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An End To Silence: Women Prisoners' Handbook On Identifying And Addressing Sexual Misconduct, 2nd Ed.

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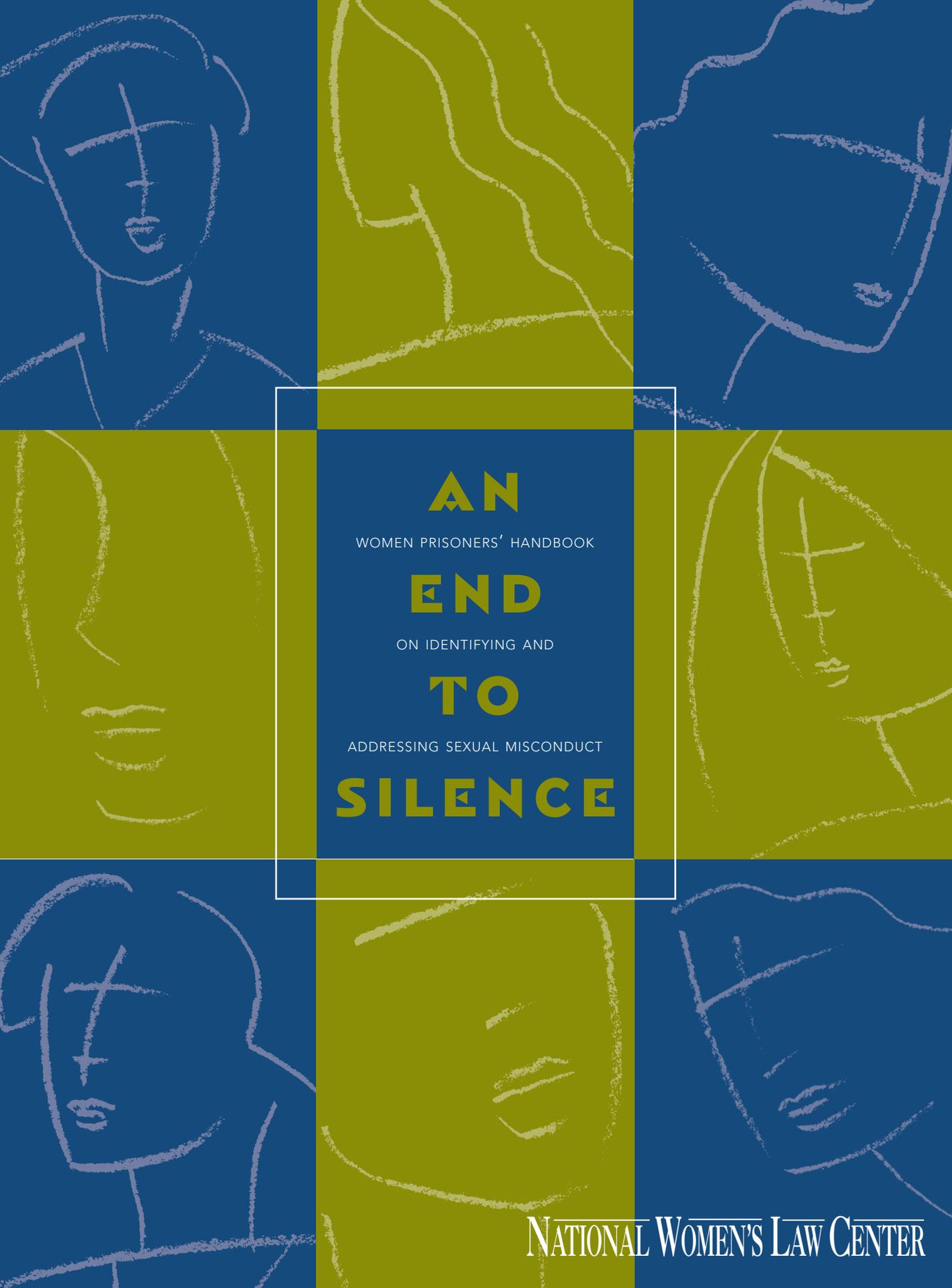
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AN

WOMEN PRISONERS' HANDBOOK

END

ON IDENTIFYING AND

TO

ADDRESSING SEXUAL MISCONDUCT

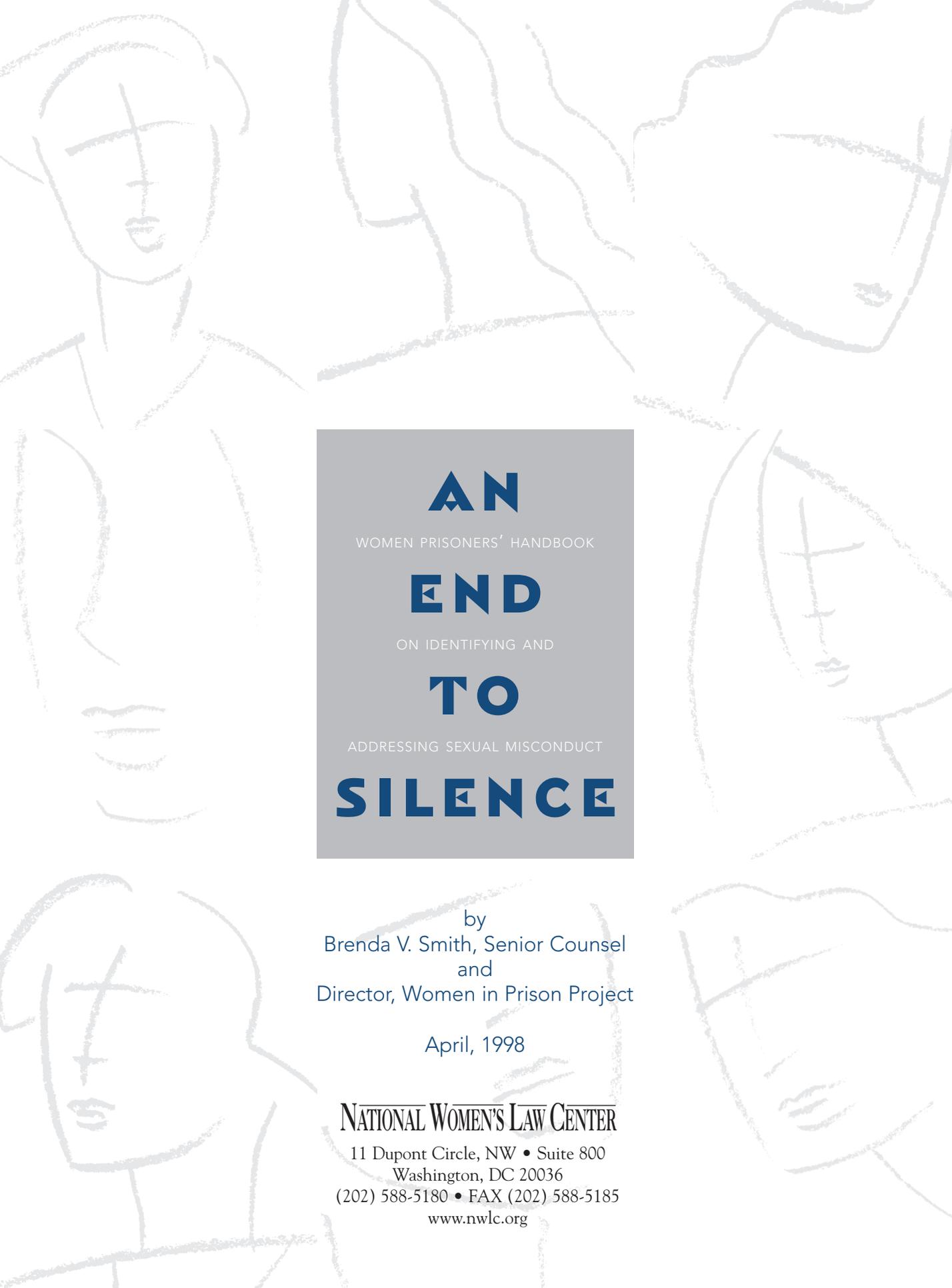
SILENCE

NATIONAL WOMEN'S LAW CENTER

The National Women's Law Center is a non-profit, tax-exempt organization under section 501(c)(3) of the Internal Revenue Service Code. Our tax I.D. number is 52-1213010. Contributions to the Center enabling it to continue its work on behalf of women and girls across the country are tax deductible.

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AN
WOMEN PRISONERS' HANDBOOK
END
ON IDENTIFYING AND
TO
ADDRESSING SEXUAL MISCONDUCT
SILENCE

by
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and
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April, 1998

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Acknowledgments

An End To Silence: Women Prisoners' Handbook on Identifying and Addressing Sexual Misconduct is the culmination of several years of work by staff at the National Women's Law Center, the United States Department of Justice Federal Bureau of Prisons and National Institute of Corrections, many law students and most importantly, innumerable women prisoners who shared their experiences, gave feedback on drafts and asked and answered the important questions about why sexual misconduct exists in prison and offered strategies for preventing misconduct.

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*The information and opinions contained in this *Handbook* do not necessarily represent the views or positions of the sponsoring organizations or foundations.

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Finally, we would like to acknowledge the extraordinary and courageous assistance of incarcerated women, whose challenging questions and insight helped this publication address the real concerns of incarcerated women. In particular, women prisoners in the District of Columbia reviewed several versions of the *Handbook* and participated in numerous focus groups over the course of its development and production. Women prisoners at the Maryland Correctional Institution for Women in Jessup, Maryland raised important questions that strengthened the content of the *Handbook*.

An End to Silence addresses rapidly developing areas of law and practice in the United States and its information is current as of April, 1998. Both law and policies may change. We will remain abreast of these changes and encourage you to contact us with new information as it becomes available.

Brenda V. Smith, Senior Counsel
National Women's Law Center

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Overview

The National Women's Law Center is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families including education, employment, reproductive rights, health, family support and income security, with special attention given to the concerns of low-income women.

As a legal arm of the women's movement, the Center has litigated ground-breaking cases and filed briefs in landmark Supreme Court decisions; advocated before state and federal policymakers to shape legislation and policies affecting women's lives; and educated the public about issues important to women. The Center's legal expertise make it an important contributor to girls' and women's progress at school, at work and in almost every aspect of their lives.

In 1990, the Center launched the Women in Prison Project to address the serious problems confronting women prisoners. The Project provides legal, counseling and advocacy services to over 1,500 women incarcerated by the District of Columbia Department of Corrections and the Federal Bureau of Prisons.

In addition to its local direct services work, the Center works on the national level conducting public education and training, providing technical assistance to policymakers and advocates, developing resources and disseminating information on issues affecting women in conflict with the law.

In 1993, the Center's work with women prisoners prompted it to file class action litigation on behalf of all women incarcerated by the District of Columbia. In 1994, Judge June Green, of the U.S. District Court for the District of Columbia, found that women prisoners were subjected to sexual harassment and provided with programs and opportunities inferior to those provided to male prisoners. The Court found violations of the U.S. Constitution, federal statutory law and District of Columbia law and ordered broad remedial relief in the areas of sexual misconduct, obstetrical and gynecological care, education and voca-

tional programs, and environmental safety. While portions of the Court's order were overturned by an appellate court, the Court's findings with regard to sexual misconduct remain.

In light of the Court's decision and the emergence of the issue of sexual misconduct nationally, the Center engaged in a three-pronged strategy which included enforcement of the Court's order, technical assistance and training to women prisoners and corrections officials, and the development of materials for both prisoners and corrections workers. We believe that addressing sexual misconduct is at the core of assuring women's safety in prison and that only a coordinated strategy that involves law and policy development, training of prisoners and corrections workers, and public education will reduce the occurrence of sexual misconduct.



RECOGNIZING MISCONDUCT

Which of the following do you think is sexual misconduct?



A prison guard walks in on you while you are changing your clothes and tells you that you are "what he likes."



The food service worker tells you he can get you cigarettes if you "flash" him.



You fall in love with a staff member and agree to get married as soon as you are released. You begin a sexual relationship with him while in prison.



The chaplain comforts you when you receive bad news from home. She keeps asking you to come by and see her even when nothing is wrong. She begins to write you letters telling you how much she loves you.



You were an exotic dancer before being incarcerated. Three officers on the midnight shift pay you to dance for them.



A correctional officer locks you in a storage room and rapes you.

All of the Above are Examples of Sexual Misconduct

Sexual misconduct is:

- ❖ any sexual advance by staff members, agents or volunteers of the corrections department
- ❖ requests for sexual favors by staff members, agents or volunteers of the corrections department

- ❖ verbal or physical conduct of a sexual nature in prison toward a prisoner by staff members, agents or volunteers of a corrections department

SEXUAL MISCONDUCT BY CORRECTIONS STAFF AGAINST A PRISONER IS PROHIBITED IN ALL STATES BY EITHER DEPARTMENTAL POLICY AND/OR LAW.

Sexual harassment of prisoners is a form of sexual misconduct¹

Sexual misconduct happens in prison any time a staff member, agent or volunteer of a corrections department makes a sexual advance or engages in sexual contact with a prisoner, ***even if the prisoner consents.***

Sexual misconduct does not have to be sex. It can include:

- ❖ touching
- ❖ kissing
- ❖ correctional staff walking in on you unannounced while you are dressing
- ❖ inappropriate body or cavity searches not justified by a legitimate institutional security need
- ❖ inappropriate comments about your personal appearance
- ❖ language of a sexual nature

¹In this pamphlet, we use the terms sexual misconduct, sexual harassment, and sexual abuse. All of these terms refer to improper conduct of a sexual nature directed at prisoners. This conduct can range from acts that violate departmental regulations to those that violate a particular state or federal law. Sexual harassment, as it relates to prisoners, is any sexual advance, welcome or not, by a staff member, agent or volunteer of a corrections agency that creates a hostile environment or is either tied to promises or special benefits (cigarettes, candy, better work assignments, etc.) or punishments (administrative segregation, poor job assignments, revoking telephone privileges, etc.). In this pamphlet, we only address staff-inmate sexual misconduct.



PHYSICAL AND EMOTIONAL EFFECTS OF SEXUAL MISCONDUCT

The physical and emotional effects of sexual misconduct can be devastating for a woman.



She may contract the HIV virus or other sexually-transmitted diseases.



She may become pregnant.



She may feel trapped in her situation and powerless to change it.



She may suffer emotional trauma.

These are repercussions that will affect her long after she has left prison.

Contracting HIV or Other Sexually-Transmitted Diseases

In some prison systems, such as New York, New Jersey, Connecticut and the District of Columbia, nearly 1 out of 4 women prisoners is HIV-positive. You cannot assume correctional employees are practicing safer sex. Correctional employees who are having sex with prisoners may not use a condom and may have sex with several partners both inside and outside of the prison. This creates a fertile breeding ground for HIV and other sexually-transmitted diseases.

SOME FACTS ABOUT HIV AND STDs

- ◆ Unlike in the general population, the rate of HIV infection among women in prison is higher than that of men.
- ◆ A 1994 study of prisons found that the overall rate of AIDS was 464 cases per 100,000 among men and 705 cases per 100,000 among women. The overall rate of AIDS among men in the United States is 95 cases per 100,000 and 40 cases per 100,000 among women. Women and people of color, however, are the fastest growing population of people living with HIV and AIDS.
- ◆ The incidence of HIV infection was even higher in city/county jail systems, where the rate of infection was 706 cases per 100,000 inmates overall.
- ◆ Among the inmates who are HIV positive, 43% are African-American, 38% are White, and 13% are Hispanic.
- ◆ The incidence of other sexually-transmitted diseases (gonorrhea, syphilis, and chlamydia) is also higher among women in prison than men.

Becoming Pregnant

Having sex puts you at risk of becoming pregnant. Becoming pregnant while in prison is stressful for several reasons:

- ❖ You may be afraid to tell anyone about the pregnancy and afraid to seek medical attention.
- ❖ Prenatal care in many prisons is inadequate and it may be difficult to receive the medical care and nutrition necessary to have a healthy baby.
- ❖ There are few prisons that will allow you to keep your baby with you. More often, women prisoners must place their newborns for adoption, foster care or with family members soon after the child is born.
- ❖ If you decide to terminate the pregnancy it can be very difficult to obtain an abortion while in prison. Many states do not allow government funds to be used to pay for abortions except in the case of rape, incest or where the mother's health is threatened. More often than not, women prisoners must arrange to terminate a pregnancy with a private agency and pay for the procedure with their own money.
- ❖ You may be punished for becoming pregnant, be denied parole, receive a disciplinary report, lose work or visiting privileges, or be charged with a separate criminal offense.²

Emotional Trauma

A woman who is involved with a correctional staff person can experience a range of feelings about the relationship. If she believes the relationship meets her emotional or financial needs, she may feel a sense of power. For women who feel coerced and pressured by staff to have these relationships, they may feel they are helpless and have lost control of their lives. In both circumstances, women can feel fear about being caught and shame at being involved with a staff member.

²In Arizona, Delaware and Nevada, prisoners who voluntarily engage in sexual contact with corrections employees can be charged with a separate criminal offense.

Women may also:

- ❖ become depressed
- ❖ begin using alcohol and other drugs
- ❖ have suicidal and/or homicidal feelings
- ❖ have panic attacks
- ❖ be unable to sleep
- ❖ have fits of rage and anger

WOMEN WHO EXPERIENCE THESE FEELINGS RELATED TO SEXUAL MISCONDUCT SHOULD GET COUNSELING WHETHER OR NOT THEY DECIDE TO REPORT THIS CONDUCT!



THIRD PARTY VICTIMS OF SEXUAL MISCONDUCT

WHAT WOMEN PRISONERS THINK

- ◆ In focus groups women inmates were asked, "Why are women vulnerable to sexual abuse in prison?" They responded:
- ◆ "Sex, just like drugs is a part of being in prison. There has to be a certain amount of that going on. What's important is what the prison does when they discover someone having sex."
- ◆ "If we had more jobs in here, we wouldn't have to have sex just to get a candy bar, some street food, or a perm."
- ◆ "Cops should act like cops. They should stay in their place so that we can stay in ours."
- ◆ "A lot of these women have low self-esteem. They don't think a lot of themselves so they'll settle for a soda, candy or some cigarettes."
- ◆ "A lot of the girls that the officers bother are slow (have mental health problems). They can prey on these women because they don't know any better."

Sexual misconduct hurts ALL women, both women prisoners and women correctional employees. Even women who are not being sexually mistreated directly are harmed by sexual misconduct.

HOW?

◆
Because some correctional employees believe that all women, both women prisoners and employees, are available for sex, and treat them as such.

◆
Because sexual misconduct erodes the boundaries that are necessary for prison security and other functions such as rehabilitation and program participation.

◆
Because women who do not participate in sexual talk or sexual relationships may be penalized by being denied the opportunities or privileges that women who participate in that conduct receive.

IF YOU FEEL THAT YOU HAVE BEEN HARMED BY SEXUAL MISCONDUCT, EVEN IF YOU HAVE NOT EXPERIENCED IT DIRECTLY, YOU MAY BE A THIRD PARTY VICTIM. AS A THIRD PARTY VICTIM, YOU CAN ALSO REPORT THE MISCONDUCT AND EXPECT A REMEDY.



WHAT YOU CAN DO IF IT HAPPENS TO YOU

You Can Take Steps to Prevent or Stop Sexual Misconduct!

Sexual misconduct by corrections staff against a prisoner is prohibited in all states by departmental policy and/or law. However, this type of behavior will continue unless YOU ACT.

There are several things you can do.

Take Informal Action

- ❖ If you are comfortable doing it, tell the staff person that his/her advances are offensive and are not welcome.
- ❖ Try to separate yourself from the staff person. This can be difficult. You should first request that the staff person be moved or re-assigned so that you do not have any contact with him or her. If your request is denied, you may want to consider being placed in protective custody. You may also have the option of requesting a move to another institution, but you must consider the risk of losing your programming placement, and the possibility of moving farther away from your family.
- ❖ Tell a corrections staff member you trust about the incident. In many states, Department of Corrections personnel are required to file written reports regarding any sexual misconduct that they witness or that is brought to their attention. These reports can lead to an investigation of the sexual misconduct and disciplinary proceedings against the perpetrator. In many states, Department of Corrections personnel who report the misconduct are required to keep it confidential. However, information about sexual misconduct is often leaked. Therefore, choose the staff member you confide in wisely.

DEPARTMENT OF CORRECTIONS POLICIES (DOC) REGARDING SEXUAL MISCONDUCT

- ◆ All DOCS address sexual misconduct of correctional staff in their administrative policies.
- ◆ The DOCS of the District of Columbia, Delaware, Georgia and Illinois have developed separate policies specifically addressing sexual misconduct between staff and inmates.
- ◆ Many agencies discipline inmates found to be voluntarily involved in sexual misconduct.
- ◆ Many agencies dismiss staff involved in serious, substantiated sexual misconduct incidents. Other actions include suspension, oral reprimands, staff transfer and staff resignation.
- ◆ Agencies generally take no action toward staff or inmates when allegations of misconduct are found to be unsubstantiated—the agency is unable to either prove or disprove misconduct occurred. However, most agencies will discipline staff and inmates who make false allegations of sexual misconduct.
- ◆ Agencies generally will protect inmates from retaliation by staff or others even if they do not find or cannot prove that sexual misconduct occurred.

REMEMBER, TAKING INFORMAL ACTION IS OPTIONAL. IF YOU FEEL YOU ARE IN PHYSICAL DANGER OR IF THE STAFF PERSON HARASSING YOU WILL NOT STOP HIS/HER CONDUCT AFTER YOU HAVE ASKED HIM/HER TO STOP, YOU SHOULD TAKE A MORE FORMAL APPROACH.

Pursue Formal Administrative Action

- ❖ File a formal complaint with the institution.

Your institution should have an inmate grievance process which allows inmates to file a formal complaint about prison-related matters. Use this process to report the sexual misconduct.

Try to keep copies of any forms that you send or receive in a safe place. Having detailed and accurate records of the conduct, and your attempts to stop it, will help during an investigation of the matter. Remember that there is little privacy in prison. Corrections staff or other inmates may have access to your belongings. Therefore, use your best judgment when deciding whether, where, and how to keep your records. If you feel that you will not be able to keep your records confidential in the prison, you may want to consider mailing copies of these records to a trusted friend or relative outside the prison for safe-keeping, or to an advocate or attorney whom you know and trust.

- ❖ Write directly to the warden of your institution or the Director of your Department of Corrections.

You may report sexual misconduct by writing directly to the warden of your facility or the Director of your Department of Corrections. You can send your letter either through the institutional or regular mail. Be sure to write “Legal Mail” and “Emergency-Confidential” across the top of your letter and on the envelope to ensure its confidentiality. Once the misconduct is reported, the Department of Corrections should conduct an investigation. *It should be confidential but this may not always be the case.* The purpose of the investigation is to determine the nature and extent of the misconduct. You may be asked to testify at a hearing or give a statement. Ask whether you are allowed to have an attorney present. If you are allowed to have legal representation, make every effort to locate an attorney who will appear on your behalf. Once the investigation is completed, you should follow up to find out the result. If the investigation finds sexual misconduct occurred, the employee could face

punishment including a reprimand, suspension or termination and in some states, criminal prosecution. Follow the procedures that the institution has set forth with regard to reporting and resolving misconduct. Not only is this the most effective way of dealing with the problem, **but you may be prohibited from bringing an action in court later if you have not used these procedures to try and resolve the problem.**

Remember that sexual misconduct investigations are supposed to be confidential. But the reality is that many are not. Information may be leaked by both corrections staff and the inmate involved. Many corrections departments punish breaches of confidentiality as a separate violation of their sexual misconduct policy. Use your best judgment about how to report the misconduct. Use the method most likely to protect your privacy when informing the Department of Corrections of your complaint and YOU should remember to keep the information confidential, so that YOU are not responsible for breaches of confidentiality.

Take Legal Action

- ❖ You can pursue a remedy under state or federal criminal laws.

Thirty-five states, the District of Columbia and the federal government have criminal laws prohibiting the sexual abuse of prisoners. These laws are specific to each state so both the definition of sexual misconduct and the penalty imposed for violation of the law will vary from state to state.³

In addition, if you decide to come forward with a complaint and there is no criminal law specifically prohibiting sexual misconduct between corrections staff and inmates, a prosecutor may apply the general rape laws of the state so that you may get relief.

- ❖ You can pursue a remedy under state civil laws.

You may have a cause of action under state civil laws for intentional infliction of emotional distress, assault and/or battery, or negligence. The claims will depend on the facts of your situation and state laws. Be aware also that state statutes of limitation require that you file claims within a certain period of time. The time period for filing claims depends on state law.

STATE LAWS PROHIBITING SEXUAL RELATIONS BETWEEN INMATES AND CORRECTIONS STAFF

- ◆ Thirty-five states, the District of Columbia, and the federal government have laws imposing criminal sanctions on corrections staff members who have sexual relations with inmates. Thirteen of these state statutes specifically provide that consent is not a defense to the conduct.
- ◆ Nine state statutes, the District of Columbia and the federal government specifically provide that marriage is a defense to a charge of sexual misconduct.
- ◆ Three state statutes—Arizona, Delaware and Nevada—specifically provide that the prisoner, as well as the staff member, will be punished for having consensual sexual relations.
- ◆ Even if a state does not have a statute that specifically covers sexual activity in prisons, state rape laws apply to sexual assaults which occur in prison. So, a corrections staff person can be convicted of rape if he has sexual relations with an inmate against her will.

³/See Appendix for Fifty-State Survey of Criminal Laws Prohibiting Sexual Misconduct Against Prisoners.

- ❖ You can pursue a remedy under federal law.

Sexual misconduct in prison is prohibited under federal law. A prisoner who has been subjected to sexual misconduct in prison may have a claim or cause of action pursuant to: (1) the Eighth Amendment to the United States Constitution, which prohibits cruel and unusual punishment; (2) the Fourteenth Amendment to the United States Constitution which mandates equal protection under the law; (3) the gender-motivated violence provision of the Violence Against Women Act of 1994; or (4) Title IX of the Education Amendments of 1972, which prohibits sexual harassment in educational programs or activities that receive federal funds.

- ❖ Seek legal advice.

Whether you decide to take legal action in state or federal court, seek advice and legal assistance from organizations who might prosecute these cases or who assist prisoners in your area. If you decide to file a lawsuit, few large national organizations other than the NAACP or the ACLU provide legal assistance to women prisoners on this issue. However, most states have local organizations that can provide legal assistance to women who have been subjected to sexual abuse. Contact organizations such as your state's bar association, local women's advocacy groups or area law schools. (See also Resource Section on pg. 25).



OTHER THINGS TO CONSIDER

Retaliation By Prison Staff

Corrections staff may try to intimidate you to prevent you from filing a complaint or from participating in an investigation of sexual misconduct. Most corrections departments prohibit any individual from interfering with an investigation, including intimidation or retaliation against witnesses. If you believe that you are being denied privileges, or are being unfairly transferred or punished in some way because you filed a complaint or assisted in the investigation of a complaint, you should report this to the warden or to an investigative agency.

Gathering A Support System

The process of dealing with sexual misconduct, whether or not you decide to formally report it, is difficult at best. It is important that you get support during this time.

Here are some suggestions:

- ❖ *Tell a trusted friend inside the prison community.*

Find other prisoners whom you trust and with whom you can talk about your experiences. Share stories and ideas on how to deal with the misconduct. This support will help you and other prisoners in similar situations. Keep in mind that other prisoners could use this information to better their own situation. Therefore, it is extremely important that you only confide in those people you know you can trust.

- ❖ *Tell a trusted friend outside the prison community.*

A friend or family member outside the prison community can help you decide what to do, including notifying the prison about the misconduct and requesting that the prison respond appropriately. The individual can also be used to corroborate your account of the misconduct should the claim be investigated.

- ❖ *Go to your community or other agencies for help or have your family and friends go on your behalf.*

For example, both C.U.R.E. (Citizens United for the Rehabilitation of Errants) and F.A.M.M. (Families Against Mandatory Minimums) are national groups with local chapters. Both assist the families of prisoners to address problems their incarcerated family member may be facing. You can also obtain a copy of the ACLU (American Civil Liberties Union) National Prison Project Resource Guide which may provide some valuable help. You may call or write these organizations as follows:

ACLU National Prison Project 202/234-4830
1875 Connecticut Avenue, NW, Suite 410
Washington, DC 20009

C.U.R.E. 202/789-2126
P.O. Box 3210
National Capital Station
Washington, DC 20001

F.A.M.M. 202/822-6700
1612 K Street, NW, Suite 1400
Washington, DC 20006

National Center for Women in Prison 202/775-0323
c/o D.C. Prisoners' Legal Services Project
1400 20th Street, NW, Suite 117
Washington, DC 20036



SEEKING MEDICAL HELP

You *must* seek medical help if:

- ❖ you may be pregnant
- ❖ you have been raped or sexually assaulted
- ❖ you may have been exposed to HIV or other sexually-transmitted diseases

Pregnancy

If you become pregnant while in prison, whether or not it is the result of sexual assault, it is very important that you receive medical care. Remember, only you can decide what is in your best interest—carrying the pregnancy to term, adoption, foster care or termination. Do not be pressured by anyone—family members, friends, other prisoners, the biological father or prison officials—to do what is not in your best interest.

First, if you decide to continue the pregnancy, proper prenatal care is essential for your health and that of the fetus. This is especially true for women who are in high risk groups, such as those who have a history of drug or alcohol abuse, have HIV or other sexually-transmitted diseases, or suffer from poor nutrition.

Second, if you do not wish to carry the fetus to term you can receive counseling on other options such as adoption, foster care placement or terminating your pregnancy. In most communities, organizations exist to provide you with information about your options. You can contact these organizations directly or through the case manager or medical staff

at your institution. For example, you can contact your local Planned Parenthood or the National Abortion Federation about terminating an unwanted pregnancy.

For information about adoption or foster care placement you can contact your local department of human services or local private social service agencies, such as Family and Child Services, Catholic Charities or Jewish Social Services.

Rape and Sexual Assault

If you have been raped or sexually assaulted, you must get medical attention immediately. You should request to be taken to a hospital where a “rape kit” can be performed. During a rape kit examination, a doctor performs a pelvic examination and takes samples of hair and semen which the perpetrator may have left during the assault. These samples often provide crucial evidence in proving that a sexual assault occurred and in identifying the assailant. That is why it is especially important that you have a rape kit in a hospital, where the medical staff is accustomed to performing it.

Although it may be difficult, it is important that you do not shower after the assault. Showering may wash off the hair and semen evidence. Also, bring the clothes and underwear that you had on at the time of the assault to the hospital with you along with any other items that may have come into contact with the perpetrator’s bodily fluids—blood, semen, or saliva. This includes any towels the perpetrator may have used to wipe himself, or you, and condoms if they were worn during the assault. The doctors may be able to take hair and semen samples from all of these items. Technology is such that even small traces of blood, semen, vaginal fluids or saliva can yield information that can identify the source of these fluids.

If you have been raped or sexually assaulted, you should always be tested for pregnancy, HIV, and other sexually-transmitted diseases. Even if you test negative for HIV, you should request that you be **re-tested** six months later, since it may take that long for a test to detect the HIV antibodies in your blood.

Sexually-Transmitted Diseases

A sexually-transmitted disease, if left untreated, can have very serious consequences. It can cause sterility or otherwise negatively affect your health. HIV infection, for which there is no cure, decreases the body's ability to fight infection and makes a person susceptible to a large number of illnesses. While there is no cure for HIV there are new medical treatments that can greatly increase both the quality and length of the lives of those infected with the virus. Proper medical care can, in some cases, cure a sexually-transmitted disease. If no cure is available, it can often reduce the effects of the disease. Therefore, it is very important to get medical care as soon as possible.

Counseling

If you have been subject to sexual misconduct, you may want to seek professional counseling or mental health advice. Many prisons offer mental health services for victims of sexual abuse, and some offer counseling sessions. There are also community-based counseling services such as local rape crisis centers. If you cannot obtain mental health services, talk about your experiences with a trusted friend, relative, or spiritual advisor. Talking with someone helps you explore your feelings about the harassment and is an important step in gaining control over your life.



QUESTIONS AND ANSWERS

Q. *Why is all sexual conduct between correctional staff and inmates considered misconduct?*

A. Because sexual contact between staff and inmates is an abuse of power. Correctional staff have ultimate power in corrections settings, and they often control the way a prisoner serves her time. One way in which correctional staff may abuse their power is to coerce, threaten or seduce women into giving them sexual favors. Women may feel they have to comply with these demands in order to survive in prison or protect their safety.

Q. *Are some women in prison more vulnerable to sexual misconduct than others?*

A. **Yes.** Women who are especially vulnerable to sexual misconduct are likely to fall into one or more of the following categories:

❖ **Women with Addictions**

More than 80% of women prisoners suffer from an addiction to alcohol, drugs or nicotine and sometimes all three. Because these items are difficult to get in prison, they become highly-valued. Correctional employees can use women's addiction to their advantage by offering to exchange alcohol, tobacco or other drugs for sex or sexual favors.

❖ **Survivors of Sexual Abuse**

It is estimated that 80% of women in prison and jails have been victims of sexual and physical abuse. If a woman has been sexually abused in the past, she is far more likely to be abused while in

prison. A woman who has been abused before may feel powerless to stop abuse in prison. She may accept the sexual abuse as an unwelcome, but normal, part of life. She may believe that she either deserves the abuse or that the harasser will grow to care for her if she allows it to continue.

❖ **Women With Mental Health Issues**

Often, a woman who suffers from a mental illness does not fully realize what is happening to her when she is being sexually abused. When she does realize it, she may also have a more difficult time reporting the abuse or being believed by staff.

❖ **Women with Little Experience in the Criminal Justice System**

A woman entering the prison system for the first time may feel intimidated by other prisoners and the corrections staff. She may feel isolated, and when subjected to sexual harassment, may not know where to turn. She may not understand how to report incidents of sexual misconduct.

Q. *What if I am in control of the relationship or am receiving some benefit from it? Does that make it OK?*

A. **No.** Remember, even if you feel you can control the relationship and end it when you want to, it is the correctional employee, not you, who is in charge. Often, a woman finds that once a sexual relationship starts, she can't end it even if she wants to. The authority that correctional employees have in prison carries over into the sexual relationship. So if a prisoner tries to end the relationship or threatens to report a correctional employee, the correctional employee can make things particularly difficult for her. The employee can:

- ❖ change her work assignments
- ❖ threaten her with a transfer or disciplinary action
- ❖ give her a negative parole recommendation

- ❖ interfere with her visits
- ❖ threaten or commit physical violence against her
- ❖ harass and intimidate her

Q. *What if I want to have sex with a correctional employee? Is this sexual misconduct?*

A. **Yes.** Not only is consensual sex with a correctional employee sexual misconduct, but it is also against most departmental policies and state and federal law. If prison officials discover that you are having sex with a correctional employee, you could face disciplinary charges and in Arizona, Delaware and Nevada could also be charged with a separate criminal offense.

Q. *Do some women invite sexual abuse?*

A. **No.** Sometimes people blame women for sexual misconduct because they behave or dress in what others believe is a seductive or inviting way. It is wrong for a corrections staff member to sexually harass a prisoner regardless of how an inmate acts or dresses. Correctional staff are responsible for their own actions and for setting and enforcing appropriate boundaries between staff and inmates.

Q. *What if a female staff member is making sexual advances? Is that also sexual misconduct?*

A. **Yes.** Sexual misconduct is about power and a female staff member can abuse that power in the same way as her male counterparts. A female staff member who coerces or forces you into granting sexual favors, touches you inappropriately, or makes inappropriate comments is also committing sexual misconduct. You should use the same procedure to report sexual misconduct by a female staff member as you would that of a male staff member.



RESOURCES

The next section provides additional resources that may be helpful in obtaining more information about state laws or in reporting sexual misconduct in prison.

The Criminal Laws In Your State

In addition to the civil remedies discussed earlier, you may also decide that you want to pursue criminal prosecution of the corrections staff person. In the Appendix section of this guide is a Fifty-State Survey of criminal laws which prohibit sexual contact between prisoners and corrections staff. Even if your state does not have a law which specifically covers sexual misconduct in prison, you can still use your state's general sexual assault laws. In many states, even if you do not want to pursue the action, the institution can independently decide to seek criminal prosecution of a staff member. The following is some basic information about state criminal laws prohibiting the sexual abuse of prisoners:

- ❖ 35 states, the District of Columbia, and the federal government have laws specifically criminalizing sexual abuse in prisons.⁴
- ❖ 28 states and the District of Columbia define sexual misconduct in prisons as a felony.⁵
- ❖ 4 states define sexual misconduct in prisons as a misdemeanor.⁶
- ❖ 3 states and the federal government define sexual misconduct in prisons as either a felony or a misdemeanor depending on the nature and severity of the assault.⁷

⁴/Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Michigan, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Wisconsin, and Wyoming.

⁵/Alaska, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Louisiana, Maine, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Texas, Wisconsin, and Wyoming.

⁶/Arkansas, Iowa, Michigan, and North Dakota.

⁷/California, Connecticut, and New York.

- ❖ 3 states criminalize the conduct of both the prisoner and the corrections employee⁸ in “consensual” cases of sexual misconduct.
- ❖ 13 states and the District of Columbia specifically provide that even if a prisoner “consents” to or voluntarily engages in sex with a corrections staff person, the staff member is criminally liable.⁹
- ❖ 9 states, the District of Columbia and federal government provide that marriage is a defense to a charge of sexual misconduct.¹⁰
- ❖ 15 states have no laws criminalizing sexual misconduct in prisons.¹¹

States that have enacted laws criminalizing the sexual abuse of prisoners have done so for several reasons. First, these states view prisoners as a vulnerable population—similar to the elderly, mentally ill or mentally retarded—and view prison staff as owing them a particular duty of care. Second, because prisoners often trade sex for food, drugs or money, it could appear to be consensual and therefore outside the scope of traditional sexual abuse statutes.

The Attorney General In Your State

If you have been subjected to sexual misconduct in a state that has a specific statute prohibiting sexual misconduct in prison and are having difficulty pursuing your claim or obtaining information about the law, you should write to the Attorney General of your state. If you are in a federal correctional facility you should contact the Office of Inspector General, which has oversight of the Federal Bureau of Prisons. Included in the Appendix section of this guide are the addresses for the Attorneys General in each state. Because Attorneys General are elected officials, you should contact their office and ask them for the name of the current Attorney General. A letter to the Attorney General in your state or the Office of Inspector General will be most effective if it includes a detailed account of the misconduct, as well as the steps you have taken to pursue your claim. Remember to keep a copy of the letter for your records.

⁸/Arizona, Delaware, and Nevada.

⁹/Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Mississippi, Nevada, New Hampshire, New York, and North Carolina.

¹⁰/Alaska, Arizona, Florida, Georgia, Illinois, Kansas, Maine, Ohio and Oklahoma.

¹¹/Alabama, Kentucky, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Oregon, Pennsylvania, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia.

Appendix

Attorneys General in Your State

STATE	ADDRESS	PHONE NO.
ALABAMA	Attorney General of Alabama Office of the Attorney General State House 11 South Union Street Montgomery, AL 36130	(334) 242-7300
ALASKA	Attorney General of Alaska Office of the Attorney General Post Office Box 110300 Diamond Courthouse Juneau, AK 99811-0300	(907) 465-3600
AMERICAN SAMOA	Attorney General of American Samoa Office of the Attorney General Post Office Box 7 Pago Pago, AS 96799	(684) 633-4163
ARIZONA	Attorney General of Arizona Office of the Attorney General 1275 West Washington Street Phoenix, AZ 85007	(602) 542-4266
ARKANSAS	Attorney General of Arkansas Office of the Attorney General 200 Tower Building, 323 Center Street Little Rock, AR 72201-2610	(501) 682-2007

STATE	ADDRESS	PHONE NO.
CALIFORNIA	Attorney General of California Office of the Attorney General 1300 I Street, Suite 1740 Sacramento, CA 95814	(916) 324-5437
COLORADO	Attorney General of Colorado Office of the Attorney General Department of Law 1525 Sherman Street Denver, CO 80203	(303) 866-3052
CONNECTICUT	Attorney General of Connecticut Office of the Attorney General 55 Elm Street Hartford, CT 06141-0120	(860) 566-2026
DELAWARE	Attorney General of Delaware Office of the Attorney General Carvel State Office Building 820 North French Street Wilmington, DE 19801	(302) 577-3838
DISTRICT OF COLUMBIA	District of Columbia Corporation Counsel Office of the Corporation Counsel 441 4th Street, NW Washington, DC 20001	(202) 727-6248
FLORIDA	Attorney General of Florida Office of the Attorney General The Capitol PL 01 Tallahassee, FL 32399-1050	(904) 487-1963

STATE	ADDRESS	PHONE NO.
GEORGIA	Attorney General of Georgia Office of the Attorney General 40 Capitol Square, SW Atlanta, GA 30334-1300	(404) 656-4585
GUAM	Attorney General of Guam Office of the Attorney General Judicial Center Building 120 West O'Brien Drive Agana, GU 96910	(671) 475-3324
HAWAII	Attorney General of Hawaii Office of the Attorney General 425 Queen Street Honolulu, HI 96813	(808) 586-1282
IDAHO	Attorney General of Idaho Office of the Attorney General Statehouse Boise, ID 83720-1000	(208) 334-2400
ILLINOIS	Attorney General of Illinois Office of the Attorney General James R. Thompson Center 100 West Randolph Street Chicago, IL 60601	(312) 814-2503

STATE	ADDRESS	PHONE NO.
INDIANA	Attorney General of Indiana Office of the Attorney General Indiana Government Center South Fifth Floor 402 West Washington Street Indianapolis, IN 46204	(317) 233-4386
IOWA	Attorney General of Iowa Office of the Attorney General Hoover State Office Building Des Moines, IA 50319	(515) 281-5164
KANSAS	Attorney General of Kansas Office of the Attorney General Judicial Building 301 West Tenth Street Topeka, KS 66612-1597	(913) 296-2215
KENTUCKY	Attorney General of Kentucky Office of the Attorney General State Capitol, Room 116 Frankfort, KY 40601	(504) 696-5300
LOUISIANA	Attorney General of Louisiana Office of the Attorney General Department of Justice Post Office Box 94095 Baton Rouge, LA 70804-4095	(504) 342-7013
MAINE	Attorney General of Maine Office of the Attorney General State House Station Six Augusta, ME 04333	(207) 626-8800

STATE	ADDRESS	PHONE NO.
MARYLAND	Attorney General of Maryland Office of the Attorney General 200 Saint Paul Place Baltimore, MD 21202-2202	(410) 576-6300
MASSACHUSETTS	Attorney General of Massachusetts Office of the Attorney General One Ashburton Place Boston, MA 02108-1698	(617) 727-2200
MICHIGAN	Attorney General of Michigan Office of the Attorney General Post Office Box 30212 525 West Ottawa Street Lansing, MI 48909-0212	(517) 373-1110
MINNESOTA	Attorney General of Minnesota Office of the Attorney General State Capitol Suite 102 St. Paul, MN 55155	(612) 296-6196
MISSISSIPPI	Attorney General of Mississippi Office of the Attorney General Department of Justice Post Office Box 220 Jackson, MS 39205-0220	(601) 359-3692

STATE	ADDRESS	PHONE NO.
MISSOURI	Attorney General of Missouri Office of the Attorney General Supreme Court Building 207 West High Street Jefferson City, MO 65101	(573) 751-3321
MONTANA	Attorney General of Montana Office of the Attorney General Justice Building, 215 North Sanders Helena, MT 59620-1401	(406) 444-2026
NEBRASKA	Attorney General of Nebraska Office of the Attorney General State Capitol Post Office Box 98920 Lincoln, NE 68509-8920	(402) 471-2682
NEVADA	Attorney General of Nevada Office of the Attorney General Old Supreme Court Building 100 North Carson Street Carson City, NV 89701	(702) 687-4170
NEW HAMPSHIRE	Attorney General of New Hampshire Office of the Attorney General State House Annex, 25 Capitol Street Concord, NH 03301-6397	(603) 271-3658
NEW JERSEY	Attorney General of New Jersey Office of the Attorney General Richard J. Hughes Justice Complex 25 Market Street, CN 080 Trenton, NJ 08625	(609) 292-4925

STATE	ADDRESS	PHONE NO.
NEW MEXICO	Attorney General of New Mexico Office of the Attorney General Post Office Drawer 1508 Santa Fe, NM 87504-1508	(505) 827-6000
NEW YORK	Attorney General of New York Office of the Attorney General Department of Law-The Capitol 2nd Floor Albany, NY 12224	(518) 474-7330
NORTH CAROLINA	Attorney General of North Carolina Office of the Attorney General Department of Justice Post Office Box 629 Raleigh, NC 27602-0629	(919) 716-6400
NORTH DAKOTA	Attorney General of North Dakota Office of the Attorney General State Capitol 600 East Boulevard Avenue Bismarck, ND 58505-0040	(701) 328-2210
N. MARIANA ISLANDS	Attorney General of N. Mariana Islands Office of the Attorney General Administration Building Saipan, MP 96950	(670) 664-2341

STATE	ADDRESS	PHONE NO.
OHIO	Attorney General of Ohio Office of the Attorney General State Office Tower 30 East Broad Street Columbus, OH 43266-0410	(614) 466-3376
OKLAHOMA	Attorney General of Oklahoma Office of the Attorney General State Capitol, Room 112 2300 North Lincoln Boulevard Oklahoma City, OK 73105	(405) 521-3921
OREGON	Attorney General of Oregon Office of the Attorney General Justice Building 1162 Court Street, NE Salem, OR 97310	(503) 378-6002
PENNSYLVANIA	Attorney General of Pennsylvania Office of the Attorney General Strawberry Square Harrisburg, PA 17120	(717) 787-3391
PUERTO RICO	Attorney General of Puerto Rico Office of the Attorney General Post Office Box 192 San Juan, PR 00902-0192	(787) 721-7700
RHODE ISLAND	Attorney General of Rhode Island Office of the Attorney General 150 South Main Street Providence, RI 02903	(401) 274-4400

STATE	ADDRESS	PHONE NO.
SOUTH CAROLINA	Attorney General of South Carolina Office of the Attorney General Rembert C. Dennis Office Building Post Office Box 11549 Columbia, SC 29211-1549	(803) 734-3970
SOUTH DAKOTA	Attorney General of South Dakota Office of the Attorney General 500 East Capitol Pierre, SD 57501-5070	(605) 773-3215
TENNESSEE	Attorney General of Tennessee Office of the Attorney General 500 Charlotte Avenue Nashville, TN 37243	(615) 741-6474
TEXAS	Attorney General of Texas Office of the Attorney General Capitol Station Post Office Box 12548 Austin, TX 78711-2548	(512) 463-2191
UTAH	Attorney General of Utah Office of the Attorney General State Capitol, Room 236 Salt Lake City, UT 84114-0810	(801) 538-1326
VERMONT	Attorney General of Vermont Office of the Attorney General 109 State Street Montpelier, VT 05609-1001	(802) 828-3171

STATE	ADDRESS	PHONE NO.
VIRGINIA	Attorney General of Virginia Office of the Attorney General 900 East Main Street Richmond, VA 23219	(804) 786-2071
VIRGIN ISLANDS	Attorney General of the Virgin Islands Office of the Attorney General Department of Justice G.E.R.S. Complex 48B-50C Kronprindsens Gade St. Thomas, VI 00802	(809) 774-5666
WASHINGTON	Attorney General of Washington Office of the Attorney General Post Office Box 40100 1125 Washington Street, SE Olympia, WA 98504-0100	(360) 753-6200
WEST VIRGINIA	Attorney General of West Virginia Office of the Attorney General State Capitol Charleston, WV 25305	(304) 558-2021
WISCONSIN	Attorney General of Wisconsin Office of the Attorney General State Capitol Post Office Box 7857 Suite 114 East Madison, WI 53707-7857	(608) 266-1221

STATE	ADDRESS	PHONE NO.
WYOMING	Attorney General of Wyoming Office of the Attorney General State Capitol Building Cheyenne, WY 82002	(307) 777-7841
UNITED STATES	United States Department of Justice Office of the Inspector General 1425 New York Ave., NW Washington, DC 20005	(800) 869-4499

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Alabama	No Legislation ¹					
Alaska	Alaska Stat. § 11.41.410 (1989 & Supp. 1996)	§ 11.41.410. Sexual assault in the first degree	§ 11.41.410(a): A person commits the crime of sexual assault in the first degree if, (3) the defendant engages in sexual penetration with another person (B) who is entrusted to the defendant's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the Department of Administration under AS 47.33 or by the Department of Health and Social Services.		§ 11.41.410(b): Sexual assault in the first degree is an unclassified felony.	§ 11.41.432. Defenses: (a) It is a defense to a crime charged under AS 11.41.410(a)(3) or AS 11.41.420 (a)(2) that the offender is: (1) mentally incapable; or (2) married to the person and neither party has filed with the court for a separation, divorce, or dissolution of the marriage.
	Alaska Stat. § 11.41.420 (1989 & Supp. 1996)	§ 11.41.420. Sexual assault in the second degree	§ 11.41.420(a): An offender commits the crime of sexual assault in the second degree if (2) the offender engages in sexual conduct with a person (B) who is entrusted to the offender's care (i) by authority of law; or (ii) in a facility or program that is required by law to be licensed by the Department of Administration under AS 47.33 or by the Department of Health and Social Services.		§ 12.55.125(i): The penalty for an unclassified felony shall be (1): imprisonment for a term of 8 years for first time, unarmed offense.	
					§ 11.41.420(b): Sexual assault in the second degree is a class B felony.	
					§ 12.55.125(d): The penalty for a class B felony shall be imprisonment for a term not to exceed 10 years.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Arizona	Ariz. Rev. Stat. Ann. §13-1419 (1997) [Enacted 7/20/96]	§13-1419. Unlawful sexual conduct; correctional employees; prisoners; classification; definition	§13-1419.A: A person who has custodial responsibility for a prisoner or an offender who is on release status and who is under the supervision of the Department of Corrections commits unlawful sexual conduct by engaging in oral sexual contact, sexual contact or sexual intercourse with a prisoner who is in the custody of the department or an offender who is under the supervision of the department. B: A prisoner who is in the custody of the state Department of Corrections or an offender who is on release status and who is under the supervision of the state department of corrections commits unlawful sexual contact by engaging in oral sexual contact, sexual contact, or sexual intercourse with a person who has custodial responsibility for the prisoner or offender.	§13-1419.E: For the purposes of this section “custodial responsibility” means having responsibility for the care, management or control of a prisoner who is committed to the state Department of Corrections or an offender who is under the supervision of the state department of corrections. NOTE: The statute makes it illegal for the prisoner to engage in any sexual contact with a custodian.	§ 13-1419.D: Unlawful sexual conduct is a class 5 felony. § 13-701(C)(4): The penalty for a class 5 felony shall be imprisonment for two years and/or	§13-1419.C.1: Marriage is a defense for custodian if the marriage occurred before the prisoner was incarcerated by the Department of Corrections. §13-1419.C.2: Marriage is a defense for an offender who is on release status if the marriage occurred before the prisoner was incarcerated by the Department of Corrections.
Arkansas	Ark. Code Ann. § 5-14-109 (Michie 1987 & Supp. 1995)	§ 5-14-109. Sexual abuse in the second degree	§ 5-14-109: Sexual abuse in the second degree: (a) A person commits sexual contact with the Department of Corrections or the Department of Community Punishment, engages in sexual contact for the purpose of sexual gratification with any person in the custody of the Department of Correction or the Department of Community Punishment, the consent of the person in custody notwithstanding.		5-14-109(b): Sexual abuse in the second degree is a Class A misdemeanor. 5-4-401(b)(1): The penalty for a Class A misdemeanor shall be imprisonment for a term not to exceed 1 year; and/or 5-4-201(b)(1): a fine not to exceed \$1,000.	§ 5-14-109: Consent is not a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
California	Cal. Penal Code § 289.6 (West 1996 Supplement)	§ 289.6. Public entity employees, officers, or agents; sexual activity with confined consenting adult; defense; application; violation; penalty	§ 289.6(a): An employee or officer of a public entity, or an employee, officer, or agent of a private person or entity that provides a detention facility or staff for a detention facility under contract with a public entity, who engages in sexual activity with a consenting adult who is confined in a detention facility is guilty of a public offense.		<p>§ 289.6 (g): Any violation of this section shall constitute a misdemeanor.</p> <p>§ 19: The penalty for a misdemeanor where not otherwise prescribed shall be imprisonment in the county jail for a term not to exceed 6 months, and/or a fine not to exceed \$1,000.</p> <p>§ 289.6(h): Any person previously convicted of a violation of this section shall, upon a subsequent violation be guilty of a felony.</p> <p>§ 18: The penalty for a felony where not otherwise prescribed shall be imprisonment for a term of 16 months, 2 years, or 3 years.</p>	<p>§ 289.6 (e) Consent by a confined person to sexual activity proscribed by this section is not a defense to a criminal prosecution for violation of this section.</p> <p>§ 289.6(f): This section does not apply to sexual activity between consenting adults that occurs during an overnight conjugal visit that takes places pursuant to a court order or with the written approval of an authorized representative of the public entity that operates or contracts for the operation of the detention facility where the conjugal visit takes place.</p>

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Colorado	Colo. Rev. Stat. § 18-3-403 (1986 & Supp. 1995)	§ 18-3-403. Sexual assault in the second degree	§ 18-3-403: Sexual assault in the second degree. (1) Any actor who knowingly inflicts sexual penetration or sexual intrusion on a victim commits sexual assault in the second degree if: (g) The victim is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over the victim and uses this position of authority, unless the sexual intrusion is incident to a lawful search, to coerce the victim to submit.		§ 18-3-403(2): Sexual assault in the second degree is a class 4 felony. § 18-1-105(V)(A): The penalty for a class 4 imprisonment for a term ranging from 2-6 years with a 3 year mandatory probation and/or § 18-1-105(III)(A): a fine ranging from \$2,000 to \$500,000.	
Connecticut	Conn. Gen. Stat. Ann. § 53a-71 (West 1958 & Supp. 1994) Conn. Gen. Stat. Ann. § 53a-73a (West 1958 & Supp. 1994)	§ 53a-71. Sexual assault in the second degree: Class C felony: Nine months not suspendable § 53a-73a. Sexual assault in the fourth degree: Class A misdemeanor	§ 53a-71: Sexual assault in the second degree: (a) A person is guilty of sexual assault in the second degree when such person engages in sexual intercourse with another person and: (5) such other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person. § 53a-73a: Sexual assault in the fourth degree: (a) A person is guilty of sexual assault in the fourth degree when: (1) Such person intentionally subjects another person to sexual contact who is (E) in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over such other person.		§ 53a-71(b): Sexual assault in the second degree is a class C felony for which 9 months of the sentence imposed may not be suspended or reduced by the court. § 53a-35a(6): The penalty for a class C felony shall be imprisonment for a term not less than 1 year nor more than 10 years. § 53a-73a(b): Sexual assault in the fourth degree is a class A misdemeanor. § 53a-36: The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Delaware	De. Code Ann. tit. 11, § 1259 (1974) & Supp. 1995)	§ 1259. Sexual relations in detention facility; Class G felony	Sexual Relations in detention facility; Class G felony: A person is guilty of sexual relations in a detention facility when, being a person in custody at a detention facility or being an employee working at a detention facility, the person engages in sexual intercourse or deviate sexual intercourse on the premises of a detention facility.	NOTE: The statute also makes it illegal for a prisoner to engage in sexual relations with an employee at the detention facility.	§ 1259: Violation of this section is a class G felony. 4205(b)(7): The penalty for a class G felony shall be imprisonment at Level V for a term not to exceed 2 years, and 4205(k): may include fines and penalties as the court deems appropriate.	§ 1259: It shall be no defense that such conduct was consensual.
District of Columbia	D.C. Code Ann. § 22-4101 (1981) & Supp. 1996) D.C. Code Ann. § 22-4113 (1981) & Supp. 1996) D.C. Code Ann. § 22-4114 (1981) & Supp. 1996) D.C. Code Ann. § 22-4117 (1981) & Supp. 1996)	§ 22-4101. Definitions § 22-4113. First degree sexual abuse of a ward § 22-4114. Second degree sexual abuse of a ward § 22-4117. Defenses to sexual abuse of a ward, patient, or client	§ 22-4113: First degree sexual abuse of a ward: Whoever engages in a sexual act with another person or causes another person to engage in or submit to a sexual act when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor shall be imprisoned for not more than 10 years and, in addition, may be fined in an amount not to exceed \$100,000. § 22-4114: Second degree sexual abuse of a ward: Whoever engages in sexual contact with another person or causes another person to engage in or submit to sexual contact when that other person: (1) Is in official custody, or is a ward or resident, on a permanent or temporary basis, of a hospital, treatment facility, or other institution; and (2) Is under the supervisory or disciplinary authority of the actor shall be imprisoned for not more than 5 years and, in addition, may be fined in an amount not to exceed \$50,000.	§ 22-4101: Definitions: For the purposes of this chapter: (6) "Official custody" means: (A) Detention following arrest for an offense; following a charge or conviction of an offense, or an allegation or finding of juvenile delinquency; following commitment as a material witness; following or pending civil commitment proceedings, or pending extradition, deportation, or exclusion.	§ 22-4113: The penalty for first degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 10 years, and may include a fine not to exceed \$100,000. § 22-4114: The penalty for second degree sexual abuse of a ward (2): shall be imprisonment for a term not to exceed 5 years and may include a fine not to exceed \$50,000.	§ 22-4117(a): Consent is not a defense, to either first or second degree sexual abuse of a ward; (b) Marriage between the defendant and the victim at the time of the offense is a defense to both first and second degree sexual abuse of a ward, which the defendant must prove by a preponderance of the evidence.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Florida	Fla. Stat. Ann. § 944.35 (Approved 5/30/96)	Authorized use of Force; Malicious battery & Sexual misconduct prohibited; reporting required	Covers offense of sexual misconduct by Department of Corrections employees with inmates or offenders being supervised by the Department of Corrections. Also covers the offense of failure to make reports of such activity or preventing another from doing so.	Sexual Misconduct: oral, anal, vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. Does not include internal search or bona fide medical exam.	Sexual misconduct is a felony in the third degree. The penalty for a felony in the third degree shall be: imprisonment for a term not to exceed 5 years; dismissal from employment; and prohibition from employment in any capacity in connection with the correctional system. Failure to report is a misdemeanor of the first degree. The penalty for a misdemeanor of the first degree shall be imprisonment for a term not to exceed 1 year. Inaccurate or false reports is a misdemeanor of the first degree. Preventing others from reporting is a felony in the third degree.	Consent is not a defense. Ignorance that inmate is an inmate or under the supervision by the Department of Corrections is a defense. Marriage is a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Georgia	Ga. Code Ann. § 16-6-5.1 (1996)	§ 16-6-5.1. Sexual assault against persons in custody; sexual assault against person detained or patient in hospital or other institution; sexual assault by practitioner of psychotherapy against patient	§ 16-6-5.1(b): A probation or parole officer or other custodian or supervisor of another person referred to in this Code section commits sexual assault when he engages in sexual contact with another person who is a probationer or parolee under the supervision of said probation or parole officer or who is in the custody of law or who is enrolled in a school or who is detained in or is a patient in a hospital or other institution and such actor has supervisory or disciplinary authority over such other person.(c)(1): A person commits sexual assault when such person has supervisory or disciplinary authority over another person and such person engages in sexual contact with that other person who is: (A) In the custody of law; or (B) Detained in or is a patient in a hospital or other institution.	§ 16-6-5.1(a): As used in this Code section, the term: (2) "Intimate parts" means the genital area, groin, inner thighs, buttocks, or breasts of a person; (4) "Sexual Contact" means any contact for the purpose of sexual gratification of the actor with the intimate parts of a person not married to the actor.	§ 16-6-5.1(b): The penalty for sexual assault shall be imprisonment for a term not less than 1 nor more than 3 years.	§ 16-6-5.1(c)(3): Consent of the victim is not a defense. The definition of "sexual contact" in § 16-6-5.1(a)(4) excludes contact between married persons.
Hawaii	Haw. Rev. Stat. Ann. § 707-731 (Michie 1994) Haw. Rev. Stat. Ann. § 707-732 (Michie 1994)	§ 707-731. Sexual assault in the second degree § 707-732. Sexual assault in the third degree	§ 707-731: Sexual assault in the second degree: (1) A person commits the offense of sexual assault in the second degree if: (c) the person, while employed in a state correctional facility, knowingly subjects to sexual penetration by an imprisoned person. § 707-732: Sexual assault in the third degree: (1) A person commits the offense of sexual assault in the third degree if: (d) the person, while employed in a state correctional facility, knowingly subjects to sexual contact with an imprisoned person or causes such person to have sexual contact with the actor.		§ 707-731(2): Sexual assault in the second degree is a class B felony. § 707-732(2): Sexual assault in the third degree is a class C felony. § 706-660: The penalty for a class B felony shall be imprisonment for a term of 10 years. The penalty for a class C felony shall be imprisonment for a term of 5 years.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Idaho	Idaho Code § 18-6110 (1987 & Supp. 1996)	§ 18-6110. Sexual contact with an inmate	§ 18-6110: Sexual contact with an inmate. It is a felony for any officer, employee or agent of a jail or correctional facility to have sexual contact with an inmate of such facility.	§ 18-6110: For the purposes of this section sexual contact means sexual intercourse, genital-genital, oral-genital, anal-genital or oral-anal, between persons of the same or opposite sex.	§ 18-6110: The penalty for sexual contact with an inmate shall be imprisonment in the state prison for a term not to exceed life.	
Illinois	Ill. Criminal Code §11-9.2	§11-9.2. Custodial Sexual Misconduct	§11-9.2 (a) A person commits the offense of custodial sexual misconduct when he or she is an employee of a penal system and engages in sexual conduct or sexual penetration with a person who is in the custody of that penal system.	§11-9.2(g). 1. "Custody" means: (i) pretrial incarceration or detention; (ii) incarceration or detention under a sentence or commitment to a state or local penal institution; 3. "Employee" means: (1) an employee of any governmental agency of this State or any county or municipal corporation that has by statute, ordinance, or court order the responsibility for the care, control, or supervision of pretrial or sentenced persons in a penal system; (4) "Sexual conduct" or "sexual penetration" means any act of sexual conduct of sexual penetration as defined in Section 12-12 of this code.	§11-9.2 Custodial sexual misconduct is a Class 3 felony. A Class 3 felony carries a penalty of 2-5 years.	§11-9.2.(e) Consent is not a defense to a criminal charge under this section. §11-9.2.(f)(1) Marriage is a defense if the marriage occurred prior to the date of custody. §11-9.2.(f)(2) Lack of knowledge that the individual with whom the employee was engaged in custodial sexual misconduct of a prisoner is a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Indiana	Ind. Code Ann. § 35-44-1-5 (West 1986 & Supp. 1996)	§ 35-44-1-5. Sexual misconduct by service provider with detainee	§ 35-44-1-5: Sec. 5(b) A service provider who knowingly or intentionally engages in sexual intercourse or deviate sexual conduct with a person who is subject to lawful detention commits sexual misconduct.	§ 35-44-1-5: Sec. 5(a) As used in this section, “service provider” means a public servant or other person employed by a governmental entity or another person who provides goods or services to a person who is subject to lawful detention.	§ 35-44-1-5(b): Sexual misconduct is a class D felony. § 35-50-2-7(a): The penalty for a Class D felony is imprisonment for 1½ years and may also include a fine not to exceed \$10,000.	§ 35-44-1-5(c): It is not a defense that an act described in subsection (b) was consensual.
Iowa	Iowa Code Ann. § 709.16 (West 1993)	§ 709.16. Sexual misconduct with offenders	§ 709.16: Sexual misconduct with offenders: An officer, employee, contractor, vendor, volunteer or agent of a judicial district department of correctional services, who engages in a sex act with an individual committed to the custody of the Department of Corrections or a judicial district department of correctional services commits an aggravated misdemeanor.		§ 709.16: Sexual misconduct with offenders is an aggravated misdemeanor. § 903.1(2): The penalty for an aggravated misdemeanor shall be imprisonment for a term not to exceed 2 years and a fine ranging between \$500 and \$5,000.	
Kansas	Kan. Stat. Ann. § 21-3520 (1995)	§ 21-3520. Unlawful sexual relations	§ 21-3520: Unlawful sexual relations: (a) Unlawful sexual relations is engaging in consensual sexual intercourse or sodomy with a person who is not married to the offender if: (1) The offender is an employee of the department of corrections or the employee of a contractor who is under contract to provide services in a correctional institution and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate; or (2) the offender is a parole officer and the person with whom the offender is engaging in consensual sexual intercourse or sodomy is an inmate who has been released on parole or conditional release or postrelease supervision under the direct supervision and control of the offender.		§ 21-3520(c): Unlawful sexual relations is a severity 10 person felony. § 21-4704(a): The penalty for a severity 10 person felony shall be imprisonment for a term between 6 and 12 months depending on offender’s criminal history.	Marriage is a defense. Consent is not a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Kentucky	No Legislation ¹					
Louisiana	La. Rev. Stat. Ann. § 134.1 (West 1986)	§ 134.1. Malfesance in office; sexual conduct prohibited with persons confined in office; sexual conduct prohibited with persons confined in correctional institutions.	§ 134.1: Malfesance in office; sexual conduct prohibited with persons confined in correctional institutions. A. It shall be unlawful and constitute malfesance in office for any person who is a law enforcement officer, officer of the Department of Corrections, or employee of a prison, jail, or correctional institution, to engage in sexual intercourse or any other sexual conduct with a person confined in a prison, jail or correctional institution.		§ 134.1.B: Penalty for a violation of a provision of this section shall be imprisonment for a term not to exceed 10 years and/or a fine not to exceed \$10,000.	
Maine	Me. Rev. Stat. Ann. tit. 17-A, § 253 (West 1983 & Supp. 1995)	§ 253. Gross sexual assault	§ 253(2): A person is guilty of gross sexual assault if that person engages in a sexual act with another person and: (E) The other person, not the actor's spouse, is in official custody as a probationer or a parolee, or is detained in a hospital, prison or other institution, and the actor has supervisory or disciplinary authority over the other person.		§ 253(5): Violation of subsection 2, paragraph E is a Class B crime. § 1252(2)(B): The penalty for a Class B crime shall be imprisonment for a term not to exceed 10 years.	Marriage is a defense.
Maryland	BILL INTRODUCED 1998 Maryland Senate Bill 156 Last Action: 2/24/98 before Committee on Judiciary: Reported favorably.		Provides that a fourth degree sexual offense includes sexual activity between an individual who works in a correctional facility or supervises offenders in the community and someone incarcerated or supervised in the community; relates to custodial employees and individuals in custody.			
Massachusetts	No Legislation ¹					

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Michigan	Mich. Comp. Laws Ann. § 750.520e (West 1991 & Supp. 1996)	§ 750.520e. Fourth degree criminal sexual conduct	§ 750.520e. (1): A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist: (e) That other person is a prisoner or probationer under the jurisdiction of a county for purposes of imprisonment or a work program or other probationary program and the actor is an employee or a contractual employee of or a volunteer with the county who knows that the other person is under the county's jurisdiction.		§ 750.520e(2): Criminal sexual conduct in the fourth degree is a misdemeanor the penalty for which shall be imprisonment for a term not to exceed 2 years and/or a fine not to exceed \$500.	
Minnesota	No Legislation ¹					
Mississippi	1998 Miss. H.B. 59 (Miss. 1998) Approved by Gov. March 26, 1998	H.B. 59 An Act to Prohibit Jailers and Other Officials From Engaging in Sexual Conduct with Prisoners; To Prescribe Penalties for Violations; and Purposes	Section 1. It shall be unlawful for any jailer, guard, employee of the Department of Corrections, sheriff, constable, marshal or other officer to engage in any sexual penetration as defined in Section 97-3-97, Mississippi code of 1972, with any offender, with or without the offender's consent, who is incarcerated at any jail or any state, county or private correctional facility. Section 2. This act shall take effect and be in force from and after its passage.		Section 1. Any person who violates this section shall be guilty of a felony and upon conviction shall be fined not more than \$5,000 or imprisoned for a term not to exceed 5 years, or both.	Consent is not a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Missouri	Mo. Ann. Stat. § 217.405 (Vernon 1983 & Supp. 1996)	§217.405. Offender abuse, penalty — employees not to use physical force, exceptions	§ 217.405: Offender abuse, penalty - employees not to use physical force, exceptions: (1) Except as provided in subsection 3 of this section, a person commits the crime of "offender abuse" if he knowingly injures the physical well-being of any offender under the jurisdiction of the department by beating, striking, wounding or by sexual contact with such person.	NOTE: There is a requirement to report reasonable belief of abuse.	§ 217.405.2: Offender abuse is a class C felony.	
	Mo. Ann. Stat. § 217.410 (Vernon 1983 & Supp. 1996)	§ 217.410. Abuse of offender, duty to report, penalty— confidentiality of report, immunity from liability— harassment prohibited	(3) No employee of the department shall use physical force on an offender except the employee shall have the right to use such physical force as is necessary to defend himself, suppress an individual or group revolt or insurrection, enforce discipline or to secure the offender.		§ 217.410.3: Any person required by subsection 1 of this section to report or cause a report to be made, but who fails to do so within a reasonable time after the act of abuse or neglect is guilty of a class A misdemeanor.	
Montana	No Legislation ¹		§ 217.410.1: When any employee of the department has reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused, he shall immediately report it in writing to the director.		§ 558.011.1(3): The penalty for a class C felony shall be imprisonment for a term not to exceed 7 years.	
Nebraska	No Legislation ¹				§ 558.011.1(5): The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Nevada	Nev. Rev. Stat. § 212.187 (1997) (amended 10/1/97)	§ 212.187. Voluntary sexual conduct between prisoner and another person is unlawful	§ 212.187(1): A prisoner who is in lawful custody or confinement, other than residential confinement, and who voluntarily engages in sexual conduct with another person is guilty of a category D felony. (2) A person who voluntarily engages in sexual conduct with a prisoner who is in lawful custody or confinement, other than residential confinement, is guilty of a category D felony.	§ 212.187(2): As used in this section, sexual conduct means acts of masturbation, homosexuality, sexual intercourse or physical contact with another's unclothed genitals or pubic area to arouse, appeal to or gratify the sexual desires of a person.	Violation of § 212.187 (2) is a category D felony. § 193.130: (2) (d): A category D felony is a felony for which a court shall sentence a convicted person to imprisonment in the state prison for a minimum term not less than 1 year and a maximum term of not more than 4 years. In addition to any other penalty, the court may impose a fine of not more than \$5,000 unless a greater fine is authorized or required by statute.	Consent is not a defense.
New Hampshire	N.H. Rev. Stat. Ann. §§ 632-A: (2), (3) Effective January 1, 1998	§ 632-A:2. Aggravated Felonious Sexual Assault; §632-A:3. Felonious Sexual Assault	§ 632-A:2. 1. A person is guilty of the felony of aggravated felonious sexual assault if he engages in sexual penetration with another person under any of the following circumstances:(n) When the action is in a position of authority over the victim and use this authority to coerce the victim to submit under any of the following circumstances: (1) When the actor has supervisory authority over the victim by virtue of the victim being incarcerated in a correctional institution or juvenile detention facility; (2) When a probation or parole officer has supervisory authority over the victim while the victim is on parole or probation or under juvenile probation. Consent of the victim under . . . (n) shall not be considered a defense.	§ 632-A:(3) Violation of § 632-A:2. Is a class B felony which carries a penalty of three and one-half to seven years in prison.	Consent is not a defense.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
New Jersey	N.J. Stat. Ann. § 2C: 14-2 (West 1995)	§ 2C: 14-2. Sexual assault	§ 2C:14-2.c: An actor is guilty of sexual penetration if he commits an act of sexual penetration with another person under any one of the following circumstances: (3) The victim is on probation or parole, or is detained in a hospital, prison or other institution and the actor has supervisory or disciplinary power over the victim by virtue of the actor's legal, professional or occupational status.		§ 2C:14-2: Sexual assault is a crime of the second degree. § 2C:43-6a(2): The penalty for a crime of the second degree shall be imprisonment for a term of between 5 and 10 years.	
New Mexico	N.M. Stat. Ann. § 30-9-11 (Michie 1978 & Supp. 1996)	§ 30-9-11. Criminal sexual penetration	§ 30-9-11: Criminal sexual penetration. D: Criminal sexual penetration in the second degree consists of all criminal sexual penetration perpetrated:(2) on an inmate confined in a correctional facility or jail when the perpetrator is in a position of authority over the inmate.		§ 30-9-11.D. Criminal sexual penetration in the second degree is a second degree felony. § 31-18-15.A.(3): The penalty for a second degree felony shall be imprisonment for a term of 9 years and E.(3): may include a fine of up to \$10,000.	
New York	N.Y. Penal Law § 130.05 (McKinney 1996)	§ 130.05. Sex offenses	§ 130.05: Whether or not specifically stated, it is an element of every offense defined in this article ... that the sexual act was committed without consent of the victim: (3) A person is deemed incapable of consent when he or she is: (e) committed to the care and custody of the state department of correctional services or a hospital; or (f) committed to the care and custody of a local correctional facility.	(1) Covers employees of the state department of correctional services who perform professional duties in a state correctional facility consisting of providing custody, medical or mental health services, counseling services, educational programs or vocational training for inmates. (2) Also covers employees of the division of parole and office of mental health who perform professional duties and provide professional services in a state correctional facility.	Violation of this section is either a class E felony or a class A misdemeanor, depending on the nature and severity of the assault. § 70.00(2)(e): For a class E felony, the term shall be fixed by the court, and shall not exceed four years. § 70.15(1): A sentence of imprisonment for a class A misdemeanor shall ... be fixed by the court, and shall not exceed one year.	Consent is not a defense. Marriage is a defense.

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
North Carolina	N.C. Gen. Stat. § 14-27.7 (1993)	§ 14-27.7. Intercourse and sexual offenses with certain victims; consent with certain victims; consent no defense	§ 14-27.7: Intercourse and sexual offenses with certain victims; consent no defense: . . . if a person having custody of a victim of any age or a person who is an agent or employee of any person, or institution, whether such institution is private, charitable, or governmental, having custody of a victim of any age engages in vaginal intercourse or a sexual act with such victim, the defendant is guilty of a Class E felony.	CASE NOTE: Custodial sexual offense does not require act by force against the will of another person. It requires that the perpetrator or the perpetrator's principal or employer, have custody of the victim. <i>State v. Raines</i> , 319 N.C. 358, 354 S.E. 2d 486 (1987).	§ 14-27.7 A violation of this section is a class E felony. § 15A-1340.17: The penalty for a class E felony shall be a fine at the discretion of the court and imprisonment for a term between 20 and 59 years depending on the amount and kind of prior offenses.	§ 14.27.7: Consent is not a defense to a charge under this section.
	N.D. Cent. Code § 12.1-20-06 (1985)	§ 12.1-20-06. Sexual abuse of wards	§ 12.1-20-06: A person who engages in a sexual act with another person or any person who causes another to engage in a sexual act is guilty of a class A misdemeanor if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.		§ 12.1-20-06: Sexual abuse of wards is a class A misdemeanor. § 12.1-20-07(2): Sexual assault is a class B misdemeanor. § 12.1-32-01.5.: The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year and/or a fine of \$1,000. § 12.1-32-01.6: The penalty for a class B misdemeanor shall be imprisonment for a term not to exceed 30 days and/or a fine not to exceed \$500.	
North Dakota	N.D. Cent. Code § 12.1-20-06 (1985)	§ 12.1-20-06. Sexual abuse of wards	§ 12.1-20-06: A person who engages in a sexual act with another person or any person who causes another to engage in a sexual act is guilty of a class A misdemeanor if the other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over the other person.		§ 12.1-20-06: Sexual abuse of wards is a class A misdemeanor. § 12.1-20-07(2): Sexual assault is a class B misdemeanor. § 12.1-32-01.5.: The penalty for a class A misdemeanor shall be imprisonment for a term not to exceed 1 year and/or a fine of \$1,000. § 12.1-32-01.6: The penalty for a class B misdemeanor shall be imprisonment for a term not to exceed 30 days and/or a fine not to exceed \$500.	
	N.D. Cent. Code § 12.1-20-07 (1985)	§ 12.1-20-07. Sexual assault	§ 12.1-20-07.1: A person who knowingly has sexual contact with another, or who causes such other person to have sexual contact with him, is guilty of an offense if: (d) The other person is in official custody or detained in a hospital, prison, or other institution and the actor has supervisory or disciplinary authority over him or her.			

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Ohio	Ohio Rev. Code Ann. § 2907.03 (1993)	§ 2907.03. Sexual battery	§ 2907.03: Sexual battery: (A) No person shall engage in sexual conduct with another, not the spouse of the offender, when any of the following apply: (6) The other person is in custody of law or a patient in a hospital or other institution, and the offender has supervisory or disciplinary authority over the other person.		§ 2907.03(B): Sexual battery is a felony of the third degree. § 2929.14(A)(3): The penalty for a felony of the third degree shall be imprisonment for a term of between 1 and 5 years.	Marriage is a defense.
Oklahoma	Okla. Stat. Ann. tit. 21, § 1111 (West 1983 & Supp. 1996) Okla. Stat. Ann. tit. 21, § 1114 (West 1983 & Supp. 1996) Okla. Stat. Ann. tit. 21, § 1116 (West 1983 & Supp. 1996)	§ 1111. Rape Defined § 1114. Rape in the first degree-second degree	§ 1111: Rape defined: A. Rape is an act of sexual intercourse involving vaginal or anal penetration accomplished with a male or female who is not the spouse of the perpetrator and who may be of the same or the opposite sex as the perpetrator under any of the following circumstances: 7. Where the victim is under the legal custody of a state agency and engages in sexual intercourse with a state employee or employee of a contractor of the state that exercises authority over the victim.		§ 1114.B: Violation of this section is rape in the second degree. § 1116: The penalty for rape in the second degree shall be imprisonment in the penitentiary for a term ranging between 1-15 years.	Marriage is a defense.
Oregon	No Legislation ¹					
Pennsylvania	Pa. Stat. Ann. tit. 18, § 3126 (1983 Supp. 1996) By 1995 amendment, the legislature amended the statute and deleted “in custody of law” language. Legislation has been introduced to add that language back to the statute.		HOW SECTION READ BEFORE THE AMENDMENT § 3126 [before the 1995 amendment]: (a) Offense defined.—A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him, is guilty of indecent assault if: (5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.			

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Rhode Island	R.I. Gen. Laws § 11-25-24 (1994 & Supp. 1995)	§11-25-24. Correctional employees — sexual relations with inmates — felony Correctional employees — sexual relations with inmates — felony	§11-25-24: Correctional employees — sexual relations with inmates — felony. Every employee of the Department of Corrections or the employee of a contractor who is under contract to provide services in a correctional institution who engages in sexual penetration as defined in § 11-37-1 in chapter 37 of this title entitled “Sexual Assault” with an inmate confined therein or who is otherwise under the direct custodial supervision and control of said employee shall be guilty of a felony.	§ 11-37-1.(8): “Sexual penetration” - sexual intercourse, cunnilingus, fellatio, and anal intercourse, or any other intrusion, however slight, by any part of a person’s body or by any object into the genitalia or anal openings of another person’s body, but emission of semen is not required.	§ 11-25-24: Violation of this section is a felony the penalty for which shall be imprisonment for a term not to exceed 5 years and/or a fine not to exceed \$10,000.	
South Carolina	S.C. Code Ann. §44-23-1150 (amended 6/11/97)	§44-23-1150. Illegal sexual intercourse: Sexual intercourse with a patient, trainee; employee of a correctional facility engaging in sexual intercourse with an inmate.	§ 44-23-1150. An employee of a state or local correctional facility having sexual intercourse with an inmate of that facility, is guilty of a felony.		§ 44-23-1150. An employee of a state or local correctional facility having sexual intercourse with an inmate of that facility, upon conviction, must be imprisoned not more than 10 years.	
South Dakota	S.D. Codified Laws Ann. § 24-1-26.1 (1997)	§ 24-1-26.1. Sexual acts prohibited between prison employees and prisoners Sexual acts prohibited between prison employees and prisoners	§ 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.		§ 24-1-26.1: The violation of this section is a Class 6 felony. § 22-6-1: The penalty for a Class 6 felony shall be imprisonment in the state penitentiary for a term of 2 years and/or a fine of \$2,000.	
Tennessee	No Legislation ¹					

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Texas	Tex. Penal Code Ann. Sec. 39.04 (Vernon 1994 and 1997 pocket part) Amended September 1, 1997.	Sec.39.04 Violations of the Civil Rights of Person in Custody; Improper Sexual Activity	Sec.39.04 (a) An official or employee of a correctional facility or a peace officer commits an offense if he intentionally: (2) engages in sexual intercourse or deviate sexual intercourse with an individual in custody.	Sec. 39.04 9 (c) In this section: (1) "Custody" means the detention, arrest or confinement of a person. (2) "Sexual intercourse" and "deviate intercourse" have the meaning assigned by Section 21.01.	Sec. 39.04(b) An offense under Sections (a)(2) is a state jail felony. Sec. 12.35: The penalty for a state jail felony is 180 days to 2 years in the state jail and/or a fine not to exceed \$10,000.	
Utah	No Legislation ¹					
Vermont	No Legislation ¹					
Virginia	No Legislation ¹					
Washington	No Legislation ¹					
West Virginia	No Legislation ¹					
Wisconsin	Wis. Stat. Ann. § 940.29 (West 1996)	§ 940.29. Abuse of residents of penal facilities	§ 940.29: Any person is charge of or employed in a penal or correctional institution or other place of confinement who abuses, neglects or ill-treats any person confined in or a resident of any such institution or place or who knowingly permits another person to do so is guilty of a Class E felony.		§ 940.29: The abuse of residents of penal facilities is a Class E felony. § 939.50(3)(e): The penalty for a Class E felony shall be imprisonment for a term not to exceed 2 years and/or a fine not to exceed \$10,000.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
Wyoming	Wyo. Stat. § 6-2-303 (1988) Wyo. Stat. § 6-2-306 (1988)	§ 6-2-303. Sexual assault in the second degree	§ 6-2-303: Sexual Assault in the second degree. (a) Any actor who inflicts sexual intrusion on a victim commits sexual assault in the second degree if, under circumstances not constituting assault in the first degree: (vi) The actor is in a position of authority over the victim and uses this position of authority to cause the victim to submit.	§ 6-2-301(a)(iv): “Position of authority means that position occupied by a parent, guardian, relative, household member, teacher, employers, custodian or any other person who, by reason of his position, is able to exercise significant influence over a person. In <i>Scudder v. Wyoming</i> , 732 P.2d 136 (1987) the Wyoming Supreme Court stated that “a jailer .. [has] power over his prisoner, and therefore, the jailer is in a position of authority over the prisoner.” Id at 1042.	§6-2-306(a)(ii): The penalty for sexual assault in the second degree shall be imprisonment for a term not to exceed 20 years.	

Fifty-State Survey of Criminal Laws Prohibiting Sexual Abuse of Prisoners

State	Statute	Title	Coverage	Definitions/Notes	Penalties	Defenses
United States ²	18 U.S.C. § 2241 (1994)	§ 2241. Aggravated sexual abuse	Specifically covers conduct in federal prisons.		For offenders with 0 to 1 prior offenses:	§ 2243: Sexual abuse of a minor or ward. (c)(2): In a prosecution under this section, it is a defense, which the defendant must establish by a preponderance of the evidence, that the persons engaging in the sexual act were at that time married to each other.
	18 U.S.C. § 2242 (1994)	§ 2242. Sexual abuse	§ 2241: “Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison,” knowingly causes another person to engage in a sexual act by using force, threats, rendering the other unconscious, or administering drugs.		U.S.S.G. § 2A3.1(b)(1): The base penalty for aggravated sexual abuse shall be imprisonment for a term of 108-135 months.	
	18 U.S.C. § 2243 (1994)	§ 2243. Sexual abuse of a minor or ward	§ 2242 covers engaging in a sexual act in federal prison with someone who is incapable of appraising the nature of the conduct or is physically incapable of declining participation.		U.S.S.G. § 2A3.1(a): The base penalty for sexual abuse shall be imprisonment for a term of 70-87 months.	
	18 U.S.C. § 2244 (1994)	§ 2244. Abusive sexual contact			U.S.S.G. § 2A3.2(a): The base penalty for sexual abuse of a minor shall be imprisonment for a term of 18-24 months.	
	18 U.S.C. § 2246 (1994)	§ 2246. Definitions for chapter	§ 2243: Sexual abuse of a minor or ward. (b) Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, knowingly engages in a sexual act with another person who is-(1) In official detention; and (2) under the custody, supervisory, or disciplinary authority of the person so engaging; or attempts to do so, shall be fined under this title, imprisoned not more than one year, or both.		U.S.S.G. § 2A3.3(a): The base penalty for sexual abuse of a ward shall be imprisonment for a term of 4-10 months.	
					U.S.S.G. § 2A3.4(a)(3): The base penalty for abusive sexual contact shall be imprisonment for a term of 6-12 months.	

Notes and Comments

1. In states that have no specific legislation criminalizing the sexual abuse of prisoners, correctional employees may be prosecuted under the state's existing sexual assault and rape statutes. Under these laws, consent is a defense to criminal liability. However, many experts believe that the inherent disparity in power between prisoners and correctional employees renders valid consent impossible in the prison context. Also, from both a management and public policy perspective, sanctioning consensual sex between correctional employees and prisoners severely compromises legitimate correctional goals such as prison security, inmate management, and rehabilitation.
2. The United States Code is included in this 50-state survey because of the increasing impact of federal criminal legislation on criminal defendants, particularly with regard to drug offenses. With the federalization of many drug offenses, criminal defendants are being sentenced to federal prisons in increasing numbers. Prisoners sentenced for drug offenses constitute the largest group of federal inmates (60%) in 1995, up from 34% in 1985. Between 1985 and 1995, the federal prison population increased approximately 283% (from 31,364 to 88,801). The increase of 42,000 drug offenders counted for more than 80% of that growth.

An End to Silence:

Women Prisoners' Handbook on Identifying and Addressing Sexual Misconduct

National Women's Law Center

11 Dupont Circle, NW, Suite 800

Washington, DC 20036

202/588-5180; fax: 202/588-5185

Sexual harassment and sexual misconduct against incarcerated persons violates either the law or corrections policy in all 50 states. Incarcerated women who experience verbal or physical harassment, assault or misconduct have the right to remedy the abuse. Corrections institutions should also remedy this conduct because sexual misconduct threatens both personal and institutional security. To provide critical information and strategies to address this problem, the National Women's Law Center has produced an educational manual designed for incarcerated women and others concerned about sexual misconduct in correctional institutions.

An End to Silence: Women Prisoners' Handbook on Identifying and Addressing Sexual Misconduct is the latest in a series of publications developed as part of the National Women's Law Center's Women in Prison Project. The project employs a strategy of litigation, advocacy, training and support aimed at reducing and preventing the incarceration of women, and improving the conditions of confinement for women who are incarcerated. The project serves as a model for programs throughout the United States.

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An End to Silence: Women Prisoners' Handbook on Identifying and Addressing Sexual Misconduct	\$25		
	\$15 (Non-profit)		
	(D.C. residents add 5.75% sales tax)		



An End to Silence:

Women Prisoners' Handbook on Identifying and Addressing Sexual Misconduct

Reader Survey

The National Women's Law Center invites your response to the following questions about the value of this publication. Your answers will help the Center continue to develop educational materials that meet your need for information.

Did this handbook answer your basic questions about sexual harassment and sexual misconduct in prison?

Yes No

If no, what other questions did you have? _____

Do you think the handbook explained the issues clearly? Yes No

Based on the information you learned from this handbook, if you or someone you know became a victim of sexual misconduct or sexual assault, would you know what steps to take to address the situation?

Yes No

Would you feel comfortable in taking those steps? Yes No

What did you like most about this handbook? _____

What, if any, suggestions do you have for improving the handbook? _____

How did you receive the handbook?

distributed by corrections department from an attorney

mailed from the National Women's Law Center from a friend

other _____

How would you rate the overall effectiveness of this handbook?

(5 = Very effective; 1 = not effective) 5 4 3 2 1

How will you use the information you obtained in the handbook? _____

I am a(n): incarcerated woman; corrections staff person; corrections administrator; lawyer;
 advocate; appointed or elected official; other (please specify) _____

Name (optional) _____ Address _____

Would you like additional information about this issue or other Center programs? Yes No Date: _____

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