

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§ 76-5-412 - Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses

Utah introduced a custodial sexual misconduct law in 2001. It is contained in the Utah Criminal Code in the chapter concerning offenses against the person, under sexual offenses.¹

Can this law be used to penalize an inmate complaining about custodial sexual abuse?	No	The law does not penalize the inmate.
Does the statute cover all forms of sexual abuse?	Yes	The statute covers all forms of contact 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 provides that consent is not a defense.
Does the statute cover all custodians and staff in contact with inmates?	--	The law covers state, county and municipal jails, however, it is unclear that it covers private providers or contractors at municipal facilities.
Does the statute cover all places where an inmate might be abused?	Yes	The law specifically mentions persons in custody in hospitals as well as under arrest, work-release, and parole.
Is the penalty a felony?	Yes	Specified acts, including penetration, amount to a third degree felony, unless the inmate is under 18 years old in which case they amount to a second-degree felony. Other acts, such as touching, amount only to a class A misdemeanor, unless the inmate is younger than 18 years old, in which case they amount to a third degree felony.

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ²	In 2005, the Utah Attorney General's Office reported that it does not compile statistics on prosecutions or convictions under the state's CSM law. ³
Incidents reported in select media since January 2000	- Utah State Prison: Corrections officer Louis Poleate was charged with one count of rape, a first-degree felony. Poleate allegedly escorted 19-year-old Priscilla Chavez from her cell to take her to the prison infirmary for medical tests. Instead, he allegedly took her to another secure area of the prison and raped her while she was still handcuffed. Poleate was sentenced to five years in prison. (<i>Deseret News</i> (Salt Lake City) 10/04/02, 08/01/03)

¹ The text of the Utah statute is reprinted at the end of this section



- Oxbow Jail: Three women are suing a former guard, Nathan Greenleaf, claiming that he frequently fondled them and made sexually explicit comments towards them. South Salt Lake police were investigating the allegations. (*The Desert News, 03/14/02*)
- Utah State Prison: Former guard, Jerry Gene Kessler, was sentenced to 18 months prison and three years probation for sexual abuse and sodomy. Female inmates claim he intimidated them into performing sex acts. (*The Desert News, 06/06/00*)

Custodial Sexual Misconduct – Policies, Procedures and Practices

AI did not receive a response from the Utah Department of Corrections to its 2000, 2002 or 2005 surveys. Information from other sources is included where available.

Is the current Department of Corrections policy on custodial sexual misconduct language-explicit?	No	Utah has no policy on sexual misconduct. ⁴
Allow cross-gender pat-down searches?		
What is the percentage of female officers in relation to male officers?		
Restrictions on the duties of male guards?		
Staff training on sexual misconduct?		
Inform inmates of agency policies and reporting procedures on sexual misconduct?		

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

AI did not receive a response from the Utah Department of Corrections to its surveys.

Is medical help available for the victim of alleged sexual abuse?		
Are immediate mental health services available for the victim of alleged sexual abuse?		
Is counseling available for the victim of alleged sexual abuse?		
Is a rape kit taken?		
Are there special procedures for investigating allegations of sexual misconduct?		
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?		
Is there a system for reporting allegations of custodial sexual misconduct directly to a body		

external to the DOC?		
Is the investigation external?		
If there is an external investigation, how is it triggered?		
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?		
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?		
Are special measures taken to shield alleged victims from retaliation?		
If so, do the measures include solitary confinement or lock-down of the inmate?		

Custodial Sexual Misconduct –Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

Legislation banning shackling in the third trimester or during labor	No	Utah has no legislation limiting the use of shackling on pregnant inmates
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Pregnancy: Policies, Procedures and Practices

AI did not receive a response from the Utah Department of Corrections to its surveys.

Use of restraints in third trimester		Not known. We have received no response to our inquiries from the Utah Department of Corrections.
Restraints during transport		See above.
Restraints during labor		See above.
Officer in delivery room		See above.

Contact information

UTAH DEPARTMENT OF CORRECTIONS

Executive Director: Scott V. Carver Utah Department of Corrections 14717 South Minuteman Drive Draper, UT 84020 TEL: (801) 265-5500 fax: (801) 545-5670 Email: corrections@utah.gov	Home page: http://www.cr.ex.state.ut.us/
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UTAH DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

Olympus Facility of the Utah State Prison

Warden: Clinton Friel
 14425 Bitterbrush Lane; Draper, UT
 Phone: (801) 576-7000

UTAH EXECUTIVE

<p>Governor Jon Huntsman, Jr. [R] East Office Building, Suite E220 PO Box 142220 Salt Lake City, UT 84114-2220 Phone (801) 538-1000; (800) 705-2464 Fax (801) 538-1528 Email link: http://www.utah.gov/governor/contact.html</p>	<p>Homepage: www.governor.state.ut.us/default.html Elected: 2004</p>
<p>Attorney General Mark Shurtleff [R] Utah State Attorney General Office of the Attorney General PO Box 142320 Salt Lake City, Utah 84114-2320 Phone: (801) 538-9600 E-mail: uag@utah.gov</p>	<p>Homepage: http://attorneygeneral.utah.gov/ Elected: 2000; Re-elected in 2004</p>

UTAH LEGISLATIVE INFORMATION

<p>Legislative Session: Utah has a citizen legislature rather than a full time legislature. Most legislators have occupations outside of the legislature when it is not in session. Annual session runs 45 days and begins on the third Monday of January. House of Representatives: 75 representatives Senate: 29 senators</p>	<p>Homepage: www.le.state.ut.us Bill search: http://www.le.state.ut.us/Documents/bills.htm Bill information phone number: House: (801) 538-1029 Senate: (801) 538-1035</p>
<p>Senate State Senate Address: W115 Capitol Complex Salt Lake City, UT 84114 Phone: (801) 538-1035; Fax: (801) 538-1414</p>	<p>Homepage: http://www.utahsenate.org/perl/spage/index.pl</p>
<p>House of Representatives W030 State Capitol Complex Salt Lake City, UT 84114 Phone: (801) 538-1029</p>	<p>Homepage: http://www.le.state.ut.us/house/index.htm</p>

WOMEN IN PRISON - NGO RESOURCES

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

<p>ACLU of Utah 355 North 300 W. Suite #1 Salt Lake City, UT 84103 Phone: (801) 521-9289; Fax: (801) 532-2850 Web site: www.acl Utah.org</p>
<p>Prisoner Information Network (PIN) 35 S 900 W Salt Lake City, Utah 84104 Phone: (801) 359-3589; Fax: (801) 521-6282 Website: www.prisonernetwork.com</p>

Utah's Custodial Sexual Misconduct Statute

§ 76-5-412. Custodial sexual relations – Custodial sexual misconduct – Definitions -- Penalties -- Defenses

(1) As used in this section:

(a) "Actor" means:

- (i) a correctional officer, as defined in Section 53-13-104;
 - (ii) a law enforcement officer, as defined in Section 53-13-103; or
 - (iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.
- (b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:
- (i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-15-601 or other medical facility;
 - (ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or
 - (iii) under lawful or unlawful arrest, either with or without a warrant.
- (c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

- (i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and
 - (ii) (A) the actor knows that the individual is a person in custody; or
(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.
- (b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.
- (c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

- (a) having sexual intercourse with a person in custody;
- (b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or
- (c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

- (i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and
 - (ii) (A) the actor knows that the individual is a person in custody; or
(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.
- (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.
- (c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

- (a) touching the anus, buttocks, or any part of the genitals of a person in custody;
- (b) touching the breast of a female person in custody;
- (c) otherwise taking indecent liberties with a person in custody; or
- (d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

- (a) Section 76-5-401, unlawful sexual activity with a minor;
- (b) Section 76-5-402, rape;
- (c) Section 76-5-402.1, rape of a child;
- (d) Section 76-5-402.2, object rape;
- (e) Section 76-5-402.3, object rape of a child;
- (f) Section 76-5-403, forcible sodomy;
- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:

- (i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or
 - (ii) was unaware of the true age of the person in custody.
- (b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in

¹ Bureau of Justice Statistics, *Prisoners in 2003*, NCJ205335, 11/2004, 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 Letter from Kenneth R Wallentine, Chief of Law Enforcement, Utah Attorney General's Office, 08/04/05.

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.