was no evidence of deliberate indifference for reasons including that, although the record suggested up to ten incidents of “familiarity” or “contact” at Edna Mahan Correctional Institution for Women (EMCI) between 1994 and 1998, these involved different guards, and not Sella, and because 5 or the 6 guards involved in the alleged previous incidents had been investigated, fired and prosecuted. The court noted that, in 1991, the NJ Department of Corrections was ordered by consent decree to assign officer positions at EMCF without reference to gender, with the exception of certain sensitive posts. It was simultaneously ordered to institute a program to train officers for gender-neutral assignments and to teach them about privacy concerns and gender sensitivity. The court recognized that although EMCF gender-neutralized its officer assignments, it did not add training about gender sensitivity and privacy to its curriculum, relying instead upon its pre-existing training. However, the court found that defendants had not failed to properly train their employees and that EMCF had in place written and training manuals for new guards that prohibited sexual contact with inmates, and that EMCF administrators instructed guards that they would be terminated, prosecuted or both in the event of sexual contact with inmates.

Judge Fuentes dissented, emphasizing that in the five years preceding Hegenmiller and Davis’s assaults, at least five other female inmates were also sexually assaulted by various guards at EMCI. He noted that the record suggests that, not only had EMCI failed to institute formal training and polices for guards as required by the 1991 consent decree, but that EMCF did not alter or update its curriculum in any way after any of the five sexual assaults in the years before Heggenmiller and Davis were assaulted. Judge Fuentes further disagreed with the majority that firing guards reported for engaging in sexual relations with inmates was sufficient to immunize defendants for liability. Rather, his findings include that, based on the evidence, a jury could conclude that defendants should have responded to the pattern of sexual assaults at the prison by taking additional reasonable measures to reduce that risk.

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

The following is based on data provided by the New Jersey 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?	No	Policy does not contain specific language about the nature of the sexual behaviors prohibited. ⁴ However, a memorandum from the Commissioner to all staff stresses an ethical obligation to report sexual misconduct by staff rather than abide by a “code of silence.” ⁵
Allow cross-gender pat-down searches?	Yes	Cross-gender pat-down searches are allowed. ⁶

What is the percentage of female officers in relation to male officers?		Forty-one percent of officers in the Edna Mahan Correctional Facility for Women are female. ⁷
Restrictions on the duties of male guards?		No information provided.
Staff training on sexual misconduct?		No information provided. Policies submitted by the New Jersey DOC do not address this issue.
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 Jersey Department of Corrections response to AI's surveys, please see above.

Is medical help available for the victim of alleged sexual abuse?	Yes	According to a written response from the New Jersey DOC, when allegations of sexual abuse are made by an inmate, the Sex Crime Unit is contacted and briefed and County Prosecutor's Office contacts the Rape Crisis Center to make arrangements for an examination. ⁸
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	Mental health services are made available for the victim while at the rape crisis center. ⁹
Is counseling available for the victim of alleged sexual abuse?	Yes	Counseling services are available for the victim while at the rape crisis center. No information is provided on follow-up counseling. ¹⁰
Is a rape kit taken?	Yes	According to a written response from the New Jersey DOC, a rape kit is secured by the Lead Investigator, Special Investigations Division and forwarded to the New Jersey State Police Forensic Laboratory. ¹¹
Are there special procedures for investigating allegations of sexual misconduct?	Yes	According to the New Jersey DOC, allegations are reported to the Prosecutor's Office where the facility is located and "all evidence gathering procedures are followed, all investigative tools are utilized." ¹² The victim and witnesses are interviewed by Special Investigations Division and by the prosecutor's office if they choose to participate. ¹³ The New Jersey DOC has also issued a policy establishing investigative procedures for staff of the DOC Special Investigation Division. These policies apply to all types of investigations and do not explicitly refer to custodial sexual misconduct. ¹⁴
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	According to a written response from the New Jersey DOC, inmates may report alleged acts of staff misconduct orally or in writing to all civilian professional staff, uniformed staff, Special Investigations Division Investigators, outside law enforcement agencies and family members." ¹⁵
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	--	According to a written response from the New Jersey DOC, all criminal acts within the facility are reported both in oral and written form (a criminal investigative report) to the Prosecutor's Office Investigators. ¹⁶ In addition, a memorandum on the "code of silence" encourages staff to report sexual misconduct by other staff in order to comply with the DOC's Code of Ethics. ¹⁷
Is the investigation external?	Yes	According to a written response from the New Jersey DOC, the Prosecutor's Office determines if the Special Investigations Division will conduct the entire investigation, if an observer from the Prosecutor's Office will be dispatched, or if the investigation will be a joint one. ¹⁸
If there is an external investigation,		See above.

how is it triggered?		
Are special measures taken to shield alleged victims from retaliation?	Yes	According to the New Jersey DOC, steps are taken through the appropriate institutional administration to keep the victim and perpetrator apart; when possible, the victim is assigned to another institution. At the Edna Mahan Facility this option is not available; however, steps are taken to keep the victim away from the alleged perpetrator. ¹⁹ Policies provided by the New Jersey DOC do not address this issue.
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	No details provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	According to New Jersey DOC, the Special Investigations Division maintains case files. In addition, Human Resources keeps records of indictments and convictions in its files. ²⁰

Custodial Sexual Misconduct –Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy – Statute

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

Use of restraints in third trimester	No	According to the New Jersey DOC, women are not restrained in their third trimester. ²¹ New Jersey DOC policy on the use of restraints during transport was provided to AI. The policy makes no reference to pregnant women or to women in their third trimester, but specifies that restraints shall not cause undue physical discomfort. ²²
Restraints during transport	Yes	According to New Jersey DOC policy, restraints may be used during transport. The policy, which makes no reference to pregnant women or to women in their third trimester, specifies that restraints shall not cause undue physical discomfort and that an inmate in restraints shall be under continuous observation by a staff member. ²³
Restraints during labor	No	According to the New Jersey DOC, no restraints are applied during labor. ²⁴
Officer in delivery room	No	According to the New Jersey DOC, an officer is posted outside the delivery room. ²⁵

Contact information

NEW JERSEY DEPARTMENT OF CORRECTIONS

Commissioner Devon Brown Whittlesey Road P.O. Box 863 Trenton, NJ 08625 Telephone (609) 292-4036; Fax (609) 292-9083	Homepage: http://www.state.nj.us/corrections/
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NEW JERSEY DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

Edna Mahan Correctional Facility for Women <i>Female inmates: 1,112²⁶</i> Charlotte Blackwell, Administrator P.O. Box 4004 Clinton, New Jersey 08809 Phone: (908) 735-7111	New Jersey State Prison (Co-correctional facility) <i>Females in administrative segregation</i> Administrator: Ron Cathel P.O. Box 861 Trenton, New Jersey 08625 Phone: (609) 292-9700
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NEW JERSEY EXECUTIVE

Acting Governor Richard J. Codey PO Box 001 Trenton, NJ 08625 Phone: (609) 292-6000 Email (web based): http://www.state.nj.us/governor/govmail.html	Home page: http://www.state.nj.us/governor/ Assumed Post: 2004
Attorney General Peter C. Harvey Office of the Attorney General P.O. Box 080 Trenton, NJ 08625-0080 Phone (609) 292-8740; Fax (609) 292-3508	Home page: http://www.nj.gov/lps/index.html Elected: 2002

NEW JERSEY LEGISLATIVE INFORMATION

Legislative Session: The two-year legislative term begins at noon on the second Tuesday in January of each even-numbered year. The Houses usually meet on Mondays and Thursdays all year long. At the end of the second year, all unfinished business before the Members expires. Senate: 40 members, 4-year term, except term following census year – then 2-year term House: 80 members, 4-year term Legislative elections are held in November of each odd-numbered year.	Legislative information home page: http://www.njleg.state.nj.us/ Bill Search: http://www.njleg.state.nj.us/html/bill2000.htm Bill information phone number: (609) 292-4840/4841
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Senate State House P.O. Box 099 Trenton, NJ 08625-0099 Phone: (800) 792-8630	Senate homepage: http://www.njleg.state.nj.us/ (Shared with House)
New Jersey General Assembly State House P.O. Box 098 Trenton, NJ 08625-0098 Phone: (800) 792-8630	House home page: http://www.njleg.state.nj.us/ (Shared with Senate)

WOMEN IN PRISON - NGO RESOURCES

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

Garden State-CURE P.O. Box 77116 Trenton, NJ 08628 Phone: (866) 442-1411
ACLU of New Jersey Post Office Box 32159 Newark, New Jersey 07102 Phone: (973) 642-2084 Web site: www.aclu-nj.org
Prisoner Self Help Legal Clinic 35 Halsey Street Newark, NJ 07102 Phone: (973) 242-3688
NJAC's Sanford Bates House Contact: Sheila Addison 33 Remsen Ave. New Brunswick, NJ 08901 Phone: (732) 846-7220 Services: Residential program for female state pre-release prisoners. Services include individual, group and family counseling, employment assistance, substance abuse counseling and financial counseling. Assist in the transition from incarceration to living in the community. Residents pay house fees on a sliding scale.
Office of the Ombudsman, New Jersey Department of Corrections Department of Corrections P.O. Box 863 Trenton, NJ 08625 Phone: (609) 633-2596 (Staff only); (609) 292-8020 (Inmate Line, collect calls accepted) Services: Provide assistance to prisoners with problems and complaints. The office functions independently of the state prison facilities to ensure the development of trust, confidentiality and objectivity between Ombudsmen and prisoners. Ombudsmen are expected to be alert and to follow through on any violation of due process; to observe that basic living standards are met; to be especially responsive to all allegations of staff brutality; and to observe searches and crisis situations as required

New Jersey's Custodial Sexual Misconduct Statute

Excerpted

2C: 14-2 Sexual assault

...
 c. An actor is guilty of sexual assault if he commits an act of sexual penetration with another person under any one of the following circumstances:
 ...

(2) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status.
 ...

Sexual assault is a crime of the second degree.

2C: 14-3 Aggravated criminal sexual contact; criminal sexual contact

...
b. An actor is guilty of criminal sexual contact if he commits an act of sexual contact with the victim under any of the circumstances set forth in section 2C: 14-2c. (1) Through (4).
Criminal sexual contact is a crime of the fourth degree.

¹ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey Department of Corrections (DOC), 08/22/05.

² The information does not reflect prosecutions or convictions under rape statutes

³ Letter from Thomas J. Fiskin, Deputy Attorney General, Prosecutors and Police Bureau, New Jersey Attorney General's Department, 07/11/02.

⁴ 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.

⁵ Directive #COM.04.002, Code of Silence, 07/14/04. Provided by Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

⁶ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

⁷ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

⁸ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

⁹ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

¹⁰ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

¹¹ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹² [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹³ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

¹⁴ Special Investigations Division, Level I, Internal Management Procedures, Internal Management Procedure # ADM.SID.035, effective 06/30/04.

¹⁵ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹⁶ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹⁷ State of New Jersey Department of Corrections, Directive #Com.04.002, 07/14/04. Received from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹⁸ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

¹⁹ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02..

²⁰ [Letter](#) from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

²¹ Fax from Robert M. Balicki, Assistant Commissioner, Division of Operations, New Jersey DOC, 07/25/02.

²² New Jersey Administrative Code 10A: "Corrections," 10A:3 -3.8 "Use of mechanical restraints." Received from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

²³ New Jersey Administrative Code 10A: "Corrections," 10A:3 -3.8 "Use of mechanical restraints." Received from Dr. Doug Gerardi, Director, Office of Policy and Planning, New Jersey DOC, 08/22/05.

²⁴ Faxed corrections from Public Information, New Jersey DOC, 02/14/01.

²⁵ Faxed corrections from Public Information, New Jersey DOC, 02/14/01.

²⁶ Edna Mahan Correctional Facility, New Jersey DOC, listing population as of 2/2005, available at <http://www.state.nj.us/corrections/cia/emcf.html>, as per 01/27/06.