

# Oregon

WOMEN IN PRISON: 965 (07/05)<sup>1</sup>

## Custodial Sexual Misconduct

### Custodial Sexual Misconduct – Statute

Senate Bill 89, passed in 2005, amends **ORS 163.305-ORS 163.467**. These sections will be updated by the Oregon Legislature in 2006 to reflect SB 89, which is already in effect. However, the amended text of these statutes was not available as of this writing.<sup>1</sup>

In 2005, Oregon enacted SB 89, creating the crime of custodial sexual misconduct. Consent is not a defense. The new law prohibits sexual intercourse or sexual contact with a person starting from the time of arrest and continuing through probation, parole, post-prison supervision or other conditional/supervised release. However, in cases where the inmate is on parole, post-conviction supervision, or work release, the perpetrator's "lack of supervisory authority" over the victim is a defense (if the incident occurs while the victim is confined or detained in a correctional facility, the perpetrator's supervisory authority is not a factor).

Does the law impose a criminal penalty on the inmate?	No	
Does the statute cover all relevant forms of sexual abuse?	Yes	The law prohibits sexual intercourse, sexual penetration and sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	
Does the statute cover all custodians and staff in contact with inmates?	No	The statute applies to any person employed by or under contract with a state or local agency that operates the correctional facility in which an inmate is detained. However, it only applies to individuals with supervisory authority over those on parole, post-conviction supervision, or other form of conditional or supervised release.
Does the statute cover all places where an inmate might be abused?	Yes	The statute is not specific as to place.
Is the penalty a felony?	Yes	First degree sexual misconduct, which involves sexual intercourse or penetration of another person's vagina, anus, or penis, is a class A felony. Second degree sexual misconduct is a class A misdemeanor.

### Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	Since Oregon's law was only recently enacted, Amnesty International did not issue a request.
Incidents reported in select media since January 2000	- Marion County Jail: Curtis Kotter, a five-year employee of the jail is facing criminal charges, accused of forcing two female inmates to perform oral sex on him while he was on duty. The charges faced are of unlawful sexual penetration, official misconduct and sodomy. His arrest comes after a two-month investigation into the allegations, conducted by the Washington County sheriff's officer, during which Kotter was placed on paid administrative leave. Kotter was fired in August 2004 and convicted of official misconduct. He served less than two months at the Linn County jail in Albany. ( <i>AP State &amp; Local Wire</i> , 7/28/04, 12/05/05)

<sup>1</sup> The text of Senate Bill 89 is reprinted at the end of this section.

	<ul style="list-style-type: none"> <li>- Coffee Creek Correctional Facility- Eight-year corrections veteran Jeffery Allen Barcenas pleaded guilty to official misconduct for a sexual relationship with an inmate. Barcenas lied about the sexual contact during an internal investigation. He resigned from the facility after a grand jury indicted him on nine counts of first-degree official misconduct. He was ultimately sentenced to six months in jail after pleading guilty to four counts of official misconduct. In a related case involving sexual misconduct, a Coffee Creek Correctional Facility former food services coordinator, was charged with official misconduct. He was sentenced to 24 days in custody for having sex with two female inmates in a meat cooler. According to the attorney for one of the inmates, the inmate feels “that he got away with rape” and that “[I]f he hadn’t been a corrections employee, he would have gotten measure 11.” Under Measure 11, the mandatory minimum sentencing law, rape carries a term of at least 8 years and 4 months in prison. (<i>The Oregonian Sunrise Edition, 05/14/2004, The Oregonian, 5/26/04</i>)</li> <li>- Clackamas County Jail: A grand jury is investigating jail deputy Glen C. White after one woman inmate claimed that he raped her and another accused him of sexual assault. (<i>The Oregonian, 05/18/02</i>)</li> <li>- Clackamas County Jail: Numerous allegations of sexual assault have been raised since 2000. Documents show the county resolved three cases in 2001, include a \$21,000 settlement in a case filed by a former inmate, who alleged she was sexually harassed and verbally abused while in jail. In 2003, the county settled a civil lawsuit with Sandra Silvia for \$72,500. Silvia alleged that she was forced to shower in front of a woman depute and two men deputies and was subjected to a cavity search against her will. An ongoing case includes an inmate who claims a deputy raped her. (<i>The Oregonian, 07/01/02, 05/16/03</i>)</li> <li>- Klamath County Jail: Two former corrections deputies were arrested on charges of having inappropriate sexual contact with female inmates. (<i>AP State &amp; Local Wire, 11/29/01</i>)</li> </ul>
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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 Oregon Department of Corrections in response to AI’s survey in 2000 and 2002. AI did not receive data from the Oregon Department of Corrections in 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>3</sup>
Allow cross-gender pat-down searches?		No information provided.
What is the percentage of female officers in relation to male officers?		In 2002, according to the Oregon DOC, 58.4% of officers were female at Shutter Creek Correctional Institution (41.6 % male) and 12.2% were female at Coffee Creek Correctional Facility (87.8% male). <sup>4</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?	<b>Yes</b>	According to written response from the Oregon DOC, the orientation process for new female inmates has been modified from videotape presentation to a live presentation by key staff at facility. Administrative staff members specifically provide information about how to stay safe in prison and how to report staff misconduct. <sup>5</sup> According to a 2002 communication from the DOC, the orientation

		process was, at that time, undergoing further revision. <sup>6</sup>
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## ***Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response***

The following is based on the Oregon 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>	According to the Oregon DOC, immediate medical service is available at the prison. Any indication of abuse is followed by independent evaluation in the community. <sup>7</sup>
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Oregon DOC, immediate mental health services are available at the prison with mental health staff. <sup>8</sup>
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Oregon DOC, based on a psychiatric diagnosis, counseling is offered in conformance with community standards. <sup>9</sup>
Is a rape kit taken?	<b>Yes</b>	According to the Oregon DOC, a rape kit is taken at the hospital. <sup>10</sup>
Are there special procedures for investigating allegations of sexual misconduct?	<b>Yes</b>	Written response from the Oregon DOC notes that the Department uses standard investigatory procedures with consideration for the nature of the complaint. Staff receives regular comprehensive training in investigation techniques that are reviewed and updated periodically. <sup>11</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to the Oregon DOC, inmates can report abuses to health services, religious services, and facility administration. <sup>12</sup>
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	<b>Yes</b>	According to the Oregon DOC, inmates can report externally, to the Governor's Office or to the State Police. <sup>13</sup>
Is the investigation external?	<b>Yes</b>	According to the Oregon DOC, a review by the State Police is always carried out. <sup>14</sup>
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	<b>Yes</b>	Facility administration may take measures to protect the victim including physical separation. <sup>15</sup>
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 information provided.
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	<b>Yes</b>	The DOC Special Investigations Unit has a system in place to track investigations. According to the Oregon DOC, the system is currently being refined to track more information including indictments and convictions. <sup>16</sup>

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

<i>None</i>
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## **Pregnancy in Custody**

## ***Pregnancy - Statute***

Legislation banning shackling in the third trimester or during labor	<b>No</b>	Oregon 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 Oregon Department of Corrections response to AI's surveys, please see above.

Use of restraints in third trimester	<b>Yes</b>	Handcuffs are applied during transport. The DOC states that in practice it does not use leg restraints. <sup>17</sup>
Restraints during transport	<b>Yes</b>	According to Oregon DOC, Department policy may require the use of handcuffs, depending on custody level. The Department policy states that correctional staff must follow physician recommendations for the preferable method of restraint. <sup>18</sup>
Restraints during labor	<b>No</b>	According to Oregon DOC, restraints are not used during labor or diagnostic procedures, unless expressly requested by the attending physician. <sup>19</sup>
Officer in delivery room	<b>Yes</b>	According to Oregon DOC, the corrections officer (usually a woman) is posted inside the room unless the physician requests otherwise and facility administration approves. <sup>20</sup>

## **Contact information**

### **OREGON DEPARTMENT OF CORRECTIONS**

<b>Director: Max Williams</b> Oregon Department of Corrections Central Administration Office 2575 Center Street NE Salem, OR 97301-4667 Phone: (503) 945-9090 <b>Fax: (503) 373-1173</b>	Homepage: <a href="http://egov.oregon.gov/DOC/index.shtml">http://egov.oregon.gov/DOC/index.shtml</a>
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### **OREGON DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN**

<b>Coffee Creek Correctional Facility</b> <i>Female inmates: 940<sup>21</sup></i> Superintendent: William Hoeful 24499 SW Grahams Ferry Rd PO Box 9000 Wilsonville, Oregon 97070 Phone: (503)570-6400 Fax: 503-570-6417	<b>Shutter Creek Correctional Institution</b> <i>Female inmates: 25<sup>22</sup></i> Superintendent: Tim Causey 95200 Shutters Landing Lane North Bend, Oregon 97459-0303 Phone: (541) 756-6666 x243 Fax: (541) 756-6888
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## **OREGON EXECUTIVE**

<p><b>Governor Ted Kulongoski [D]</b>          160 State Capitol          900 Court Street          Salem, OR 97301          Phone: (503) 378-4582; Fax: (503) 378-6827          Email (internet based):  <a href="http://www.governor.state.or.us/Gov/contact_us.shtml">http://www.governor.state.or.us/Gov/contact_us.shtml</a></p>	<p>Homepage:  <a href="http://www.governor.state.or.us/">http://www.governor.state.or.us/</a></p> <p>Elected: 2002</p>
<p><b>Attorney General Hardy Myers [D]</b>          Oregon Department of Justice          1162 Court Street, N.E.          Salem, OR 97310          Phone: (503) 378-4400</p>	<p>Homepage: <a href="http://www.doj.state.or.us/">http://www.doj.state.or.us/</a></p> <p>Elected: 1996</p>

## **OREGON LEGISLATIVE INFORMATION**

<p><b>House:</b> 60 members, 2-year terms  <b>Senate:</b> 30 members, 4-year terms (8-yr. limit)</p> <p><b>Legislative Session:</b> The Legislative Assembly meets biannually in odd numbered years from the second Monday in January. The session is of unspecified length.</p>	<p>Legislature Homepage:  <a href="http://www.leg.state.or.us/">http://www.leg.state.or.us/</a>          State website  <a href="http://www.state.or.us/">http://www.state.or.us/</a>          Bill information phone number: (503) 378-8551</p>
<p><b>Senate</b>          900 Court Street NE S-203,          Salem, OR 97301</p>	<p>Homepage:  <a href="http://www.leg.state.or.us/senate/senateset.htm">http://www.leg.state.or.us/senate/senateset.htm</a></p>
<p><b>House of Representatives</b>          900 Court Street NE, Room 269          Salem, Oregon 97301</p>	<p>Homepage:  <a href="http://www.leg.state.or.us/house/houseset.htm">http://www.leg.state.or.us/house/houseset.htm</a></p>

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

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

<p>Oregon CURE          1631 NE Broadway #460          Portland, OR 97232          Phone: (503) 977-9979          Web: <a href="http://www.oregoncure.org">www.oregoncure.org</a></p>
<p>Western Prison Project          PO Box 40085          Portland, OR 97240          Email: (503) 335-8449; Fax: (503) 232-1922          Website: <a href="http://www.westernprisonproject.org">www.westernprisonproject.org</a></p>
<p>ACLU of Oregon          P.O. Box 40585          Portland OR 97240-0585          or          P.O. Box 50426          Eugene OR 97401          Website: <a href="http://www.aclu-or.org">www.aclu-or.org</a></p>
<p>Prison Legal News          2400 NW 80th Street, Rm 148          Seattle, WA 98117-4449          Tel: 206-246-1022          Fax: 206-505-4449          Email: <a href="mailto:info@prisonlegalnews.org">info@prisonlegalnews.org</a>          Web site: <a href="http://www.prisonlegalnews.org">http://www.prisonlegalnews.org</a></p>

**Oregon Senate Bill 89, amending ORS 163.305 to 163.467, creating the crime of custodial sexual misconduct**

Be It Enacted by the People of the State of Oregon:

Section 1. Sections 2 to 4 of this 2005 Act are added to and made a part of ORS 163.305 to 163.467.

Section 2. As used in sections 3 and 4 of this 2005 Act, 'Correctional Facility' has the meaning given that term in ORS 162.135.

Section 3. (1) A person commits the crime of custodial sexual misconduct in the first degree if that person:

(A) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

- (A) In the custody of a law enforcement agency following arrest;
- (B) Confined or detained in a correctional facility;
- (C) Participating in an inmate or offender work crew or work release program; or
- (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(B) Is employed by or under contact with the state or local agency that:

- (A) Employs the officer who arrested the other person;
- (B) Operates the correctional facility in which the other person is confined or detained;
- (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
- (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class A Felony.

Section 4. (1) A person commits the crime of custodial sexual misconduct in the second degree if the person:

(A) Engages in sexual contact with another person knowing that the other person is:

- (A) In the custody of a law enforcement agency following arrest;
- (B) Confined or detained in correctional facility;
- (C) Participating in an inmate or offender work crew or work release program; or
- (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(B) Is employed by or under contract with the state or local agency that:

- (A) Employs the officer who arrested the other person;
- (B) Operates the correctional facility in which the other person is confined or detained;
- (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
- (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the second degree is a class A misdemeanor.

Section 5. ORS 163.412 is amended to read:

163.412. Nothing in ORS 163.408 or 163.411 or Section 3 of this 2005 Act prohibits a penetration described in those sections when:

- (1) The penetration is part of a medically recognized treatment or diagnostic procedure; or
- (2) The penetration is accomplished by a peace officer or a corrections officer acting in official capacity, or by medical personnel at the request of such an officer, in order to search for weapons, contraband or evidence of crime.

Section 6. This 2005 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect on its passage.

**HISTORY:**

Approved by the Governor July 13, 2005.

<sup>1</sup> Oregon Department of Corrections (DOC), *Inmate Population Profile*, July 2005, available at [http://www.oregon.gov/DOC/RESRCH/docs/inmate\\_profile.pdf](http://www.oregon.gov/DOC/RESRCH/docs/inmate_profile.pdf), as per 01/27/06.

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

<sup>3</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>4</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.

<sup>5</sup> Faxed response from Dan Van Lehman, Manager of Central Operations, Director's Office, Oregon DOC, 02/15/01.

<sup>6</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.

<sup>7</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.

<sup>8</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.

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- <sup>15</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.
- <sup>16</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.
- <sup>17</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.
- <sup>18</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.; Faxed response from Dan Van Lehman, Manager of Central Operations, Director's Office, Oregon DOC, 02/15/01.
- <sup>19</sup> Letter from Catherine M. Knox, Health Services Administrator, Oregon Department of Corrections, 01/12/01.
- <sup>20</sup> Email from Perrin P. Damon, Communications Manager, Oregon DOC, 07/18/02.
- <sup>21</sup> Oregon DOC: Inmate Population Profile for 07/01/05, available at [http://www.oregon.gov/DOC/RESRCH/inmate\\_population.shtml#Inmate\\_Population\\_Profiles](http://www.oregon.gov/DOC/RESRCH/inmate_population.shtml#Inmate_Population_Profiles), as per 01/27/06.
- <sup>22</sup> Oregon Department of Corrections: Inmate Population Profile for 07/01/05, available at [http://www.oregon.gov/DOC/RESRCH/inmate\\_population.shtml#Inmate\\_Population\\_Profiles](http://www.oregon.gov/DOC/RESRCH/inmate_population.shtml#Inmate_Population_Profiles), as per 01/27/06.