

South Dakota

WOMEN IN PRISON: 338 (06/05)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§ 24-1-26.1 – *Sexual acts prohibited between prison employees and prisoners.*

§ 22-22-7.6 – *Sexual acts between jail employees and detainees – Felony – Juvenile correctional facility defined.*¹

South Dakota’s law on prison employees is in the Management section of the Penal Institutions title. The law covering jail employees is in the Sexual Offenses section of the criminal code.

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	Under §24-1-26.1, for employees of the state or of any state prison, the only prohibited act is penetration. Under §22-22-7.6, employees of jails and juvenile detention facilities are prohibited from sexual contact or sexual penetration.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	The laws are “statutory rape” offenses; an officer cannot claim the victim’s consent in order to avoid prosecution.
Does the statute cover all custodians and staff in contact with inmates?	No	Both laws require the offender to have custodial, supervisory, or disciplinary authority over the victim.
Does the statute cover all places where an inmate might be abused?	No	Both laws require the victim to be “in detention.”
Is the penalty a felony?	Yes	Violation of either statute is a class 6 felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	<p>The South Dakota Attorney General provided the following information reflecting court activity over the past 5 years³:</p> <p>For § 24-1-26.1 – Sexual acts prohibited between prison employees and prisoners: 2001: 1 filing, 1 conviction 2002: No filings 2003: No filings 2004: 1 filing, 2 convictions 2005: No filings to date</p> <p>For § 22-22-7.6 – Sexual acts between jail employees and detainees: 2001: 1 filing 2002: 1 dismissal 2003: 3 filings, 2 convictions, 1 dismissal 2004: 3 filings, 2 convictions, 1 dismissal 2005: No filings to date</p>
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¹ The text of the South Dakota statute is reprinted at the end of this section.

Incidents reported in select media since January 2000	- Community Alternatives of the Black Hills: Geoffrey Atherton, manager of the treatment facility for criminal offenders, was sentenced to twelve months in jail for having sexual contact with a woman in his care. Eight months of his sentence were suspended. (<i>Rapid City Journal</i> , 07/16/03, cited to by <i>Stop Prisoner Rape</i>)
	- Pennington County Jail: Guard Jermaine Leonard pleaded guilty to having sexual contact with a female inmate. He was sentenced to up to four months in jail. (<i>AP</i> , 07/15/03) - Brown County Jail: Former guard, Andrew Dunn, pleaded guilty to committing a sexual act with a detainee. Dunn agreed to a plea agreement; his conviction was set to be a sealed record upon completion of a 30-day jail sentence and probation. (<i>AP</i> , 11/20/02) - South Dakota Women's Prison, Pierre: An inmate sued the State, alleging that she was raped in mid-1998; South Dakota's Supreme Court ruled that officials are protected by sovereign immunity. (<i>AP</i> , 09/05/00)

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

The following is based on data provided by the South Dakota Department of Corrections in response to AI's survey in 2000 and 2002. AI did not receive data from the South Dakota 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?	Yes	According to the South Dakota DOC, the policy is language specific. However, no details were provided. ⁴
Allow cross-gender pat-down searches?	No	According to a written response from South Dakota DOC, no cross-sex searches are allowed. ⁵
What is the percentage of female officers in relation to male officers?		According to the South Dakota DOC, as of August 2002, South Dakota Women's Prison had 20 female officers (57.1%) and 15 male officers (42.9%). ⁶
Restrictions on the duties of male guards?	Yes	No cross-sex pat-down searches or strip searches are allowed. See above.
Staff training on sexual misconduct	Yes	According to the South Dakota DOC, all staff receive four hours' annual in-service training. ⁷
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 South 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 the South Dakota DOC, medical help is available, but no details were provided. ⁸
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to the South Dakota DOC, mental health services are available, but no details were provided. ⁹
Is counseling available for the victim of alleged sexual abuse?	Yes	According to the South Dakota DOC, counseling is available, but no details were provided. ¹⁰
Is a rape kit taken?	Yes	According to the South Dakota DOC, a rape kit is taken; no details were provided. ¹¹
Are there special procedures for investigating allegations of sexual misconduct?		No information provided.

Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	According to the South Dakota DOC, a reporting system exists, but no details were provided. ¹²
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 South Dakota DOC, an external investigation is undertaken, but no details were provided. ¹³
If there is an external investigation, how is it triggered?		No information provided.
Are special measures taken to shield alleged victims from retaliation?	Yes	According to the South Dakota DOC, special measures are taken, but no details were provided. ¹⁴
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?	Yes	According to the South Dakota DOC, a tracking system exists, but no details were provided. ¹⁵

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

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

Use of restraints in third trimester	Yes	According to the South Dakota DOC, high-risk inmates may be handcuffed during transport. Women in the third trimester at the correctional facility are not restrained. It is unclear whether this is determined by policy or procedure. ¹⁶
Restraints during transport	Yes	According to South Dakota DOC, high-risk inmates are handcuffed. It is unclear whether this is determined by policy or procedure. ¹⁷
Restraints during labor	No	According to South Dakota DOC, no restraints are applied during labor. ¹⁸
Officer in delivery room	Yes	According to South Dakota DOC, a correctional officer is present. ¹⁹

Contact information

SOUTH DAKOTA DEPARTMENT OF CORRECTIONS

Secretary: Tim Reisch 3200 East Highway 34, Suite 8 Pierre, SD 57501-5070 Phone (605) 773-3478	Home page: http://www.state.sd.us/corrections/corrections.html
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SOUTH DAKOTA DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

SOUTH DAKOTA WOMEN'S PRISON <i>Female inmates: 308 (06/05)²⁰</i> Warden: Dwane Russell Solem Public Safety Center 3200 East Highway 34, Suite 1, Pierre, SD 57501-5070 Phone: (605) 773-6636; Fax: (605) 773-3194

SOUTH DAKOTA EXECUTIVE

Governor Mike Rounds [R] Office of the Governor 500 East Capitol Avenue Pierre, SD 57501-5070 Phone: (605) 773-3212; Fax: (605) 773-4711 Email link: http://www.state.sd.us/governor/	Homepage: http://www.state.sd.us/governor/index.htm Elected: 2002
Attorney General Larry Long [R] Office of Attorney General 500 East Capitol Ave. Pierre, SD 57501-5070 Phone: (605)-773-3215 Fax: (605) 773-4106 E-mail: atghelp@state.sd.us	Homepage: http://www.state.sd.us/attorney/ Elected: 2002

SOUTH DAKOTA LEGISLATIVE INFORMATION

Legislative Session: Sessions begin on the second Tuesday in January at noon. In odd-numbered years, the session is limited to 40 legislative days, and in even-numbered years, the session is limited to 35 legislative days. Legislative days do not include Sundays, holidays, or days when the legislature is in recess. The Governor can convene a special session, and the legislature can also call itself into special session. Senate: 35 members, 2-year terms, 8 year term-limit House: 70 members, 2-year terms, 8 year term-limit Elections are held for the entire legislature every even-numbered year.	Legislative home page: www.state.sd.us/state/legis/legis.htm Legislative Research Council: http://www.state.sd.us/state/legis/lrc.htm Phone: (605) 773-3251 - Fax: (605) 773-4576 Bill search: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/lrcmenu.htm or http://www.state.sd.us/state/legis/lrc/lawstat/https/75/mainfrm.htm Bill information phone number: (605) 733-3011
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Senate Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070	Senate home page: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/senrost.htm
House of Representatives Capitol Building, 500 East Capitol Avenue, Pierre, SD 57501-5070	Home page: http://www.state.sd.us/state/legis/lrc/lawstat/https/75/hourost.htm

WOMEN IN PRISON - NGO RESOURCES

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

South Dakota-CURE P.O. Box 961 Sioux Falls, SD 57101
American Friends Service Committee P.O. Box 72 Porcupine SD 57772 Phone: (605) 867-2417

South Dakota's Custodial Sexual Misconduct Statute

§ 24-1-26.1. Sexual acts prohibited between prison employees and prisoners.

Any person, employed by the state, or employed within any state prison or other detention facility, who knowingly engages in an act of sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, is guilty of a Class 6 felony.

§ 22-22-7.6. Sexual acts between jail employees and detainees -- Felony -- Juvenile correctional facility defined.

Any person employed at any jail or juvenile correctional facility, who knowingly engages in an act of sexual contact or sexual penetration with another person who is in detention and under the custodial, supervisory, or disciplinary authority of the person so engaging, and which act of sexual contact or sexual penetration does not otherwise constitute a felony pursuant to the provisions of chapter 22-22, is guilty of a Class 6 felony.

A juvenile correctional facility pursuant to this section is a juvenile detention facility as defined in subdivision 26-7A-1(16) or a juvenile facility operated by the Department of Corrections under § 1-15-1.4.

¹ South Dakota Department of Corrections (DOC), *Statistics: Adult Monthly Population*, June 2005, available at http://www.state.sd.us/corrections/adult_stats.htm, as per 01/27/06.

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

³ Letter from Larry Long, Attorney General, 08/03/05.

⁴ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

⁵ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

⁶ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

⁷ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

⁸ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

⁹ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹⁰ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹¹ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹² Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹³ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹⁴ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹⁵ Fax received from Michael Winder, South Dakota DOC, 08/23/02.

¹⁶ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

¹⁷ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

¹⁸ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

¹⁹ Faxed corrections from Administration, South Dakota DOC, 02/15/01.

²⁰ South Dakota DOC, *Statistics: Adult Monthly Population*, June 2005, available at http://www.state.sd.us/corrections/adult_stats.htm, as per 01/27/06.