

OREGON DEPARTMENT OF CORRECTIONS

PRISON RAPE ELIMINATION ACT/SENATE BILL 89 OVERVIEW

The Oregon Department of Corrections has a zero-tolerance policy regarding sexual abuse. The department will immediately respond to, investigate, and support the prosecution of sexual misconduct in Oregon's prisons, both internally and externally in partnership with law enforcement and county prosecutors.

Senate Bill 89 (2005) made custodial sexual misconduct a felony. Any Department of Corrections' (DOC) employee or contractor convicted of this crime in the first degree will be sent to prison.

It cannot be emphasized enough that the Department has a zero-tolerance policy for sexual abuse. While these laws make the likely prosecution and penalties greater for this behavior, nothing in the law takes away from the Department's own policies regarding inappropriate staff/inmate relationships of all kinds, whether sexual in nature or otherwise.

If at any time you feel that you are on the path to an inappropriate relationship, regardless of its nature, contact a peer, your supervisor or other management staff. They can help and will advise you through the issue before that inappropriate and illegal line is crossed. No matter where you are in the Department, there is someone who can help you avoid choices, the consequences of which may be catastrophic.

Below are the Oregon Revised Statutes defining custodial sexual misconduct in the first and second degree. Please review them.

163.452 Custodial sexual misconduct in the first degree. (1) A person commits the crime of custodial sexual misconduct in the first degree if the person:

(a) Engages in sexual intercourse or deviate sexual intercourse with another person or penetrates the vagina, anus or penis of another person with any object other than the penis or mouth of the actor knowing that the other person is:

(A) In the custody of a law enforcement agency following arrest;

(B) Confined or detained in a correctional facility;

(C) Participating in an inmate or offender work crew or work release program; or

(D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and

(b) Is employed by or under contract with the state or local agency that:

(A) Employs the officer who arrested the other person;

(B) Operates the correctional facility in which the other person is confined or detained;

(C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or

(D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual intercourse, deviate sexual intercourse or the sexual penetration is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison

supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the first degree is a Class C felony. [2005 c.488 §3]

163.454 Custodial sexual misconduct in the second degree. (1) A person commits the crime of custodial sexual misconduct in the second degree if the person:

- (a) Engages in sexual contact with another person knowing that the other person is:
 - (A) In the custody of a law enforcement agency following arrest;
 - (B) Confined or detained in a correctional facility;
 - (C) Participating in an inmate or offender work crew or work release program; or
 - (D) On probation, parole, post-prison supervision or other form of conditional or supervised release; and
- (b) Is employed by or under contract with the state or local agency that:
 - (A) Employs the officer who arrested the other person;
 - (B) Operates the correctional facility in which the other person is confined or detained;
 - (C) Is responsible for supervising the other person in a work crew or work release program or on probation, parole, post-prison supervision or other form of conditional or supervised release; or
 - (D) Engages the other person in work or on-the-job training pursuant to ORS 421.354 (1).

(2) Consent of the other person to sexual contact is not a defense to a prosecution under this section.

(3) Lack of supervisory authority over the other person is an affirmative defense to a prosecution under this section when the other person is on probation, parole, post-prison supervision or other form of conditional or supervised release.

(4) Custodial sexual misconduct in the second degree is a Class A misdemeanor. [2005 c.488 §4]

In support of the Prison Rape Elimination Act of 2003, the Oregon Department of Corrections has a zero-tolerance policy regarding sexual abuse.