

# New Mexico

WOMEN IN PRISON: 594<sup>(6/04)</sup><sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

§ 30-9-11 – *Criminal sexual penetration.*<sup>i</sup>

New Mexico’s law provides that sexual penetration is a felony offense where the perpetrator is in a position of authority over the inmate who is confined in a correctional facility or jail. This provision covers only sexual penetration of confined inmates. Status offense.

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	The law only covers penetration.
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 officer’s claim of consent.
Does the statute cover all custodians and staff in contact with inmates?	No	The law requires the person to be in a position of authority over the inmate.
Does the statute cover all places where an inmate might be abused?	No	The law requires the inmate to be detained in a correctional facility or jail, it does not protect those on probation, on parole, or off-site.
Is the penalty a felony?	Yes	Violation is a Second Degree felony.

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

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	<p>Amnesty International did not receive a response from the New Mexico Attorney General’s Office in 2000 or 2002.</p> <p>In 2005, the New Mexico Attorney General’s Office reported that it does not compile statistics on prosecutions or convictions under the state’s CSM law. The AG referred AI to the Association of District Attorneys.<sup>3</sup> AI did not receive a response to its inquiries with this office.</p>
Incidents reported in select media since January 2000	<ul style="list-style-type: none"> <li>- McKinley County Detention Center: The ACLU filed a federal lawsuit claiming that a jail officer sexually assaulted two female inmates from Wyoming and photographed them naked. The women were jailed at McKinley in 2003 because there was no room for them at Wyoming’s only women’s prison in Lusk. According to the suit, the officer was not properly trained or supervised. (<i>AP</i>, 01/25/06)</li> <li>- Santa Fe County Jail: A transgender woman, referred to as a “male inmate going through a sex change,” who was placed in a special segregation unit in protective custody alleged that he was raped by an unknown assailant in his cell. (<i>Albuquerque Journal</i>, 01/06/05)</li> </ul>

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

	<p>- Santa Fe County Jail: A former inmate, alleges that guard Luis Gallegos and other unnamed guards raped her repeatedly in 2001. She also claims that Gallegos allowed other male inmates to rape her. She filed a civil-rights lawsuit in the U.S. District Court. (<i>The Santa Fe New Mexican</i>, 03/31/04). The case is currently before the Court.<sup>4</sup></p>
	<p>- Laguna Pueblo Jail: A former guard has been sentenced to two years' probation for having sex with a female prisoner. George Brown pleaded guilty to a misdemeanor charge of sexual abuse of a ward for having sex with an unidentified prisoner at the jail in 2001. (<i>A.P.</i>, 02/03/03)</p>
	<p>- Laguna Pueblo Jail: Sandra Martinez was forcibly raped by Laguna Police Officer David Chavez on November 24, 2001 while he was transporting her from the Laguna Detention Center to the Cibola County Corrections center in Milan, New Mexico. Chavez was charged with sexual assault under federal law and pled guilty. He was sentenced to 97 months in prison. (<i>United States of America vs. David Chavez</i>, 3/4/04)</p> <p>- Santa Fe County Jail: Police say a former guard had sex with a female inmate on several occasions. A grand jury indicted him on five counts of criminal sexual penetration. (<i>Santa Fe New Mexican</i>, 07/18/01)</p> <p>- Penitentiary of New Mexico: A former corrections officer is suspected of having sex with a female inmate some time between November 1999 and February 2000, according to a search warrant filed in the state District Court. (<i>Albuquerque Journal</i>, 03/30/01)</p> <p>- Santa Fe County Jail: Three former inmates have filed a federal lawsuit against guard Marcus Trujillo, who allegedly sexually abused them while they were in jail. A fourth inmate has filed a separate claim alleging she was raped by Trujillo while she was an inmate. (<i>AP</i>, 03/21/01).</p> <p>- Espanola Detention Center: The District Attorney's office said that it never received the police report about allegations of sex between a guard and a female inmate last year. (<i>Albuquerque Journal</i>, 02/07/01)</p>

- Dona Ana County Detention Center: Six detention guards were charged in 1999 with sexual misconduct with female prisoners, including rape and assault.

One prisoner (Belinda Dillon) slit her wrists and used her blood to write that she had been raped by prison guards. The Detention Center Administrators looked into the inmate's rape allegations but never reported them to the police. New Mexico governor Gary Johnson commuted her sentence after several of the guards were convicted. (*Albuquerque Journal* 09/09/99, 10/26/00 and *AP* 10/26/0 and 01/16/01). She was awarded \$1.69 million in a civil suit against the County Jail. (*AP & LW* 06/17/03). Six guards were implicated, three of whom were convicted, receiving prison sentences of 18 months to a year. (*The Santa Fe New Mexican*, 05/31/02).

Rudy Florez, was sentenced to 18 years in prison (the maximum sentence possible) with all but 18 months suspended after being found guilty on two counts of criminal sexual penetration with female inmates (One of the inmates being Belinda Dillon). (*AP & LW*, 08/14/01 & 03/05/02) Santiago Garcia Soto pleaded guilty to attempted rape and was sentenced to a year in prison. Pedro Porras was acquitted on charges of sexual battery. Ronald Jackson won a dismissal of his rape charge after a judge ruled information needed for his defense was withheld by the Government. (*AP & LW* 06/26/01).

In another case Roger Terrazas (who was also charged in connection with the Belinda Dillon assaults ) pleaded guilty to a charge of criminal sexual penetration. He assaulted an inmate whilst working as a medical assistant in the jail. The victim filed a lawsuit against Dona Ana County Jail which was settled in 2001 for \$60,000, making it at the time the fourth payment over a two year period to former inmates who were assaulted by the facility's employees. (*AP*, 03/17/01)

The cases against the guards named above cost the county nearly \$2 million in settling the claims. (*El Paso Times*, 03/17/05)

- San Juan County Detention: Officers Whitaker and Monclova and a prison administrator were accused of sexual assault and other charges. Officer Monclova was convicted of two sex-related charges including fondling the breast of a female inmate against her will and placing his mouth on the breasts of another inmate. Officer Whitaker was accused of five counts of willful sexual assault. County paid inmates \$40,000 to settle suit. Three more female inmates have also filed a lawsuit. (*AP* 01/22/00 and *Albuquerque Tribune* 8/25/00)
- Western New Mexico Women's Correctional Facility: Rape of inmate, by corrections officer. Inmate alleged that the rape "constituted excessive force in violation of her Eighth Amendment rights." *Giron v Corrections Corp of America* 14 F. Supp.2d (D.No.M. 1998) (191 F.3d 1281, (1999)). (*Prison Legal News* 07/00)
- South Facility, Santa Fe: Investigation into allegations of sexual misconduct between two guards and a female inmate. Guards were placed on paid administrative leave for five days pending the outcome of the investigation. (*The Santa Fe New Mexican*, 03/01/00)
- Penitentiary of New Mexico: Two guards were placed on paid leave as state investigated allegations of criminal sexual penetration of a female inmate. (*Albuquerque Journal*, 02/29/00)

Other Reported Incidents	<p><i>State v. Jackson, 92 P.3d 1263, 2004 NMCA 57, 135 No.M. 689(No.M. Ct. App., 2004)</i></p> <p>Defendant Ronald Jackson was indicted by a grand jury in 1999 for criminal sexual penetration, in violation of NMSA 1978 § 30-9-11. The charge stemmed from the alleged rape of a female inmate at the Dona Ana County Detention Center while Jackson was employed there. A trial court granted defendant a pretrial dismissal of the case with prejudice. On appeal, this decision was reversed and the case remanded for trial.</p>
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## ***Custodial Sexual Misconduct – Policies, Procedures and Practices of Guarding Specific to Women***

The following is based on data provided by the New Mexico Department of Corrections in response to AI’s survey in 2000 and 2005. AI did not receive data from the New Mexico Department of Corrections in 2002. 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>	New Mexico policy includes direct and specific language about the sexual nature of the behaviors prohibited. <sup>5</sup> The New Mexico Corrections Department policy specifies that the following are considered sexual misconduct: sexual abuse (including rape), sexual contact, use of sexually explicit language, kissing, embracing/inappropriate touching, “other physical contact of an intimate nature,” and “any sexual activity between staff and inmates, parolees, or probationers including consensual.” <sup>6</sup> The definition also includes “conversations or correspondence of a romantic or sexual nature.” The prohibited behavior includes that done by any department employee, contractor, volunteer, visitor or department representative. <sup>7</sup>
Allow cross-gender pat-down searches?	<b>No</b>	No details provided.
What is the percentage of female officers in relation to male officers?		Male: 46% (32 men) Female:54% (37 women)
Restrictions on the duties of male guards?	<b>Yes</b>	According to the New Mexico Corrections Dept., male guards are not permitted to conduct pat searches, strip searches or urinalysis tests. <sup>8</sup>
Staff training on sexual misconduct?	<b>Yes</b>	According to the New Mexico Corrections Dept., this occurs during basic training. <sup>9</sup>
Inform inmates of agency policies and reporting procedures on sexual misconduct?	<b>Yes</b>	New Mexico Corrections Dept. policy specifies that upon the arrival of the inmate at the facility, and in language clearly understood by the inmate, information about the following should be communicated orally and in writing: “prevention/intervention, self-protection, reporting sexual abuse/assault, treatment/counseling.” <sup>10</sup> In addition, the policy on sexual misconduct is available in the Education Resource Center and there is a toll-free number that families can call to report any staff misconduct. <sup>11</sup>

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

The following is based on the New Mexico 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>	No details provided.
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	No details provided.
Is counseling available for the victim	<b>Yes</b>	No details provided.

of alleged sexual abuse?		
Is a rape kit taken?	<b>Yes</b>	No details provided.
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	Procedures for investigating custodial sexual misconduct are spelled out in New Mexico Corrections Dept. policies. <sup>12</sup> New Mexico Corrections Dept. policy regarding investigating “Level 1 misconduct,” which includes all sexual misconduct involving facility staff, states that all witnesses and people who may have information related to the incident shall be interviewed. <sup>13</sup> The New Mexico Corrections Dept. also provides a form for reporting an incident of employee misconduct, which includes witness statements. <sup>14</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	New Mexico Corrections Dept. policy states that allegations of sexual misconduct involving facility staff must be reported to the Chief Administrative Officer and the Office of Special Investigations and Internal Affairs. <sup>15</sup> Additionally, inmates have the option of reporting a sexual abuse incident to a “designated staff member other than an immediate point-of-contact line officer.” <sup>16</sup> Another Corrections Dept. policy states that inmates may report the incident may report the incident to “any” staff member or volunteer. Further, according to this policy, inmates may place a note or memo in any drop box located in the facility for medical or mental health staff. <sup>17</sup>
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	<b>Yes</b>	New Mexico Corrections Dept. policy regarding “Level 1 misconduct,” which includes all sexual misconduct by prison staff, states that allegations must be reported to the “appropriate law enforcement authorities.” <sup>18</sup>
Is the investigation external?	--	According to a written response from the New Mexico Corrections Dept., investigations may be both internal and external. Dept. policy states investigation is often conducted by an outside law enforcement or other agency if a criminal offense has been alleged. <sup>19</sup>
If there is an external investigation, how is it triggered?		According to the New Mexico Corrections Dept, external investigation is triggered by referral to the appropriate law enforcement agency by the facility or by the Special Investigations Internal Affairs Unit.
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	No details provided.
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>Yes</b>	No details provided.
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	<b>No</b>	New Mexico had a Corrections Oversight, Courts and Justice Committee in the Legislature. However, the Committee tenure expired on the 1 December 2005. <sup>20</sup>
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	<b>Yes</b>	New Mexico Corrections Dept. policy states that upon completion of the investigation, the assigned Investigations Officer prepares a written report detailing the allegations, the facts revealed during the investigations and stating policies, procedures and laws that have been violated. The Office of Special Investigations and Internal Affairs is responsible for tracking the investigative process and maintaining information in its database. <sup>21</sup>

## ***Custodial Sexual Misconduct – Pending Legislative Proposals***

*None*

# Pregnancy in Custody

## *Pregnancy - Statute*

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

Use of restraints in third trimester	Yes	According to the New Mexico Corrections Dept., decisions are made on a case-by-case basis in consultation with medical officials. <sup>22</sup>
Restraints during transport	Yes	According to the New Mexico Corrections Dept., decisions are made on a case-by-case basis in consultation with medical officials. <sup>23</sup>
Restraints during labor	No	According to the New Mexico Corrections Dept., restraints are not used during labor. <sup>24</sup>
Officer in delivery room	No	According to the New Mexico Corrections Dept., an officer remains outside the door. <sup>25</sup>

## Contact information

### NEW MEXICO DEPARTMENT OF CORRECTIONS

<b>Corrections Secretary Joe R. Williams</b> New Mexico Corrections Department 4337NM 14 Santa Fe, New Mexico 87508 Phone: (505) 827-8709; Fax: (505) 827-8220	Homepage: <a href="http://corrections.state.nm.us/">http://corrections.state.nm.us/</a>
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### NEW MEXICO DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<b>New Mexico Women's Correctional Facility</b> <i>Average daily population: 541</i> <sup>26</sup> Warden: Bill Snodgrass (Corrections Corporation of America) P.O. Box 800, Grants, New Mexico 87020 Phone: (505) 287-2941; Fax: (505) 285-6828 Street Address: 1700 East Old Highway 66
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### NEW MEXICO EXECUTIVE

<b>Governor Bill Richardson [D]</b> Office of the Governor State Capitol, Room 400 Santa Fe, New Mexico 87501 Phone: (505) 476-2200	Home page: <a href="http://www.governor.state.nm.us/">http://www.governor.state.nm.us/</a>  Elected: 2002
<b>Attorney General Patricia A. Madrid [D]</b> Office of the Attorney General P.O. Drawer 1508 Santa Fe, NM 87504-1508 Phone: (505) 827-6000; Fax: (505) 827-5826	Home page: <a href="http://www.ago.state.nm.us/">http://www.ago.state.nm.us/</a>  Elected: 1998

## **NEW MEXICO LEGISLATIVE INFORMATION**

<p><b>Legislative Session:</b> The New Mexico Legislature convenes in regular sessions in Santa Fe on the third Tuesday in January each year. In odd-numbered years, the Legislature meets for 60 days and in even-numbered years for 30 days. Most legislation is considered in the Committees, where the public has the opportunity to testify for or against a bill. Once a bill is passed, it becomes a law. Most laws become effective 90 days after the Legislature adjourns.</p> <p><b>Senate:</b> 42 members, 4-year term  <b>House:</b> 70 members, 2-year term</p>	<p>Legislative information home page:  <a href="http://legis.state.nm.us/">http://legis.state.nm.us/</a></p> <p>Bill Search:  <a href="http://legis.state.nm.us/Ics/BillFinder.asp">http://legis.state.nm.us/Ics/BillFinder.asp</a></p> <p>Bill information phone number:            (505) 986-4714</p>
<p><b>Senate</b>            New Mexico State Senate            Email: <a href="mailto:senate@state.nm.us">senate@state.nm.us</a></p>	<p>Senate homepage:  <a href="http://legis.state.nm.us/scripts/senate_info.asp">http://legis.state.nm.us/scripts/senate_info.asp</a></p>
<p><b>House of Representatives</b>            New Mexico House of Representatives            Email: <a href="mailto:house@state.nm.us">house@state.nm.us</a></p>	<p>House home page:  <a href="http://legis.state.nm.us/scripts/house_info.asp">http://legis.state.nm.us/scripts/house_info.asp</a></p>

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

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

<p>New Mexico-CURE            P. O. Box 8413            Albuquerque, NM 87198-8413</p>
<p>ACLU of New Mexico            P.O. Box 566            Albuquerque, NM 87103            Phone: (505) 266-5915            Website: <a href="http://www.aclu-nm.org">www.aclu-nm.org</a></p>

### **New Mexico's Custodial Sexual Misconduct Statute**

*Excerpted*

#### **30-9-11. Criminal sexual penetration.**

A. Criminal sexual penetration is the unlawful and intentional causing of a person to engage in sexual intercourse, cunnilingus, fellatio or anal intercourse or the causing of penetration, to any extent and with any object, of the genital or anal openings of another, whether or not there is any emission.

B. Criminal sexual penetration does not include medically indicated procedures.

...

D. Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:

...

(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate;

...

Whoever commits criminal sexual penetration in the second degree, is guilty of a second-degree felony. **Whoever commits criminal sexual penetration in the second degree when the victim is a child who is thirteen to eighteen years of age is guilty of a second degree felony for a sexual offence, against a child and, notwithstanding the provisions of Section 31-18-15 NMSA 1978, shall be sentenced to a minimum term of imprisonment of three years, which shall not be suspended or deferred. The imposition of a minimum, mandatory term of imprisonment pursuant to the provisions of this subsection shall not be interpreted to preclude the imposition of sentencing enhancements pursuant to the provisions of Sections 31-18-17, 31-18-25 and 31-18-26 NMSA 1978.**

<sup>1</sup> New Mexico Corrections Department, Offender Statistics as of 06/30/04, available at <http://corrections.state.nm.us/statistics/malesfemales.html>, as per 01/27/06.

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

<sup>3</sup> Email from Michael Cox, New Mexico's Attorney General's office, 08/24/05.

<sup>4</sup> *Juanita Martinez v. Cornell Corrections of Texas, INC., and Rudy Estrada, Cody Graham, and Luis Gallegos*, 229 F.R.D. 236; 2005 U.S. Dist. LEXIS 13931

<sup>5</sup> US Dept. of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence," National Institute of Corrections, Colorado, May 2000.

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- <sup>6</sup> New Mexico Corrections Dept. Policy CD-031800, Effective 12/15/84. Revised 02/09/05. Received as attachment from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05.
- <sup>7</sup> New Mexico Corrections Dept. Policy CD-150100, Effective 06/19/85. Revised 04/27/05. Received as attachment from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05.
- <sup>8</sup> Email from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05.
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- <sup>13</sup> New Mexico Corrections Dept. Policy CD-031800, Effective 12/15/84. Revised 02/09/05. Received as attachment from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05. Also available at <http://corrections.state.nm.us/policies/CD-031800.pdf>, as per 01/27/06.
- <sup>14</sup> Form CD-031801.A. Provided in email from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05.
- <sup>15</sup> New Mexico Corrections Dept. Policy CD-031800, Effective 12/15/84. Revised 02/09/05. Received as attachment from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05. Also available at <http://corrections.state.nm.us/policies/CD-031800.pdf>, as per 01/27/06.
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- <sup>20</sup> New Mexico State Code 2003, Chapter 2, Article 18 Sections 2-18-1
- <sup>21</sup> New Mexico Corrections Dept. Policy CD-031800, Effective 12/15/84. Revised 02/09/05. Received as attachment from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05. Also available at <http://corrections.state.nm.us/policies/CD-031800.pdf>, as per 01/27/06.
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- <sup>25</sup> Email from Rachel Rodriguez, Executive Assistant, New Mexico Corrections Dept., Deputy Secretary's Office, 09/13/05.
- <sup>26</sup> New Mexico Corrections Dept. Adult Prisons Division, New Mexico Women's Correctional Facility, General Information, available at <http://corrections.state.nm.us/prisons/nmwc.html>, as per 01/27/06.