

# Washington

WOMEN IN PRISON: 1,494 (06/05)<sup>1</sup>

## Custodial Sexual Misconduct

### *Custodial Sexual Misconduct – Statute*

#### §§9A-44-160 *et seq.* – Custodial Sexual Misconduct<sup>i</sup>

Washington’s law is under the Sexual Offenses chapter of the criminal code. Washington includes the unique provision that the defendant is culpable if the person in custody “reasonably believes the perpetrator has the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision.” Although the Washington law specifically disallows consent as a defense to prosecution, *RCW 9A.44.180* provides that it is an affirmative defense to prosecution, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person. Washington law also provides, in *RCW 72.09.630 Custodial sexual misconduct -- Investigation of allegations* that the Department of Corrections is responsible for investigating for probable cause before notifying the district attorney.

Does the law impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the statute covers all relevant forms of sexual abuse?	Yes	The laws cover 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 states consent is not a defense.
Does the statute cover all custodians and staff in contact with inmates?	Yes	The statute covers employees and contract personnel who have, or the victim reasonably believes have, the ability to influence the terms, length, or fact of incarceration. Amnesty International finds this condition unfortunate, however, believes that it can be met for all relevant individuals, including janitorial and kitchen staff.
Does the statute cover all places where an inmate might be abused?	Yes	The law is not concerned with the location of the people, only their status.
Is the penalty a felony?	Yes	Violation in the first degree is a class C felony. Violation in the second degree is a gross misdemeanor.

### *Custodial Sexual Misconduct – Allegations and Incidents*

Indictments/Convictions (answer to AI letter requesting information) <sup>2</sup>	<p>According to the Washington Department of Corrections, as of February 2001, there had been one conviction since the law became effective.<sup>3</sup></p> <p>In 2005, the Attorney General of Washington reported that they do not compile such statistics. The AG sent Amnesty International a document, reportedly from 2002, detailing various initiatives to protect inmates from sexual assault. The document states that the Washington Department of Corrections must begin creating semi-annual reports on the incidence of custodial sexual misconduct. The AG suggested that AI contact the Washington DOC for such statistics, however, the DOC did not respond.<sup>4</sup></p>
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<sup>i</sup> The text of Washington’s statute is reprinted at the end of this section.

<p>Incidents reported in select media since January 2000</p>	<p>- King County Jail: Eight corrections officers were under investigation into sexual misconduct against female inmates. Two officers were arrested in May, accused of sexually abusing a female inmate. One was charged with first-degree custodial sexual misconduct and the other was charged with second-degree custodial sexual misconduct. Both officers were on paid administrative leave pending arraignment on Dec 15, 2005. While investigating that inmate's claims, detectives found evidence of a third officer engaging in sexual misconduct in the jail's psychiatric unit two years earlier. That officer was arrested in May, 2005. Two more corrections officers, arrested on allegations, remain on paid administrative leave while allegations of sexual misconduct with female inmates are investigated. On Oct. 27, a sixth officer was arrested after he was accused of a sexual offense with a female inmate. Allegedly, two additional officers were implicated in conduct ranging from making lewd comments to bribing inmates with drugs and candy in exchange for sexually explicit "shows." (<i>AP State &amp; Local Wire</i>, 6/11/05; 6/16/05 and <i>Seattle Times</i> 07/07/05, 12/08/05)</p>
	<p>- Regional Justice Center, Kent: A Kent jail officer, was placed on administrative leave and has been charged with second-degree custodial sexual misconduct for allegedly exposing himself to a female inmate while putting handcuffs on her. The officer has since resigned. (<i>AP State &amp; Local Wire</i>, 6/11/05; 6/16/05 and <i>Seattle Times</i> 07/07/05,12/8/05)</p>
	<p>- Benton County Jail: A corrections officer has resigned and faces possible criminal charges after an investigation reportedly revealed he fondled two female inmates. Benton County Sheriff Larry Taylor said the officer, who resigned, allowed two female inmates to make unauthorized phone calls and fondled their breasts while they were on the phone. (<i>AP State &amp; Local Wire</i>, 05/22/03)</p>
	<p>- Puyallup Tribal Jail: Joseph A. Digeralomo pleaded not guilty to the felony charge of first-degree custodial sexual misconduct and was released without bail, pending trial. Prosecutors allege that Digeralomo sexually assaulted a woman in 2002, two days after she was admitted to the jail. Prosecutors allege that Digeralomo came into the woman's cell while she was sleeping, woke her up and told her, "I gotta do a little search if you don't mind." He then touched her breasts and put his fingers inside her vagina. The woman reported the incident to another correctional officer. Digeralomo was fired days after the allegation, and entered a modified guilty plea which allowed him to maintain his innocence while acknowledging he'd likely be convicted at trial. He has been sentenced to do 40 hours of community service, to get a psychological evaluation, and to comply with any treatment prescribed. Although the alleged incident occurred in a tribal jail, Pierce County, rather than the tribe, has jurisdiction over the case because Digeralomo is not a tribal member. (<i>The News Tribune</i>, 04/04/03, 08/26/03)</p> <p>- Snohomish County Jail: Former inmate Donya LeNoir, who claims she was forced into having sex in exchange for drugs while she was an inmate three years ago, is suing the county, the state Department of Corrections and former jail nurse Paul Wentland. LeNoir claims the county and Corrections Department deprived her of her constitutional rights, were negligent and failed to protect jail inmates. LeNoir alleges Wentland repeatedly refused to provide her with her medication unless she had sex with him. In addition to being named in the suit, Wentland pleaded guilty to first-degree custodial misconduct, and was sentenced to a year in prison. (<i>The Seattle Times</i>, 10/29/03; <i>The Seattle Post-Intelligencer</i>, 10/30/03)</p>

	<ul style="list-style-type: none"> <li>- Snohomish County Jail: Guard Tracey Skinner was charged with criminal misconduct for ordering a female prisoner to undress and shower in front of him. The prisoner had taken off her pants when other staff intervened. Skinner, who resigned last summer and maintains he never committed a crime, has signed a deal that could lead to the dismissal of a gross-misdemeanor charge against him. The deal requires he undergo an evaluation for sexual deviancy, follow up with any recommended treatment and not have any contact with the woman. (<i>Prison Legal News</i>, 12/00; <i>The Seattle Times</i>, 02/18/01)</li> <li>- Washington Corrections Center for Women: Two female inmates in the state's women's prison alleged that a male guard raped them. They filed \$1 million claims against the state. The guard, who was dismissed, denied any wrongdoing. A state Corrections Department investigation found that while the women's accusations could not be confirmed by witnesses, there was enough circumstantial evidence to give them credibility. Pierce County prosecutors said there was not enough evidence to ensure conviction, so criminal charges were dropped. (<i>AP and Local Wire</i>, 11/17/00, 06/21/01)</li> <li>- Pierce County Jail: Officer was put on unpaid leave after allegations that he had sex with a female inmate. (<i>The News Tribune (Tacoma)</i>, 09/19/00)</li> <li>- Pierce County Jail: The parents of Victrina Richards, an inmate who hung herself, won a \$10 million wrongful death claim. They said she was raped by a guard and harassed by guards. According to their claim, Richards herself had reported being raped, but her request to move to another part of the jail was refused. (<i>The Columbian (Vancouver WA)</i>, 01/09/00)</li> </ul>
Other Reported Incidents	<p><i>Shinn v. State</i>, 2004 Wash. App. LEXIS 2992 (Wash. Ct. App. 2004)  In March 2000, a Department of Corrections sergeant reported an allegation to the McNeil Island Corrections Center Investigation Office that McNeil ferry captains were providing contraband to female Work Ethic Program prisoners in exchange for sex. In the course of a subsequent investigation, inmate Erin Turner alleged that James Shinn had engaged in sexual activities with her. The DOC investigator forwarded his report to the Pierce County Sheriff's Department and the Prosecutors. Shinn and one other ferry captain were charged with attempted custodial sexual misconduct in the second degree. Shin was acquitted by a jury. The DOC had also initiated an internal conduct report. After meeting with Shinn and reviewing this conduct report, DOC Superintendent issued comments stating her determination that the alleged misconduct did occur and that disciplinary action would follow. Shinn was subsequently dismissed. He then sued the Superintendent, the DOC investigator and the alleged victim for claims including violation of civil rights. His case was dismissed on summary judgment and dismissal was upheld on appeal.</p>
	<p><i>State v. Adams</i>, 2002 Wash. App. LEXIS 1974 (Wash. Ct. App. 2002)  Former Sheriff's Deputy Charles Adams' conviction for third degree rape was upheld on appeal. The State had charged Adams with first degree custodial sexual misconduct and third degree rape. He was acquitted of the first charge. The charges against him were based on his alleged rape of a 17-year-old girl in his custody. The girl had been in a car accident and he placed her in the back of his patrol car and took a written statement from her. Adams asked her where she wanted to go and she told him to a house where she was living with friends. Adams then asked her if she wanted to ride around with him and she did not respond. She said she needed to use the restroom and Adams allegedly drove her to Pain Field Sheriff's substation, which was empty, and allegedly raped her.</p>
	<p><i>Schwenk v. Hartford</i> 204 F.3d 1187 (9th Cir. 2000)  Washington State Penitentiary in Walla Walla: Schwenk, a preoperative transsexual housed in an all-male prison, alleged that shortly after she</p>

	arrived in Baker Unit, correctional officer Mitchell subjected her to an escalating series of unwelcome sexual advances and harassment that culminated in a sexual assault by Mitchell in her cell. <sup>5</sup>
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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 Washington Department of Corrections to AI’s survey in 2002 and 2005. AI did not receive data from the Washington Department of Corrections in 2000. 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>6</sup>
Allow cross-gender pat-down searches?		No information provided.
What is the percentage of female officers in relation to male officers?		According to the Washington Department of Corrections, as of 2002, 45% of officers were female. <sup>7</sup>
Restrictions on the duties of male guards?		No information provided.
Staff training on sexual misconduct?	<b>Yes</b>	All staff members receive training on sexual misconduct, within a block of 15-20 annual in-service hours. <sup>8</sup>
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 Washington 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 Washington DOC, medical help is available. <sup>9</sup> However no details were provided.
Are immediate mental health services available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Washington DOC, immediate mental health services are available. <sup>10</sup> However no details were provided.
Is counseling available for the victim of alleged sexual abuse?	<b>Yes</b>	According to the Washington DOC, counseling is available. <sup>11</sup> However no details were provided.
Is a rape kit taken?	<b>Yes</b>	According to the Washington DOC, a rape kit is taken. <sup>12</sup> However no details were provided.
Are there special procedures for investigating allegations of sexual misconduct?		DOC policy 856.020 details the procedure for taking statements from individuals including the person making allegations, the accused, all witnesses and other parties with any knowledge of the allegation. It also provides for the administration of polygraph test for the accused and details procedures for the conclusion of preliminary and final investigation reports. <sup>13</sup>
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	<b>Yes</b>	According to the Washington DOC, a system for reporting custodial sexual misconduct does exist. However no details regarding this system were provided to Amnesty. <sup>14</sup>
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?	<b>No</b>	No external investigation is undertaken. <sup>15</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>	According to the Washington DOC, measures to protect victims from retaliation are taken DOC Policy 856.020 provides that the investigation must remain confidential, and that employees must not retaliate against victims or complainants for making allegations. <sup>16</sup>
If so, do the measures include solitary confinement or lock-down of the inmate?	<b>Yes</b>	DOC Policy 856.020 provides that permissible measures include “administrative segregation” of the accused.
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>	According to DOC Policy 856.020, the Office of the Assistant Deputy Secretary of the Office of Corrections Operations tracks allegations and findings of sexual abuse, sexual assault and sexual contact. No details regarding the tracking system were provided to Amnesty. <sup>17</sup>

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

*None*

## **Pregnancy in Custody**

### ***Pregnancy - Statute***

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

Use of restraints in third trimester	<b>Yes</b>	No details provided.
Restraints during transport	<b>Yes</b>	According to stated Washington DOC policy, routine restraints include waist chain, leg irons, and handcuffs. The policy stipulates that medical conditions may require alternative procedures, such as handcuffs in front of torso. <sup>18</sup>
Restraints during labor	<b>No</b>	Washington DOC policy states, "a female offender shall not be restrained during labor or delivery of an infant." <sup>19</sup>
Officer in delivery room	<b>Yes</b>	Varies. The Washington DOC policy states that an officer must leave the room during any surgical procedure when the offender is “unconscious,” but must maintain visual contact with the inmate at all times. <sup>20</sup>

## **Contact information**

## WASHINGTON DEPARTMENT OF CORRECTIONS

<b>Secretary Harold Clarke</b> P.O. Box 41101 Olympia, WA 98504-1101 Phone (360) 753-1573; Fax: (360) 664 4056	Homepage: <a href="http://www.wa.gov/doc/home.htm">http://www.wa.gov/doc/home.htm</a>
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## WASHINGTON DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

<b>Washington Correction Center for Women</b> Female inmates: 839 (06/05) <sup>21</sup> Superintendent Belinda D. Stewart 9601 Bujacich Rd NW PO Box 17 Gig Harbor, WA 98335-0017 Phone (253) 838-4200; Fax (253) 838-4608	<b>Pine Lodge Corrections Center for Women</b> Female inmates: 387 (06/05) <sup>22</sup> Capacity: 400 Superintendent Donna Cayer 751 S. Pine St. P.O. Box 300 Medical Lake, WA 99022-0300 Phone: (509) 299-2300	<b>Mission Creek Correction Center for Women</b> Female inmates: 78 (06/05) <sup>23</sup> NE 3420 Sand Hill Road Belfair, WA 98528 Phone: (360) 275-4440
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## WASHINGTON EXECUTIVE

<b>Governor Christine Gregoire [D]</b> Office of the Governor P.O. Box 40002 Olympia, WA 98504-0002 Phone (360) 902-4111; Fax (360) 753-4110 E-mail link: <a href="http://www.governor.wa.gov/contact/govemail.htm">http://www.governor.wa.gov/contact/govemail.htm</a>	Homepage: <a href="http://www.atg.wa.gov/">http://www.atg.wa.gov/</a>  Elected: 2004
<b>Attorney Rob McKenna [R]</b> 1125 Washington St. SE PO Box 40100 Olympia, WA. 98504-0100 Phone (360) 753-6200; Fax (360) 586-7671	Homepage: <a href="http://www.wa.gov/ago/">http://www.wa.gov/ago/</a>  Elected 2004

## WASHINGTON LEGISLATIVE INFORMATION

<b>Legislative Session:</b> Washington has 49 legislative districts, each of which elects one Senator and two Representatives. Senators serve 4-year terms and Representatives serve 2-year terms. The legislative cycle is two years long. Regular sessions begin the 2 <sup>nd</sup> Monday in January each year. In odd numbered years, the regular sessions last 105 days, in even numbered years, the sessions last 60 days.	Legislative home page: <a href="http://www.leg.wa.gov/">http://www.leg.wa.gov/</a> Bill track: <a href="http://www.leg.wa.gov/wsladm/bills.htm">http://www.leg.wa.gov/wsladm/bills.htm</a>  Bill information phone number: (360) 786-7573
<b>Senate</b> Legislative Building Olympia, WA 98504-0482	Senate Home Page: <a href="http://www.leg.wa.gov/">http://www.leg.wa.gov/</a>
<b>House of Representatives</b> Legislative Building Olympia, WA 98504-0482	Home Page: <a href="http://www.leg.wa.gov/house/default.htm">http://www.leg.wa.gov/house/default.htm</a>

## WOMEN IN PRISON - NGO RESOURCES

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

Washington-CURE  
P.O. Box 156  
Kent, WA 98035  
Phone: 253-854-8255  
Website: [www.curewa.org](http://www.curewa.org)

ACLU of Washington State  
705 Second Avenue, Suite 300  
Seattle, WA 98104  
Legal Complaint Line: (206) 624-2180  
Phone: (206) 624-2184  
Web site: [www.aclu-wa.org](http://www.aclu-wa.org)

## Washington's Custodial Sexual Misconduct Statute

### **§ 9A.44.160 Custodial sexual misconduct in the first degree.**

(1) A person is guilty of custodial sexual misconduct in the first degree when the person has sexual intercourse with another person:

(a) When:

- (i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and
  - (ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or
- (b) When the victim is being detained, under arrest[,], or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the first degree is a class C felony.

### **RCW 9A.44.170 Custodial sexual misconduct in the second degree.**

(1) A person is guilty of custodial sexual misconduct in the second degree when the person has sexual contact with another person:

(a) When:

- (i) The victim is a resident of a state, county, or city adult or juvenile correctional facility, including but not limited to jails, prisons, detention centers, or work release facilities, or is under correctional supervision; and
  - (ii) The perpetrator is an employee or contract personnel of a correctional agency and the perpetrator has, or the victim reasonably believes the perpetrator has, the ability to influence the terms, conditions, length, or fact of incarceration or correctional supervision; or
- (b) When the victim is being detained, under arrest, or in the custody of a law enforcement officer and the perpetrator is a law enforcement officer.

(2) Consent of the victim is not a defense to a prosecution under this section.

(3) Custodial sexual misconduct in the second degree is a gross misdemeanor.

### **§9A.44.180 Custodial sexualmisconduct -- Defense.**

It is an affirmative defense to prosecution under RCW 9A.44.160 or 9A.44.170, to be proven by the defendant by a preponderance of the evidence, that the act of sexual intercourse or sexual contact resulted from forcible compulsion by the other person.

*Note: See also RCW §72.09.225 Sexual misconduct by state employees, contractors  
And RCW 72.09.630 Custodial sexual misconduct -- Investigation of allegations.*

<sup>1</sup> State of Washington, Department of Corrections (DOC), *Population Summaries as of June 30, 2005*, available at [http://www.doc.wa.gov/BudgetAndResearch/ResearchData/Population\\_Summaries\\_Jun\\_30\\_2005.doc](http://www.doc.wa.gov/BudgetAndResearch/ResearchData/Population_Summaries_Jun_30_2005.doc), as per 01/27/06.

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

<sup>3</sup> Facsimile corrections, Lynne DeLano, Assistant Deputy Secretary, Washington DOC, 02/21/01.

<sup>4</sup> Letter from K.P.Bodnar, Senior Public Records Officer, Attorney General of Washington, 08/23/05; Phone conversation with K.P. Bodner, 08/26/05.

<sup>5</sup> *Schwenk v. Hartford*, 204 F.3d 1187 (9<sup>th</sup> Cir. 2000).

<sup>6</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>7</sup> Letter from the Washington DOC, Office of Correctional Operations, Belinda D. Stewart, 8/29/02.

<sup>8</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996 And facsimile update from Lynne DeLano, Assistant Deputy Secretary, Washington DOC, 02/21/01.

<sup>9</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>10</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>11</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>12</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>13</sup> "Guidelines for Investigation of Sexual Abuse, Assault, Contact, or Harassment of Offenders by Employees," DOC 856.020, 06/28/99.

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<sup>14</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>15</sup> Letter from Belinda D. Stewart, Office of Correctional Operations, Washington DOC, 08/29/02.

<sup>16</sup> Washington DOC, policy on "Guidelines for Investigations of Sexual Abuse, Assault, Contact, or Harassment of Offenders by Employees," 856.020. Received from DOC, 08/29/02.

<sup>17</sup> Washington DOC, policy on "Guidelines for Investigations of Sexual Abuse, Assault, Contact, or Harassment of Offenders by Employees," 856.020. Received from DOC, 08/29/02.

<sup>18</sup> Washington DOC, policy on "Use of Restraints," 420.250. Received from DOC 08/07/00.

<sup>19</sup> Washington DOC, policy on "Use of Restraints," 420.250 (page 5,D). Received from the DOC 08/07/00.

<sup>20</sup> Washington DOC, policy on "Use of Restraints," 420.250. Received from DOC 08/07/00.

<sup>21</sup> Washington DOC, *Confinement Statistics: West Central Region*, June 2005, available at <http://www.doc.wa.gov/BudgetAndResearch/secstats.htm>, as per 01/27/06.

<sup>22</sup> Washington DOC, *Confinement Statistics: Northeast Region*, June 2005, available at <http://www.doc.wa.gov/BudgetAndResearch/secstats.htm>, as per 01/27/06.

<sup>23</sup> Washington DOC, *Confinement Statistics: Southwest Region*, June 2005, available at <http://www.doc.wa.gov/BudgetAndResearch/secstats.htm>, as per 01/27/06.