

Wisconsin

WOMEN IN PRISON: 1,248 (10/05)¹

Custodial Sexual Misconduct

Custodial Sexual Misconduct – Statute

§940.225-Sexual Assault¹

Wisconsin amended §940.225 in 2003 to prohibit custodial sexual misconduct. The law is incorporated in the Wisconsin Criminal Code under Crimes against Life and Bodily Security.

§ 940.225(2)(h): Prohibits sexual intercourse and sexual contact between correctional employees and detainees.

§ 940.225(2)(i): Prohibits sexual intercourse and sexual contact between parole/probation/extended supervision agents and individuals on probation, etc.

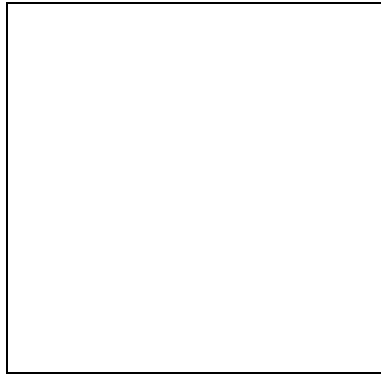
Does the statute impose a criminal penalty on the inmate?	No	The law does not penalize the inmate.
Does the statute cover all relevant forms of sexual abuse?	Yes	The law covers sexual intercourse and sexual contact.
Does the law allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution?	No	According to § 940.225(4), “consent is not an issue” with respect to allegations of custodial sexual misconduct.
Does the statute cover all custodians and staff in contact with inmates?	No	The law applies to correctional staff members. According to the Wisconsin DOC, volunteers are considered correctional staff members for the purposes of the statute. ² The law also applies to probation, parole, and extended supervision agents but only to those with supervisory authority or those who have tried to influence an agent with supervisory authority.
Does the law cover all places where an inmate might be abused?	Yes	The law covers violations that occur in correctional institutions, defined as a jail or correctional facility, a secured detention facility, or a secured correctional facility, as well as violations occurring while on probation, parole, or under extended supervision.
Is the penalty a felony?	Yes	Violation is a Class C felony

Custodial Sexual Misconduct – Allegations and Incidents

Indictments/Convictions (answer to AI letter requesting information) ³	In 2005, the Wisconsin Attorney General’s Office informed Amnesty International that the AG is aware of one prosecution under the state’s custodial sexual misconduct statute: State of Wisconsin v. David Lee Elsinger, Racine County. ⁴
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¹ The text of the Wisconsin statute is reprinted at the end of this section.

<p>Incidents reported in select media since January 2000</p>	<p>- Taycheedah Correctional Institution: Edward Wood, who is the senior power plant operator at TCI, pled no contest to fourth degree sexual assault in December 2005. He had initially been charged with second degree sexual assault for inappropriately touching one inmate on two separate occasions. He was ordered to pay fines and court costs totaling \$397 and to make a \$250 donation to ASTOP, a local agency that assists victims of sexual assault. (<i>The Fond Du Lac Reporter</i>, 12/23/05)</p>
	<p>- Taycheedah Correctional Institution: Three correctional staff were charged with sexual misconduct in October 2005. Dwight Helsell admitted having sexual contact with two inmates but pleaded not guilty to charges. One of the inmates claimed that she had sexual relations with Helsell to keep him from reporting her relationship with another correctional employee, Andrew Metzen. Metzen has also been charged. Edward Wood faces similar charges for alleged sexual misconduct. All three employees were suspended with pay. (<i>The Fond Du Lac Reporter</i>, 10/11/05 and <i>Prison Ministry Press</i>, 10/18/05)</p>
	<p>- Ellsworth Correctional Center: Guard David Elsinger was charged with having sexual contact with two inmates while on duty. His employment was terminated. He was charged with five counts of sexual assault by correctional staff and sentenced to 20 years imprisonment. (<i>Duluth News-Tribune</i>, 09/16/04; <i>Wisconsin DOC</i>)⁵</p>
	<p>- Ellsworth Correctional Center: Correctional officer Michael D. Boivin was charged and convicted of second degree sexual assault. He was sentenced to 3 ½ years in prison and 6 ½ years of extended supervision. His employment was terminated in July 2004. (<i>Wisconsin DOC</i>)⁶</p>
	<p>- Ellsworth Correctional Center: Correctional Sergeant Mark Gates was accused of sexual misconduct by two inmates. Based on investigation, he was terminated from employment in July 2003. (<i>Wisconsin DOC</i>)⁷</p>
	<p>- Taycheedah Correctional Institution: In 2003 an inmate who tried to report sexual misconduct between guard Matthew Emery and another inmate, was charged with “lying about staff” and ordered to a year in solitary confinement. A month later it was discovered that Emery had impregnated the other inmate, who is mentally ill. She was sent to solitary confinement for a year for “sexual conduct, soliciting staff,” and Emery was fired. A third inmate was sent to solitary confinement for 120 days for “soliciting staff” after telling authorities that guard Brian Kollman had periodically let her out of her cell so they could be alone and talk. Kollman resigned during investigation of the incident. After a newspaper published stories about the inmates, all three were reportedly released from solitary confinement. (<i>Milwaukee Journal Sentinel</i> 02/03/03, 04/30/03)</p>
	<p>- Taycheedah Correctional Institution: Maria Ochs, a former inmate, testified before legislators that male guards watched women shower and undress. Guards also allegedly smuggled in contraband to reward or solicit sexual favors. Ochs indicated that she never reported the misconduct to a prison official while in jail out of fear of punishment. (<i>Milwaukee Journal Sentinel</i>, 02/27/03)</p>
	<p>- Taycheedah Correctional Institution: Sgt. Luke Kulibert was suspended after a female inmate reported that Kulibert asked her to expose her breasts and perform oral sex. The inmate was reportedly initially branded a liar by prison investigators and placed in solitary confinement. She was released after passing a lie-detector test regarding her claims. (<i>Milwaukee Journal Sentinel</i>, 02/13/03). According to the Wisconsin DOC, an investigation substantiated the inmate’s allegations.⁸</p>
	<p>- Milwaukee County Jail: Sheriff’s deputy Laville Parker was fired in July 2000 for allegedly having sexual contact with three female inmates, including two who were mentally ill. He appealed the decision in Milwaukee County Circuit Court, where Judge John Franke upheld the firing. (<i>Milwaukee Journal Sentinel</i>, 11/07/01, 11/08/01)</p>



- Waukesha County Jail: A former female inmate lost a civil lawsuit alleging that, while on suicide watch, she was sexually assaulted by jailer Agerholm, who allegedly threatened her and promised her favors in exchange for sex. Agerholm was fired, convicted of two misdemeanors – disorderly conduct and fornication in a public place, and sentenced to four months of work release and three years’ probation. However, civil claims against Agerholm were dismissed because the sex was assumed to be consensual after the inmate failed to admit or deny this. Claims against the county were also dismissed after a finding that Agerholm was not acting in the scope of his employment. (*Milwaukee Journal Sentinel*, 06/22/00)
- Racine County Jail: Sheriff’s deputy Jason Krupp was fired after allegations of watching a female inmate undress. (*Milwaukee Journal-Sentinel*, 01/09/00)

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

The following is based on data provided by the Wisconsin Department of Corrections in response to AI’s survey I 2000 and 2005. AI did not receive data from the Wisconsin Department of Corrections in 2002. Additional information from other sources is included where available.

Is the current Department of Corrections policy on custodial sexual misconduct language-explicit?	Yes	The policy explicitly prohibits sexual intercourse, which includes oral sex and any type of “intrusion” of a person’s body. The policy also prohibits but does not define other forms of sexual misconduct including sexual contact conduct of a sexual nature, obscenity or unreasonable invasion of privacy, and conversations or correspondence which suggest a romantic or sexual relationship. ⁹
Allow cross-gender pat-down searches?	Yes	According to a written response from the Wisconsin DOC, cross-gender pat searches are conducted only in “an extreme situation.” The Wisconsin DOC states that no same-sex pat searches have been done since 1999. ¹⁰
What is the percentage of female officers in relation to male officers?		56% of officers are female, according to the Wisconsin DOC. ¹¹
Restrictions on the duties of male guards?	Yes	According to a written response from the Wisconsin DOC, the Bona Fide Occupational Qualification (BFOQ) Plan places restrictions on pat-down searches, strip searches and unannounced bathroom and shower entries; it also covers situations where a medical condition is likely to require disrobing. ¹²
Staff training on sexual misconduct?	Yes	According to the Wisconsin DOC, mandatory training occurs on an annual basis.
Inform inmates of agency policies and reporting procedures on sexual misconduct?	Yes	According to the Wisconsin DOC, the warden at the Taycheedah Correctional Institution (TCI) informs inmates during orientation. The Wisconsin DOC further states that it distributes a pamphlet which has been reviewed by the U.S. Department of Justice. ¹³

Custodial Sexual Misconduct - Policies and Procedures Guiding Official Response

The following is based on the Wisconsin 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 a written response from the Wisconsin DOC, medical staff are available on site at all times at TCI. (The DOC did not explain the availability at other facilities) A victim may also be transported to a local hospital for further medical attention. ¹⁴
Are immediate mental health services available for the victim of alleged sexual abuse?	Yes	According to a written response from the Wisconsin DOC, services are provided by institution clinical staff. If the victim prefers, staff from community agencies may be called in. ¹⁵
Is counseling available for the victim	Yes	According to a written response from the Wisconsin DOC,

of alleged sexual abuse?		counseling is available from social workers, psychologists, chaplains or outside agencies. ¹⁶
Is a rape kit taken?	Yes	According to a written response from the Wisconsin DOC, a kit is taken at a local hospital. ¹⁷
Are there special procedures for investigating allegations of sexual misconduct?	Yes	The Wisconsin DOC states that when an allegation is received, local law enforcement is contacted; local law enforcement conducts the criminal investigation. ¹⁸ According to the Wisconsin DOC, specialized investigators have been trained on investigations of this nature. ¹⁹
Is there a system for reporting allegations of custodial sexual misconduct within the DOC?	Yes	According to the Wisconsin DOC, inmates may file complaints under Chapter DOC 310, WI Administrative Code. ²⁰ Wisconsin DOC policy further requires that any statement by an offender, DOC staff member, or other person that alleges sexual contact or sexual intercourse by a DOC staff member be reported to supervisory staff. Supervisory staff must, in turn, report the allegations to the Warden, Regional Chief or Superintendent, who notifies local law enforcement. ²¹
Is there a system for reporting allegations of custodial sexual misconduct directly to a body external to the DOC?	Yes	The Wisconsin DOC states that inmates may contact local law enforcement agencies directly. ²²
Is the investigation external?	Yes	According to the Wisconsin DOC, local law enforcement conducts the criminal investigation. ²³
If there is an external investigation, how is it triggered?		According to Wisconsin DOC policy, external investigation is triggered by notification by the Warden, Regional Chief or Superintendent, who are informed of the allegations by supervisory staff. ²⁴ In a written response, the Wisconsin DOC states that TCI typically requests an external investigation. ²⁵
Are special measures taken to shield alleged victims from retaliation?	Yes	According to Wisconsin DOC policy, the alleged victim will be separated from the accused staff person in order to protect the victim, prevent retaliation, and preserve evidence. Options include: transfer of victim to another unit, location or agent; internal reassignment of staff member; placement of staff member on administrative leave. ²⁶
If so, do the measures include solitary confinement or lock-down of the inmate?	Yes	According to Wisconsin DOC policy, an inmate victim cannot be put in segregation or temporary lock-up unless: “extraordinary circumstances” require it; after completion of the investigation, it is determined that the inmate knowingly provided false information or otherwise violated the administrative code or conditions of probation, parole or extended supervision; or the inmate was already in segregation or temporary lock-up for unrelated conduct. ²⁷
Is there an independent body, such as a Corrections Ombudsman, with independent oversight of correctional facilities and the DOC?	No	According to the Wisconsin DOC, there is no such body at this time. ²⁸
Is there a system in place to track investigations, indictments and convictions for custodial sexual misconduct?	Yes	According to a written response from the Wisconsin DOC, weekly updates are submitted to central office administrative staff. ²⁹

Custodial Sexual Misconduct – Pending Legislative Proposals

None

Pregnancy in Custody

Pregnancy - Statute

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

Use of restraints in third trimester	Yes	According to the Wisconsin DOC, restraints are used based on the inmate's security level, unless medical staff advises against it. ³⁰
Restraints during transport	Yes	See above.
Restraints during labor	Yes	According to Wisconsin DOC, according to TCI policy and procedures, no restraints are used during active labor as determined by medical staff. ³¹
Officer in delivery room	Yes	According to the Wisconsin DOC, only female staff may act as officers in the delivery room. ³²

Use of Restraints during Pregnancy – Allegations and Incidents

The Appelton Post-Crescent ran a series of articles about women in prison, which also covered the practice of restraining women for most of their labor (in accordance with Wisconsin DOC policy, see above). The articles reported the experiences of two women, both non-violent offenders, detained at the Taycheedah Correctional Institution:

- Merica Kabke-Erato was reportedly shackled throughout most of her labor and immediately after delivering a baby girl in May 2005.³³

- In September 2005, although still two weeks from her due date, Samantha Luther was allegedly taken in handcuffs and leg shackles to the local hospital, and informed that labor was going to be induced. She told a reporter, "I was in shock... I felt like all of my rights had been taken away." Reportedly, her handcuffs were taken off, while her shackles remained on providing 18 inches between her ankles. The doctor ruptured her amniotic sac, and had her pace the hospital hallway for several hours. "It was so humiliating. My ankles were raw," Luther said. Luther was given drugs to induce labor, when it did not begin, and reportedly was left in her shackles until just before birth. She reported, "I had shackles on up until the baby was coming out and then they took them off for me to push... It was unbelievable. Like I was going to go anywhere." She gave birth to a son. Reportedly, it is common to induce inmates before term, however, according to DOC officials, an inmate must sign a consent form.³⁴

According to news reports, Wisconsin Department of Corrections reported in January 2006, that staff have been directed to end the use of restraints on pregnant inmates during labor, delivery and recovery. AI welcomes this initiative and urges the Department to implement a written policy prohibiting these practices as soon as possible, as well as to provide training for staff on the new policy.³⁵

Contact information

WISCONSIN DEPARTMENT OF CORRECTIONS

Secretary Mr. Matthew Frank 3099 East Washington Avenue Post Office Box 7925, Madison, Wisconsin 53707-7925 Phone: (608) 240-5000; Fax: (608) 240-3300 Email: docweb@doc.state.wi.us	Homepage: http://www.wi-doc.com
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WISCONSIN DEPARTMENT OF CORRECTIONS FACILITIES FOR WOMEN

Taycheedah Correctional Institution <i>Female inmates: 723 (10/05)</i> ³⁶ Capacity: 653 Warden: Ana Boatwright 751 County Road K Fond du Lac, WI 54935-2946 Phone: 920-929-3800 Fax: 920-929-2946 <i>Security level: maximum/medium</i>	Milwaukee Women's Correctional Center <i>Female inmates: 84 (10/05)</i> ³⁷ Capacity: 42 Superintendent: Diane Williams 615 West Keefe Avenue Milwaukee, WI 53233-2190 Phone: (414) 267-6101 Fax: (414) 267-6130 <i>Security level: minimum</i>	Robert E. Ellsworth Center <i>Female inmates: 220 (10/05)</i> ³⁸ Capacity: 230 Superintendent: Ann Krueger 21425-A Spring St Union Grove, WI 53182-9408 Phone: 414-878-6000 Fax: 414-878-6015 <i>Security level: minimum</i>
John Burke Correctional Center <i>Female inmates: 208 (10/05)</i> ³⁹ Capacity: 200 Superintendent: Susan Ross 900 S. Madison Street Waupun, WI 53963-0900 Phone: 920-324-3460 Fax: 920-324-4575 <i>Security level: minimum</i>	St. Croix Correctional Center <i>Female inmates: 13 (07/05)</i> ⁴⁰ Superintendent: Jo Ann Skalski 1859 N. 4 th St. PO Box 36 New Richmond, WI 54017-0036 Phone: 715-246-6971 Fax: 715-246-3680 <i>Security level: minimum</i>	

WISCONSIN EXECUTIVE

Governor Jim Doyle [D] P.O. Box 7863 Madison, WI 53707 Phone: (608) 266-1212	Homepage: http://www.Wisconsin.gov Elected: 2002
Attorney General Peg Lautenschlager [D] Wisconsin Department of Justice P.O. Box 7857 Madison, WI 53707-7857 Phone: 608-266-1221	Homepage: http://www.doj.state.wi.us/ag/ Elected: 2002

WISCONSIN LEGISLATIVE INFORMATION

Legislative Session: Each biennial session period begins and ends on the first Monday in January of the odd-numbered year. Senate: 33 members, 4-year term Assembly: 99 representatives, 2-year term	Legislative home page: http://www.legis.state.wi.us/ Bill search: http://www.legis.state.wi.us/billtrack.html or http://www.legis.state.wi.us/billtext.html
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Senate State Senate State Capitol Madison, WI 53701	Senate home page: http://www.legis.state.wi.us/senate/senate.html
Assembly State Capitol P.O. Box 8952 Madison, WI 53708-8952	Assembly Home Page http://www.legis.state.wi.us/assembly/assembly.html

WOMEN IN PRISON - NGO RESOURCES

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

Wisconsin-CURE P.O. Box 259452 Madison, WI 53725-9452 Phone: (608)835-3740
Horizon House 2511 Vine Street Milwaukee, WI 53205 Phone: (414) 342-3237 Services: Substance abuse treatment, Halfway house. Residential treatment program. Services include counseling, lodging for women on probation and those released from prison, and a parent education/children's program.
Wisconsin Coalition for Advocacy 16 North Carroll Street, Suite 400 Madison, Wisconsin 53703 Phone: (608)267-0214 or 2040 W. Wisconsin Ave, Suite 678 Milwaukee, Wisconsin 53233 Phone: (414) 342-8700 Website: www.w-c-a.org
ACLU of Wisconsin 207 E. Buffalo Street, Suite 325 Milwaukee, WI 53202 Phone: (414) 272-4032 Web site: www.aclu-wi.org
Benedict Center for Criminal Justice 135 W. Wells Street, Suite 700 Milwaukee, WI 53203 Phone: (414) 347-1774; Fax: (414) 347-0148 Website: www.benedictcenter.org
Legal Assistance to Incarcerated Persons University of Wisconsin School of Law 975 Bascom Mall, Madison, WI 53706-1399 Phone: (608)262-5914 Website: www.law.wisc.edu/fjr/laip/laippublic.htm
Wisconsin Women's Network 122 State St #404 Madison WI 53703 Phone: (608) 255-9809 Email: wiwomen@execpc.com Website: www.wiwomensnetwork.org
Task Force on Women in the Criminal Justice System Email: legalnow@chorus.net

Wisconsin NOW (National Organization for Women)
122 State Street Room 403
Madison, WI 53703
Phone: (608)255-3911 Fax: (608)255-1139
Email admin@winow.org
Web page: www.winow.org

Wisconsin's Custodial Sexual Misconduct Statute

§940.225. Sexual Assault

...

(2) Second degree sexual assault. Whoever does any of the following is guilty of a Class C felony:

...

(h) Has sexual contact or sexual intercourse with an individual who is confined in a correctional institution if the actor is a correctional staff member. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

(i) Has sexual contact or sexual intercourse with an individual who is on probation, parole, or extended supervision if the actor is a probation, parole, or extended supervision agent who supervises the individual, either directly or through a subordinate, in his or her capacity as a probation, parole, or extended supervision agent or who has influenced or has attempted to influence another probation, parole, or extended supervision agent's supervision of the individual. This paragraph does not apply if the individual with whom the actor has sexual contact or sexual intercourse is subject to prosecution for the sexual contact or sexual intercourse under this section.

...

(5) Definitions. In this section:

(ab) "Correctional institution" means a jail or correctional facility, as defined in s. 961.01(12m), a secured correctional facility, as defined in s. 938.02(15m), or a secure detention facility, as defined in s. 938.02(16).

(ad) "Correctional staff member" means an individual who works at a correctional institution, including a volunteer.

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¹ Letter from Matthew J. Frank, Secretary, State of Wisconsin Department of Corrections (DOC), 11/14/05.

² Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³ The information does not reflect prosecutions or convictions under rape statutes.

⁴ Letter from Corey F. Finkelmeyer, Assistant Attorney General, Director, Civil Litigation Unit, 08/08/05

⁵ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

⁶ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

⁷ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

⁸ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

⁹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁰ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹¹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹² Letter from Bill Clausius, Public Information Director, State of Wisconsin DOC, 02/15/01.

¹³ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁴ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁵ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁶ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁷ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁸ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

¹⁹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

²⁰ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

²¹ State of Wisconsin DOC Executive Directive 16-A, "Staff Sexual Assault of Offenders," 08/2004.

²² Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

²³ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

²⁴ State of Wisconsin DOC Executive Directive 16-A, "Staff Sexual Assault of Offenders," 08/2004.

²⁵ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

²⁶ State of Wisconsin DOC Executive Directive 16-A, "Staff Sexual Assault of Offenders," 08/2004.

²⁷ State of Wisconsin DOC Executive Directive 16-A, "Staff Sexual Assault of Offenders," 08/2004.

²⁸ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC 11/14/05.

²⁹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³⁰ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³¹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³² Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³³ Wendy Harris, *Treatment of female prisoners in forefront*, Appelton Post-Crescent, 01/17/06

³⁴ Wendy Harris, *Policy keeps shackles on during labor*, Appelton Post-Crescent, 01/15/06

³⁵ Ben Jones, *State halts shackling of inmates in childbirth*, Appelton Post-Crescent, 01/20/06.

³⁶ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³⁷ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³⁸ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

³⁹ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.

⁴⁰ Letter from Matthew J. Frank, Secretary, State of Wisconsin DOC, 11/14/05.