

Pennsylvania

WOMEN IN PRISON: 1,823^(12/03)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

18 § 3124.2 – Institutional Sexual Assault¹

Pennsylvania’s law is in the Sexual Offenses section of the Criminal Code. It expressly does not apply when there is a nonconsensual act.

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 all forms of sexual abuse.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The law specifically applies in cases where consent is not an issue. If there was no consent, Pennsylvania’s rape statutes apply.
Does the statute cover all custodians and staff in contact with inmates?	No	The law applies to employees and agents at the state and county level. However, it appears the law does not employee to municipal employees or agents.
Does the statute cover all places where an inmate might be abused?	No	The law does not account for municipal and local institutions.
Is the penalty a felony?	Yes	Violation is a third degree felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	<p>In response to a 2002 inquiry by Amnesty International, the DOC indicated that, in 2001, at least 38 persons were charged with institutional sexual assault. ⁱⁱ Four of those cases were dismissed at the minor judiciary level. The other 34 were transferred to the Common Pleas Court where, at the time of communication, they had yet to be concluded. Of the 34 cases moved forward, 27 involved male defendants.³</p> <p>Amnesty International did not receive a response to its 2005 follow up inquiries with the Pennsylvania Attorney General’s Office.</p>
Incidents reported in select media since January 2000	<p>- Allegheny County Jail: 14 former guards were charged after a two-year grand jury investigation found evidence that guards induced female prisoners to have sex with them in exchange for favors, cigarettes and prescription drugs. The investigation found that at least nine female inmates had been sexually assaulted. One former officer was convicted of four counts of institutional sexual assault and was sentenced to up to 28 years in prison. Another former officer who pleaded guilty to fondling and kissing an inmate was sentenced to probation. In total, seven officers have pleaded or been found guilty, while one has been acquitted. (<i>Pittsburgh Post-Gazette</i>, 1/14/05 and 07/13/05, <i>Pittsburgh Tribune Review</i>, 1/13/05)</p>

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

ⁱⁱ This figure excludes charges filed in the city of Philadelphia, which has a separate minor judiciary system. It may also exclude any cases that were initiated through direct indictment at the Common Pleas level.

	<ul style="list-style-type: none"> - Montgomery County: The trial of prison guard Eileen Mayfield, who was accused of alleged indecent contact with inmates and trading snacks for sexual favors, ended in a hung jury. (<i>Philadelphia Inquirer</i>, 10/16/04) - Northumberland County Prison: Warden Ralph “Rick” Reish Jr was suspended without pay for failure to notify county officials that he was under investigation for the alleged assault of a female inmate. The inmate advised state police that Reish attacked her while transferring her to Lycoming County Prison. The Warden was reportedly suspended for three days for violating administration procedures, not for the allegations. (<i>AP State and Wire</i> 05/07/04) - Northumberland County Prison: A correctional officer has been charged with sexually assaulting a female inmate at least 10 times during the past four months. (<i>Shamokin News Item</i>, 4/15/04) - Bucks County: In September of 2002, Bucks County agreed to settle a federal lawsuit by paying \$35,000 to each of seven female county jail prisoners who sued the county government after they were sexually assaulted by correctional staff members. (<i>The Morning Call (Allentown, PA)</i> 09/12/02) - Correctional Institute Cambridge Springs: Former officer Brenda Jones was charged with having sexual contact with female inmates. (<i>Pittsburgh Post-Gazette</i>, 01/27/01) - Quehanna Boot Camp: Former officer Tom Mattive was sentenced to eleven and one-half months in jail for sexually assaulting a female inmate. (<i>Pittsburgh Post Gazette</i>, 01/26/01)
Other Reported Incidents	<p><i>Commonwealth v. Budd</i>, 821 A.2d 629, 2003 PA Super 136 (Pa. Super. Ct. 2003)</p> <p>Defendant Jeffrey Budd, a Bucks County correctional officer, was arrested after he allegedly sexually assaulted a Bucks County Prison inmate on work release. A Pennsylvania trial court found Bucks guilty of institutional sexual assault. Budd appealed, challenging the constitutionality of Pennsylvania’s custodial sexual misconduct statute on the grounds that it does not define relevant and important terms, such as “inmate”. He also claimed that the phrase “employee or agent of the Department of Corrections or county correctional authority” is defined inadequately and broadly, and that the statute is vague and consequently violates due process.</p> <p>The Superior Court of Pennsylvania affirmed the lower court decision, finding that it is reasonable to conclude that a person is an “inmate” even if on work release, and that a correctional officer is still an officer, even if off duty. The Court also found that the facts of the case provided sufficient evidence for the trier of fact to conclude that Budd knew that inmate with whom he had a sexual relation was still an inmate on work release.</p> <p>The Court noted, however, that 18 § 3124.2 would not provide a sanction if a defendant does not know that his or her victim is an inmate at the time the sexual assault takes place. The example provided was of an off-duty correctional officer who met someone in a bar and proceeded to have a sexual relation with that person, unaware of the fact that the other person was an inmate on work release.</p>

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

The following is based on data provided by the Pennsylvania 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	Yes	Policy includes direct and specific language about the sexual nature
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Corrections policy on custodial sexual misconduct language explicit?		of the behaviors prohibited. ⁴ Specifically, Pennsylvania DOC policy prohibits all sexual contact and sexual harassment with inmates. Sexual contact is defined as intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thighs, or buttocks as well as rape and sexual assault. Sexual harassment is defined as verbal, visual, or physical conduct of a sexual nature or offensive comments or gestures. ⁵
Allow cross-gender pat-down searches?	Yes	Practice is managed at institution level. At Muncy it is routinely done. At Cambridge Springs, searches are predominantly same-sex. ⁶
What is the percentage of female officers in relation to male officers?		According to the Pennsylvania DOC, 9% of uniformed staff are female; 91% are male. ⁷
Restrictions on the duties of male guards?	--	No information provided.
Staff training on sexual misconduct?	Yes	According the Pennsylvania DOC, new staff receive a module on sexual misconduct during basic training. Existing staff must complete a computer based module. ⁸
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According the Pennsylvania DOC, all inmates are given a video and staff presentation, receive written materials, and discuss sexual misconduct with counselors during an annual review. The agency policy and reporting procedures are also in the inmate handbook. ⁹

Custodial Sexual Misconduct - Policies and Procedures

Guiding Official Response

The following is based on the Pennsylvania 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 the Pennsylvania DOC, the inmate victim is taken to the facility medical department as soon as staff are made aware of the alleged abuse. Some inmates are sent to an outside hospital. There are also guidelines for prophylactic medications and testing. ¹⁰
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to the Pennsylvania DOC, psychological or psychiatric staff will evaluate each inmate victim. If the inmate is sent to an outside hospital, the local Rape Crisis Center will provide counselors. ¹¹
Is counseling available for the victim of alleged sexual abuse?	Yes	Pennsylvania DOC policy provides that when considered necessary, weekly psychological evaluation and counseling shall continue until the psychologist and/or the victim are satisfied that sessions should be scheduled less often or terminated. ¹²
Is a rape kit taken?	Yes	According to the Pennsylvania DOC, if the inmate alleges oral/anal/vaginal penetration within 72 hours, he/she is taken to an outside hospital and a rape kit is taken there. In consultation with the Pennsylvania Coalition Against Rape (PCAR), the Pennsylvania DOC instructs the facility to consult with the forensic nurse at the outside hospital in cases where the timeframe is between 72 and 96 hours. They inmate may or may not be taken to the hospital based on the consultation. ¹³
Are there special procedures for investigating allegations of sexual misconduct?	Yes	According the Pennsylvania DOC, the Department's Office of Professional Responsibility investigates all allegations of staff sexual contact with an inmate (but these procedures do not apply to allegations of sexual harassment). Pennsylvania DOC policy requires the Office of Professional Responsibility to conduct the investigation in accordance with best practices and in a thorough, professional, non-abusive and non-threatening manner. Policy requires that every investigation report be sent to the Pennsylvania State Police. ¹⁴
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	According to the Pennsylvania DOC, all allegations of sexual misconduct are referred to the Office of Professional Responsibility if the alleged perpetrator is an employee. If the alleged perpetrator is

		another inmate, the allegations are referred to the Facility Manager. Inmates are also given the contact information for the Pennsylvania Coalition Against Rape during training and in an informational brochure. ¹⁵
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?	Yes	According to the Pennsylvania DOC, policy requires all allegations of sexual abuse to be reported to State Police. In cases where the allegation appears to be founded, the investigation must also be referred to the District Attorney. ¹⁶
If there is an external investigation, how is it triggered?		According to the Pennsylvania DOC, policy requires all allegations of sexual abuse to be reported to State Police. ¹⁷
Are special measures taken to shield alleged victims from retaliation?	Yes	DOC policy provides that an inmate must be protected from retaliation by measures including the taking of disciplinary and/or legal action. ¹⁸ However, Amnesty International is concerned that Pennsylvania DOC policy also states that an inmate may be disciplined if it is determined that the report is false, and that this may deter individuals from reporting custodial sexual misconduct out of fear of punishment if their claims cannot be proven.
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	According to the Pennsylvania DOC, protective custody may be assigned only if the inmate's safety cannot be guaranteed in any other type of housing. ¹⁹
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	No	However, according to the Pennsylvania DOC, the Pennsylvania Prison Society offers assistance to inmates and their family. ²⁰
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?		No information provided.

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

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

DOC policies concerning pregnancy and delivery	Yes	The Pennsylvania DOC has a procedures manual for the care and management of pregnant inmates. Policy not provided. ²¹
Use of restraints in third trimester	Yes	See below.
Restraints during transport	Yes	According to Pennsylvania DOC policy, restraints are applied based on security class. ²² According to the DOC, policy provides that all

		inmates are transported in both hand- and leg-restraints when they are escorted to outside medical providers. At least one accompanying officer must be same gender. Once the inmate is in active labor, she is restrained using a wrist restraint. Policy allows for exceptions to restraint procedures for medical reasons upon the recommendation of a physician and approval by facility manager. ²³
Restraints during labor	Yes	According to the DOC, pregnant inmates who are in active labor are not restrained once they arrive at the hospital. Once the newborn is delivered, the mother is restrained by an ankle restraint. ²⁴
Officer in delivery room	Yes	A female correctional officer is present in the delivery room. ²⁵

Contact information

PENNSYLVANIA DEPARTMENT OF CORRECTIONS

Jeffrey A. Beard, Secretary 2520 Lisburn Road P.O. Box 598 Camp Hill, PA 17001-0598 Phone: (717) 975-4859	Home page: http://www.cor.state.pa.us/
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PENNSYLVANIA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

SCI Muncy <i>Female inmates:</i> 1,001 (06/05) ²⁶ Superintendent: Shirley R. Moore P.O. Box 180 Muncy, PA 17756 Phone: (570) 546-3171 Female-only institution Houses all security classes	SCI Cambridge Springs <i>Female inmates:</i> 891 (06/05) ²⁷ Superintendent: Rhoda A. Winstead 451 Fullerton Avenue Cambridge Springs, PA 16403-1238 Phone: (814) 398-5400 Female only institution	Quehanna Boot Camp <i>Female inmates:</i> 14 (2004) ²⁸ Superintendent: George N. Patrick HC Box 32 Karthaus, PA 16845 Phone: (814) 263-4125
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PENNSYLVANIA EXECUTIVE

Governor Edward G. Rendell [D] 225 Main Capitol Building Harrisburg, Pennsylvania 17120 Phone: (717) 787-2500 Email (internet based): http://sites.state.pa.us/PA_Exec/Governor/govmail.html	Home page: http://www.state.pa.us/governor/ Elected: 2002
Attorney General Tom Corbett [R] Strawberry Square, 16 th Floor Harrisburg, PA 17120 Phone: (717) 787-3391 Email (internet based): http://www.attorneygeneral.gov/contact/index.cfm	Home page: http://www.attorneygeneral.gov/ Elected: 2004

PENNSYLVANIA LEGISLATIVE INFORMATION

<p>Legislative Session: The General Assembly convenes the first Tuesday of January each year. The session of one year must adjourn by noon of the first Tuesday of the following year. Two regular sessions cannot meet at the same time.</p> <p>The General Assembly must also adjourn by November 30, in even-numbered years, due to the expiration of the terms of office of all House members and half the Senate. The governor can call special sessions.</p> <p>Senate: 50 members, 4-year terms House: 203 members, 2-year terms</p>	<p>Legislature home page: http://www.legis.state.pa.us/</p> <p>Legislative information: http://www.legis.state.pa.us/WU01/sessinfo.htm Bill search: http://www.legis.state.pa.us/WU01/LI/BI/billroom.htm</p> <p>Bill information phone number: : House: (717) 787-2372 Senate: (717) 787-5920</p>
<p>Senate Capitol Building Senate Box 203030 Harrisburg 17120-3030</p>	<p>Senate home page: http://www.pasen.gov/</p>
<p>House of Representatives Capitol Building Senate Box 203030 Harrisburg 17120-3030</p>	<p>Home page: http://www.house.state.pa.us/</p>

WOMEN IN PRISON - NGO RESOURCES

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

<p>Pennsylvania-CURE P.O. Box 125 Millersberg, PA 17061-0125 Phone: (717) 692-2180; Fax: (717) 692-5603 Email: dlhdh@pa.net</p>
<p>Pennsylvania Prison Society 2000 Spring Garden Street Philadelphia PA 19130-3805 Phone: (215) 564-6005 x7915; Fax: (215) 564-7926 Email: drush@voicenet.com / wd@ix.netcom.com Web page: www.prisonsociety.org <i>Provides advocacy, support, information and referral services to prisoners and their families. Meets prisoners to discuss complaints and attempts to mediate solutions.</i></p>
<p>National Clearinghouse in Defense of Battered Women 125 South 9th Street, #302 Philadelphia, PA 19107 Phone: (215) 351-0010; Fax: (215) 351-0779 <i>Provides legal and technical assistance to battered women charged with crimes.</i></p>
<p>The Program for Women and Families 1031 Linden Street Allentown, PA 18102 Phone: (610) 433-6556</p>
<p>ACLU of Pennsylvania P.O. Box 1161 Philadelphia, PA 19105 Phone: (215) 923-4357 Web site: www.aclupa.org</p>

<p>Parent Resource Association / Incarcerated Parents and Their Children 213 Fernbrook Avenue Wyncote, PA 19095 Phone: (215) 576-7961 <i>Provides family counseling programs for paroled offenders and training and consulting to correctional programs. Training focuses on parent/child relationships.</i></p>
<p>American Friends Service Committee Criminal Justice Program -- National 1501 Cherry Street Philadelphia, PA 19102 Phone: (215) 241-7130; Fax: (215) 241-7275 <i>National and local criminal justice programs. Publish analysis and reports.</i></p>
<p>Project IMPACT S.C.I. Muncy P.O. Box 180 Muncy, PA 17756 Phone: (570) 546-3171 Services: Run a children's center at SCI-Muncy where prisoners can spend individual time with their children. Project IMPACT also offers activity workshops, prenatal classes and parenting support groups. Provide a workbook for incarcerated parents written by staff, professionals and prisoners at SCI-Muncy,</p>
<p>The Program for Female Offenders, Inc. 1835 Forbes Ave. Pittsburgh, PA 15219 Phone: (412) 281-7380 Fax: (412) 642-9118 E-mail: chertz@tpfo.org Services: Work with women who are on probation or parole or who have ever been in trouble with the law. Provide on-going support in the areas of counseling, parole planning, career, workshops, referrals and job placement. Operate the Program Center, a work release center which functions as an alternative program to serving time in the Allegheny County Jail.</p>
<p>Women's Law Project Address: 125 South 9th St, Suite 401 Philadelphia PA 19107 Phone: (215) 928-9801</p>
<p>Pennsylvania Institutional Law Project 924 Cherry St., Ste. 523 Philadelphia, PA 19107 Phone: (215) 925-2966; Fax: (215) 925-5337 E-mail: arlpilp@earthlink.net Services: Represent prisoners on prison conditions issues and a full range of civil services. Assistance provided to prisoners in the federal, state, or county jails throughout the Commonwealth. Distribute various self-help publications regarding disciplinary actions, political asylum, name change, and a report of leading cases in 3rd Circuit Court of Appeals, as well as a local referral guide.</p>
<p>The Program for Female Offenders, Inc., Greater Harrisburg Office 1515 Derry St. Harrisburg, PA 17104 Phone: (717) 238-9950; Fax: (717) 236-3585 Services: Work with women who are on probation or parole or who have ever been in trouble with the law. Provide ongoing support in the areas of counseling, HIV/AIDS prevention, parole planning, career education, mentoring, workshops, referrals, and job placement. Operate the Woodside Family Center which functions as an alternative program to serving time in the Dauphin County Prison.</p>

<p>Pennsylvania's Custodial Sexual Misconduct Statute</p> <p>§ 3124.2. Institutional sexual assault.</p> <p>(a) General rule. Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault) and 3125 (relating to aggravated indecent assault), a person who is an employee or agent of the Department of Corrections or a county correctional authority, youth development center, youth forestry camp, State or county</p>
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juvenile detention facility, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution commits a felony of the third degree when that person engages in sexual intercourse, deviate sexual intercourse or indecent contact with an inmate, detainee, patient or resident.

(b) Definition. -As used in this section, the term "agent" means a person who is assigned to work in a State or county correctional or juvenile detention facility, a youth development center, youth forestry camp, other licensed residential facility serving children and youth, or mental health or mental retardation facility or institution who is employed by any State or county agency or any person employed by an entity providing contract services to the agency.

¹ Bureau of Justice Statistics, *Prisoners in 2003*, NCJ205335, November 2004, available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/p03.pdf>, as per 01/27/06.

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

³ Email from Doug Hoffman, Director, Pennsylvania Commission on Crime and Delinquency, Center for Research, Evaluation and Statistical Analysis, 09/04/02.

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; Pennsylvania Department of Corrections (DOC) Policy Statement DC-ADM 008 "Sexual Harassment/Sexual Abuse of Inmates," 05/08/00.

⁵ Pennsylvania DOC, Policy Statement, DC-ADM 008, Sexual Harassment of or Sexual Conduct with Inmates, effective 01/03/05, provided by John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 8/12/05.

⁶ National Institute of Corrections, Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research," Colorado, January 1999.

⁷ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

⁸ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

⁹ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹⁰ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹¹ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹² Pennsylvania DOC Policy Statement DC-ADM 008 "Sexual Harassment/Sexual Abuse of Inmates," 05/08/00.

¹³ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹⁴ Pennsylvania DOC, Policy Statement, DC-ADM 008, Sexual Harassment of or Sexual Conduct with Inmates, effective 01/03/05, provided by John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 8/12/05.

¹⁵ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹⁶ Pennsylvania DOC Policy Statement DC-ADM 008 "Sexual Harassment/Sexual Abuse of Inmates," 05/08/00.

¹⁷ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

¹⁸ Pennsylvania DOC Policy Statement DC-ADM 008 "Sexual Harassment/Sexual Abuse of Inmates," 05/08/00.

¹⁹ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

²⁰ Email from Kathleen Zwierzyna, Pennsylvania DOC, 08/12/05.

²¹ Pennsylvania DOC, Policy Number 13.2.7 Inmate Health Care Plan. Described in letter from John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 02/13/01.

²² Pennsylvania DOC, "Use of Force" (DC-ADM 201) Policy received from the Pennsylvania DOC, 08/17/00.

²³ Pennsylvania DOC, Policy Number 13.2.7 Inmate Health Care Plan. Described in letter from John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 02/13/01.

²⁴ Pennsylvania DOC, Policy Number 13.2.7 Inmate Health Care Plan. Described in letter from John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 02/13/01.

²⁵ Pennsylvania DOC, Policy Number 13.2.7 Inmate Health Care Plan. Described in letter from John S. Shaffer, Deputy Secretary for Administration, Pennsylvania DOC, 02/13/01.

²⁶ Pennsylvania DOC, *Monthly Institution Profile*, 06/2005, available at http://www.cor.state.pa.us/portal/lib/portal/monthly_profile.pdf, as per 01/27/06.

²⁷ Pennsylvania DOC, *Monthly Institution Profile*, 06/2005, available at http://www.cor.state.pa.us/portal/lib/portal/monthly_profile.pdf, as per 01/27/06.

²⁸ Pennsylvania DOC, *Quehanna Motivational Boot Camp: Performance Analysis and Evaluation*, 01/2005, available at <http://www.cor.state.pa.us/stats/lib/stats/bootcamp.pdf>, as per 01/27/06.