

North Dakota

WOMEN IN PRISON: 113 (08/05)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§12.1-20-06 – *Sexual abuse of wards.*

§12.1-20-07 – *Sexual assault.*ⁱ

§ 12.1-20-06 and 07 covers those in official custody and those detained in hospitals or other institutions. The provision “sexual acts” means penetration. The penalty for a violation of any act is a Class C 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	Both sexual acts and sexual contact are covered.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The consent of the inmate is irrelevant.
Does the statute cover all custodians and staff in contact with inmates?	No	The law only covers those with “supervisory or disciplinary authority” over the inmate.
Does the statute cover all places where an inmate might be abused?	Yes	The law protects all those in official custody.
Is the penalty a felony?	Yes	Violation is a class C felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	The North Dakota Attorney General’s Office does not compile statistics on prosecutions and convictions under the state’s CSM statutes. ³ In 2005 the AG referred AI to the ND Department of Corrections and Rehabilitations. ⁴ The DCR informed AI that they do not compile such statistics. ⁵	
Incidents reported in select media since January 2000	- Barnes County: Kevin Schudar faces a charge of sexual abuse of wards. He has been fired. (<i>AP State & Local Wire, 12/2/04</i>)	

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

The following is based on data provided by the North Dakota 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?	Yes	Policy prohibits both consensual and nonconsensual acts between staff and inmates; it defines staff sexual misconduct as including intentional touching; completed, attempted, threatened, or requested sexual acts; and occurrences of indecent exposure, invasion of
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ⁱ § 12.1-20-06 and 07 were amended by the 2001 enactment of SB 2254, which increased the specific penalty for custodial sexual misconduct from a misdemeanor to a Level C Felony. The text of North Dakota’s statute is reprinted at the end of this section.

		privacy, or staff voyeurism. The policy also prohibits and defines staff sexual harassment. ⁶
Allow cross-gender pat-down searches?	Yes	No details provided.
What is the percentage of female officers in relation to male officers?		Approximately 20% of officers are female (80% male). ⁷
Restrictions on the duties of male guards?	--	No information provided.
Staff training on sexual misconduct?	Yes	According to the North Dakota Department of Corrections and Rehabilitation (DOCR), training is revised annually to incorporate policy changes. ⁸ North Dakota DOCR policy specifies that training includes information on the Prison Rape Elimination Act and the DOCR publication “Sexual Misconduct” is distributed. Refresher training occurs every other training year after initial training. ⁹
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According to North Dakota DOCR policy, “written policy, procedure and practice ensure that information is provided to offenders” about reporting sexual abuse/assault as well as prevention, intervention, self-protection, treatment and counseling. Information is provided during offender orientation, and appropriate provisions are to be made for inmates not fluent in English, those with disabilities, and those with low literacy levels. ¹⁰

Custodial Sexual Misconduct - Policies and Procedures

Guiding Official Response

The following is based on the North Dakota 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 North Dakota DOCR policy, victims of sexual assault are referred under appropriate security provisions to a community facility for treatment and gathering of evidence. ¹¹
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to North Dakota DOCR policy, evaluation of a mental health professional is available following the physical examination, to assess the need for crisis intervention counseling and long-term follow-up. In addition, investigators are to notify mental health staff immediately when they learn of an allegation of sexual assault. Mental health staff may sit in on any interviews with the victim, if the victim requests this. ¹²
Is counseling available for the victim of alleged sexual abuse?	Yes	See above.
Is a rape kit taken?	Yes	According to North Dakota DOCR policy, a rape kit will be taken as part of the physical examination with the victim’s consent and if the incident occurred less than 72 hours prior to the time it was reported. ¹³
Are there special procedures for investigating allegations of sexual misconduct?	Yes	North Dakota DOCR policy establishes detailed procedures for allegations of custodial sexual misconduct.
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	According to North Dakota DOCR policy, inmates may report incidents of staff sexual misconduct orally or in writing to any employee of the DOCR. ¹⁴
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	No	According to North Dakota DOCR policy, the warden will consult with human resources and designate a staff person from that office to begin an investigation. ¹⁵
Is the investigation external?	--	According to North Dakota DOCR policy, internal investigations are typically followed by external investigation ‘once it becomes apparent that a crime has possibly been committed.’ However, in “extreme” cases where the staff investigator is “certain” that the

		allegation is false “based on obvious and irrefutable facts” an outside agency will not be called on to assume the investigation. ¹⁶
If there is an external investigation, how is it triggered?		According to North Dakota DOCR policy, a staff person conducts the initial investigation. Once it becomes apparent that a crime has possibly been committed, the staff investigator will request assistance from the North Dakota Highway Patrol or the North Dakota Bureau of Criminal Investigation, and work as a liaison with that investigative agency while they take the lead in the investigation. ¹⁷
Are special measures taken to shield alleged victims from retaliation?	Yes	North Dakota DOCR policy prohibits staff from any form of retaliation against an offender who makes an allegation of staff sexual misconduct or staff sexual harassment. The policy provides for separation of the victim and the alleged abuser and specifies that this separation does not represent a form of punishment. ¹⁸ AI notes that the policy also provides for the possibility of disciplinary action against an offender if investigation reveals she made an accusation which she could not in good faith have believed to be true. ¹⁹
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	According to the North Dakota DOCR, these are possible measures. ²⁰
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 North Dakota DOCR policy, statistics are reported annually to the Bureau of Justice. The statistics are based on investigations into the incidents, but do not include information on indictments and convictions. ²¹

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

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

Use of restraints in third trimester	No	No details provided. ²²
Restraints during transport	--	No information provided
Restraints during labor	--	No information provided
Officer in delivery room	--	No information provided

Contact information

NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION

Director Leann K. Bertsch 3100 Railroad Ave. Bismarck, ND 58502-1891 Phone: (701) 328-6390; Fax: (701) 328-6651	Homepage: http://www.state.nd.us/docr/Index.htm
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NORTH DAKOTA DEPARTMENT OF CORRECTIONS AND REHABILITATION FACILITIES FOR WOMEN

Dakota Women's Correctional Rehabilitation Center 440 McKenzie Ave. New England, ND 58647	
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NORTH DAKOTA EXECUTIVE

Governor John Hoeven [R] 600 E. Boulevard Ave. Bismarck, ND 58505-0001 Phone: (701) 328-2200; TDD: (701) 328-2887 Fax: (701) 328-2205 Email: governor@state.nd.us	Home page: http://www.governor.state.nd.us/ Elected: 2000, re-elected 2004.
Attorney General Wayne Stenehjem [R] The State Capitol Building Office of Attorney General 600 East Boulevard Avenue, Dept 125 Bismarck, ND 58505-0040 Phone: (701) 328-2210 TDD (800) 366-6888	Home page: http://www.ag.state.nd.us/ Elected: 2000; Reelected: 2004

NORTH DAKOTA LEGISLATIVE INFORMATION

Legislative Session: The North Dakota Legislative Assembly meets biennially, from approximately the second week in January to mid-April in each odd-numbered year. Senate: 49 members, 4-year term House: 98 members, 4-year term	Legislative information home page: http://www.state.nd.us/lr/ Bill Search: http://www.state.nd.us/lr/ (Provides a guide to a multi-step search process. Start at 1999 Bills/Session Laws) Bill information phone number: (701) 224-2916/ (888)-NDLEGIS (635-3447)
Senate State Capitol Bismarck, North Dakota 58505	Senate homepage: http://www.state.nd.us/lr/
House of Representatives State Capitol Bismarck, North Dakota 58505	House home page: http://www.state.nd.us/lr/

WOMEN IN PRISON - NGO RESOURCES

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

ACLU of the Dakotas
112 N. Univ. Dr., Suite 301
Manchester Building
Fargo, ND 58102-4661
Phone: 701-461-7290

North Dakota's Custodial Sexual Misconduct Statute

12.1-20-06. Sexual abuse of wards.

A person who engages in a sexual act with another person, or any person who causes another to engage in a sexual act is guilty of a class C felony if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.

12.1-20-07. Sexual assault.

1. A person who knowingly has sexual contact with another person, or who causes another person to have sexual contact with that person, is guilty of an offense if:

...

d. The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over that other person;

...

2. The offense is a class C felony if the actor's conduct violates subdivision b, c, d, or e of subsection 1, or subdivision f of subsection 1 if the adult is at least twenty-two years of age, a class A misdemeanor if the actor's conduct violates subdivision f of subsection 1 if the adult is at least eighteen years of age and not twenty-two years of age or older, or a class B misdemeanor if the actor's conduct violates subdivision a of subsection 1.

¹ Faxed letter from Larry Tice, North Dakota State Penitentiary, 08/24/05.

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

³ Letter from Liz Brocker, Executive Assistant, North Dakota Office of Attorney General, 8/28/02.

⁴ Email from Liz Brocker, Executive Assistant/ PIO, North Dakota Office of Attorney General, 08/08/05.

⁵ Letter from Leann K. Bertsch, Director, Department of Corrections and Rehabilitations, 09/06/05.

⁶ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07-22-05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

⁷ Fax from Wanda Kellam, North Dakota Department of Corrections & Rehabilitation, 06/15/02.

⁸ Faxed corrections, North Dakota Department of Corrections, State Penitentiary, 02/13/01.

⁹ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁰ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹¹ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹² Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹³ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁴ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁵ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁶ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁷ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁸ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

¹⁹ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

²⁰ Fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

²¹ Policies and Procedures Manual, Department of Corrections and Rehabilitation, "Inmates Rights, Prison Rape Elimination Act." Issued 07/22/05. Received by fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.

²² Fax from Larry Tice, North Dakota State Penitentiary, 08/24/05.