

# Introduction

In 1999, Amnesty International published “*Not part of my sentence*”: *Violations of the Human Rights of Women in Custody*. The report described conditions for women incarcerated in prisons and jails across the United States. This report follows up on two areas of concern: custodial sexual misconduct and the treatment of women in custody who are parents or are pregnant.

The information compiled in this report, based on a survey by Amnesty International, summarizes existing legislation, policies and practices in every state, the District of Columbia and the US Bureau of Prisons and reviews these areas in the context of international human rights standards. The main concerns arising from the surveys are the continuing lack of laws prohibiting custodial sexual misconduct in some states; the failure of existing laws to provide adequate protection; and the widespread lack of legislation and uniform standards, in policy and practice, to protect incarcerated women in labor from being shackled during child birth. Amnesty International believes legislative and policy shortcomings in these areas contribute to human rights abuses against inmates.

International human rights standards stipulate that all inmates must be protected from sexual abuse at the hands of correctional staff. Amnesty International believes that the nature and extent of sexual abuse of female inmates by male staff in US jails and prisons, and the harm that sexual abuse causes warrants special focus on the issue. Legislation, regulations, policies and practices must reflect a commitment to protect inmates against such abuse of power. The six key concerns arising from the survey relating to legislation on custodial sexual misconduct are:

- That an inmate could be held criminally liable for sexual contact with guards: Amnesty International fears that this would have the effect of making retaliation for complaints of custodial sexual misconduct lawful and sanctioned, and would lead to violations of the right to an effective remedy as well as the equal protection of the law.
- That all forms of sexual contact may not be covered by the statute: Amnesty International believes all sexual contact between inmates and correctional staff is inherently abusive and should be covered by the statute.
- That a statute may consider the consent of an inmate to sexual acts a mitigating factor: Amnesty International believes that sexual relations between staff and inmates are inherently abusive because as agents of the state, the guards are abusing the considerable power of their role. Thus the focus is on the guards’ professional misconduct not the consent of the inmate. Statutes should bar sexual contact between staff and inmates and leave no room for exceptions.
- That state laws fail to cover all staff (including contractors and volunteers): Amnesty International fears this would mean that those not covered by the statute may commit sexual misconduct without facing criminal charges.
- That laws may not cover all locations where an inmate could be abused: Amnesty International fears this could mean that a custodial sexual violation could be exempt from criminal court proceedings because of where it took place - in a local jail, for example.

- That the level of the penalty meet the nature of the harm: Amnesty International believes that cases meeting the state standards of criminal first and second degree assaults require a felony punishment, and those that fit a degree of little or no coercion merit misdemeanor level punishments. In cases of actions not meeting standards of criminal prosecution, appropriate actions, including administrative penalties, should be authorized.

Amnesty International is also concerned that authorities do not always implement policies and procedures to ensure changes on practical levels. Effective policies and procedures for reporting and investigating allegations of misconduct must be introduced, along with educational programs on custodial sexual misconduct for staff and inmates.

International standards restrict the use of restraints to situations where they are strictly necessary to prevent escape or to prevent prisoners from injuring themselves or others or from damaging property. International standards further provide that chains and irons shall not be used as restraints. In *‘Not part of my sentence,’* Amnesty International reported that restraints are routinely used on pregnant women in transport and during medical care, although this is not essential to prevent escape or protect people and property. Legislation, regulation, policies and practices must reflect a commitment to protect inmates against such abuse:

- Amnesty International considers the routine use of restraints on pregnant women, particularly on women in labor, a cruel and unusual practice that rarely can be justified in terms of security concerns.
- Amnesty International is concerned that the shackling of women in labor endangers the woman and her unborn child, and also constitutes a violation of international standards.

A full discussion of Amnesty International’s position on these issues as well as a thorough presentation of the methodology of the report can be found under Scope and Methodology.

The focus on the specific issues raised in this report should not obscure the need for further investigation and policies to protect inmates from other types of abuse or cruel, inhumane and degrading treatment. Medical or mental health neglect, the over-reliance on solitary confinement and abuse of stun technology are among other issues that merit attention and immediate action. Nor should the focus on women downplay the need for policies and programs to protect male inmates from custodial sexual misconduct and the use of excessive restraints, or to help them maintain family ties and obtain parenting skills.

Amnesty International hopes this survey will contribute to activism around promoting and protecting the rights of women in prison. Amnesty International understands that this effort is part of a larger effort with regard to the criminal justice system in the US. It is not enough to improve the prison system; a human rights approach also demands a review and criticism of unfair processes, driven to a large extent by racism and poverty, that result in the huge growth in incarcerated women and men.

The survey also demonstrates the need for more centralized data collection. This report is also intended to be a campaigning tool for individuals and organizations wishing to identify issues and areas to work on, nationwide or in specific states.

While this report mostly covers federal and state level, aligning regulations and practices at local levels with international standards is also of paramount importance. Amnesty International recommends that federal, state and local governments and authorities take immediate action to increase transparency and thus improve accountability. The organization appeals to correctional authorities to enhance their statistical and general data collection capabilities in order to facilitate appropriate monitoring and identification of issues, which at the moment are obscured by lack of adequate information.

Amnesty International further urges federal, state and local governments and authorities to take urgent action to ensure that laws, regulations, policies and practices for which they are responsible rigorously conform to international standards and respect the human rights of women deprived of their liberty.

To combat custodial sexual misconduct, Amnesty International recommends that authorities take the following measures:

- Incarcerated women should be guarded only by female officers. Male staff who provide professional services in female facilities should always be accompanied by female officers.
- Sexual abuse of all persons in custody should be expressly prohibited and immediate action taken against staff who sexually abuse inmates.
- Sexual abuse should be widely defined to include sexual assault and threatened sexual assault; sexual contact; and sexually explicit language and gestures.
- All staff and inmates should be informed that sexual abuse is prohibited and that
  - Inmates have a right to complain if they are abused.
  - Staff have a duty to report if they know that an inmate has been abused.
- All complaints must be investigated independently, promptly and thoroughly in line with best practice for the investigation of sexual assault.
- Victims of sexual abuse must be provided with appropriate care and redress.
- Inmates and staff who report abuse should be protected from retaliation by measures including:
  - Inmates and staff must be informed that they have a right to protection from retaliation;
  - As far as practicable, reports of abuse by inmates and staff should be treated in strict confidence;
  - Disciplinary and/or legal action as appropriate should be taken against any member of staff who seeks to deter inmates and staff from reporting abuse or who, in any manner, harasses or intimidates inmates or staff who report abuse.

Amnesty International recommends that State Legislatures develop laws to ban shackling of pregnant inmates, and that Departments of Corrections, prisons and jails adopt policies on the use of restraints in accordance with the following:

- Restraints should be used only when they are required as a precaution against escape or to prevent an inmate from injuring herself or other people or damaging property. In every case, due regard must be given to an inmate's individual history.
- Policies should prohibit the use of restraints on pregnant women when they are being transported and when they are in hospital awaiting birth, and after they have just given birth.

Amnesty International intends to develop recommendations for individual states with further details. This report is available on line at <http://www.amnestyusa.org> and will be updated as necessary.

# KEY FINDINGS

## CUSTODIAL SEXUAL MISCONDUCT

This survey covers all 50 states, DC and the Federal Bureau of Prisons

- **Two years ago, 14 states had no law prohibiting sexual relations between inmates and correctional staff. Six states still have no such law.**  
Alabama, Minnesota, Oregon, Utah, Vermont and Wisconsin.  
In Utah, a bill has passed both Houses and is waiting for the Governor's signature to be passed into law. Amnesty International welcomes this initiative, and urges the remaining five states to redouble efforts to pass similar legislation.
- **No states have statutes that meet all of Amnesty International's six recommendations to ensure full protection of all persons in custody from custodial sexual misconduct.**
  - **In four states, the statute allows for making the inmate criminally liable for engaging in sexual conduct.**  
Arizona, California, Delaware and Nevada.  
In California, the inmate may be penalized for engaging in oral sex only. In Arizona an inmate who is raped may be charged under this law. In Delaware and Nevada, the statute calls for punishment of the inmate if he or she is unable to prove rape.
  - **The statute in eight states and the US Bureau of Prisons does not penalize custodial sexual misconduct as a felony.**  
Arkansas, California, Iowa, Kentucky, Maryland, North Dakota, Tennessee and the US Bureau of Prisons. In these jurisdictions, the penalty is a misdemeanor.
  - **In 19 states, the statute does not cover all forms of sexual abuse.**  
The law may not cover threats or oral sex, among other things.  
Arkansas, Delaware, Florida, Idaho, Indiana, Iowa, Maine, Maryland, Mississippi, Missouri, Nevada, New Mexico, North Carolina, Ohio, Rhode Island, South Carolina, South Dakota, Texas and West Virginia.
  - **In three states, the statute would allow an officer to claim an inmate consented to the sexual act(s) to avoid prosecution.**  
Colorado, Missouri and Wyoming.

- **Only ten states have a statute that covers all staff and custodians (eg: vendors, medical or kitchen staff).**

Arizona, Arkansas, California, Indiana, Iowa, Kansas, Kentucky, Nevada, North Carolina and Oklahoma.

In all other states, DC and the US Bureau of Prisons, custodians who are not covered by the statute may commit sexual misconduct without facing criminal charges under this statute.

- **Twenty-one states have a statute that does not cover all correctional facilities and locations.**

Arkansas, Colorado, Delaware, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Dakota, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee and Virginia.

- **In 1999, a survey showed that all 45 responding states allow cross-gender pat down searches in practice. In six of these states, searches take place routinely.**

Connecticut, Kansas, Michigan, New Hampshire, New York, and Pennsylvania.

- **Florida, Michigan, South Dakota and the Federal Bureau of Prisons disallow cross-gender pat down searches today.**

# KEY FINDINGS

## PREGNANCY IN CUSTODY

A legislative survey has been conducted on the shackling of pregnant women in custody in all 50 states and the District of Columbia. Furthermore, a survey on Department of Corrections policies and practices has been carried out, by contacting all Departments; Washington DC and 39 state Departments of Corrections have responded at least partially. We received no response from: California, Maryland, Michigan, Montana, Nebraska, Nevada, New Hampshire, Utah, Vermont, Virginia, and West Virginia.

The key findings are:

- **Only one state, Illinois, has a law banning the shackling of pregnant women during transport to the hospital for the purpose of delivery and labor. In New York a bill has been introduced which would ban similar shackling if it is passed into law. No other states have such legislative initiatives at present.**
- **At least 18 state Departments of Corrections and Washington DC have a policy or practice that may allow women to be restrained during labor and/or delivery.**  
Alabama, Arizona, Arkansas, Connecticut, Idaho, Illinois, Indiana, Louisiana, Maine, Massachusetts, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina and Tennessee.
- **At least 33 state Departments of Corrections and Washington DC may require the restraint of pregnant women during transportation to the hospital.**  
Alabama, Arizona, Arkansas, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Massachusetts, Minnesota, Mississippi, Missouri, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Washington and Wisconsin.

### Labor/Delivery

**Of the 21 state Departments of Corrections and Washington DC that have a policy or practice which may allow women to be restrained during labor and/or delivery:**

- **Four state Departments of Corrections have written policies requiring that inmates be restrained during medical procedures and make no distinction for women in labor or delivery.**  
Connecticut, Louisiana, Minnesota and Oklahoma.  
In Louisiana women may be restrained with handcuffs and leg-irons. In Minnesota the policy states that inmates are to be restrained to the bed with at least one set of restraints at all times.

- **Ten state Departments of Corrections have policies or practices, which may require the restraint of women during labor and/or delivery.**  
Alabama, Idaho, Kentucky, Massachusetts, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina and Tennessee.
- **Three states have written policies allowing women to be restrained during labor, but not during delivery/active labor.**  
Arkansas, Illinois and Missouri.
- **Three states have no policy or practice protecting women from being restrained during transportation or during labor/ delivery.**  
Arizona, Indiana and Maine.
- **Fifteen state Departments of Corrections have policies or practices stipulating that no restraints are to be used on inmates during labor and birth.**  
Florida, Georgia, Hawaii, Iowa, Kansas, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, South Dakota, Texas, Washington, Wisconsin and Wyoming.

## **Transport**

**Of the 33 state Departments of Corrections and Washington DC that may require the restraint of pregnant women during transportation to the hospital:**

- **Eight state Departments of Corrections may use handcuffs, leg-irons and belly-chains.**  
Idaho, Kansas, Minnesota, Mississippi, North Carolina, Ohio, Oklahoma and Washington.
- **Five state Departments of Corrections may use handcuffs and leg-irons.**  
Connecticut, Alabama, Arkansas, Louisiana and Pennsylvania.
- **Ten state Departments of Corrections and DC may use handcuffs.**  
Arizona, Florida, Georgia, Hawaii, Illinois, Missouri, New Jersey, Rhode Island, South Dakota and Texas.
- **Nine state Departments of Corrections allow the use of restraints, but did not inform Amnesty International what types are used.**  
Indiana, Iowa, Massachusetts, New York, North Dakota, Oregon, South Carolina, Tennessee and Wisconsin.

**Table 1: Overview of State Laws on Custodial Sexual Misconduct**

STATE	Does The State's Custodial Sexual Misconduct Law Cover –					
	No Penalty to inmate?	All forms of Sexual Abuse?	Consent NOT a defense?	All Custodians	All Locations	Felony
Alabama	<i>Alabama does NOT have a law</i>					
Alaska	✓	✓	✓		✓	✓
Arizona		✓	✓	✓	✓	✓
Arkansas	✓		✓	✓		
California		✓	✓	✓	✓	
Colorado	✓	✓				✓
Connecticut	✓	✓	✓		✓	✓
Delaware			✓			✓
Florida	✓		✓			✓
Georgia	✓	✓			✓	✓
Hawaii	✓	✓	✓			✓
Idaho	✓		✓			✓
Illinois	✓	✓	✓		✓	✓
Indiana	✓		✓	✓	✓	✓
Iowa	✓		✓	✓	✓	
Kansas	✓	✓	✓	✓	✓	✓
Kentucky	✓	✓	✓	✓	✓	
Louisiana	✓	✓	✓			✓
Maine	✓		✓		✓	✓
Maryland	✓		✓			
Massachusetts	✓	✓	✓		✓	✓
Michigan	✓	✓	✓			✓
Minnesota	<i>Minnesota does NOT have a law</i>					
Mississippi	✓		✓		✓	✓
Missouri	✓					✓
Montana	✓	✓	✓			✓
Nebraska	✓	✓	✓			✓
Nevada			✓	✓	✓	✓
New Hampshire	✓	✓	✓			✓
New Jersey	✓	✓	✓		✓	✓
New Mexico	✓		✓			✓
New York	✓	✓	✓		✓	✓
North Carolina	✓		✓	✓	✓	✓
North Dakota	✓	✓	✓			
Ohio	✓		✓		✓	✓
Oklahoma	✓	✓	✓	✓	✓	✓
Oregon	<i>Oregon does NOT have a law</i>					
Pennsylvania	✓	✓	✓			✓
Rhode Island	✓		✓			✓
South Carolina	✓		✓			✓
South Dakota	✓		✓			✓
Tennessee	✓	✓	✓			
Texas	✓		✓		✓	✓
Utah	<i>Utah does NOT have a law</i>					
Vermont	<i>Vermont does NOT have a law</i>					
Virginia	✓	✓	✓			✓
Washington	✓	✓	✓		✓	✓
West Virginia	✓		✓		✓	✓
Wisconsin	<i>Wisconsin does NOT have a law</i>					
Wyoming	✓	✓			✓	✓
District of Columbia	✓	✓	✓		✓	✓
US Bur. of Prisons	✓	✓	✓		✓	

**Table 2: Responses to AIUSA from State AGs and DOCs**

<b>STATE</b>	<b>Attorney General Letter Responses</b>	<b>Department of Corrections Responses</b>
Alabama	<i>No law</i>	<b>Response received</b>
Alaska	<i>No response</i>	<i>Restricts all information</i>
Arizona	<i>No response</i>	<b>Response received</b>
Arkansas	<b>Response received</b>	<b>Response received</b>
California	<b>Response received</b>	<i>No response</i>
Colorado	<i>No response</i>	<i>Restricts all information</i>
Connecticut	<i>No response</i>	<b>Response received</b>
Delaware	<i>No response</i>	<i>Restricts all information</i>
Florida	<b>Response received</b>	<b>Response received</b>
Georgia	<i>No response</i>	<b>Response received</b>
Hawaii	<i>No response</i>	<b>Response received</b>
Idaho	<b>Response received</b>	<b>Response received</b>
Illinois	<b>No statistics</b>	<b>Response received</b>
Indiana	<i>No response</i>	<b>Response received</b>
Iowa	<i>No response</i>	<b>Response received</b>
Kansas	<i>No response</i>	<b>Response received</b>
Kentucky	<i>No response</i>	<i>Restricts all information</i>
Louisiana	<i>No response</i>	<b>Response received</b>
Maine	<b>No statistics</b>	<b>Response received</b>
Maryland	<i>No response</i>	<i>No response</i>
Massachusetts	<i>No response</i>	<b>Response received</b>
Michigan	<i>No statistics</i>	<i>No response</i>
Minnesota	<i>No law</i>	<b>Response received</b>
Mississippi	<i>No response</i>	<b>Response received</b>
Missouri	<i>No statistics</i>	<b>Response received</b>
Montana	<i>No response</i>	<i>No response</i>
Nebraska	<i>No response</i>	<i>No response</i>
Nevada	<i>No response</i>	<i>No response</i>
New Hampshire	<b>No statistics</b>	<i>No response</i>
New Jersey	<i>No response</i>	<b>Response received</b>
New Mexico	<i>No response</i>	<b>Response received</b>
New York	<i>No response</i>	<i>Restricts some information</i>
North Carolina	<b>No statistics</b>	<b>Response received</b>
North Dakota	<b>No statistics</b>	<b>Response received</b>
Ohio	<b>Response received</b>	<b>Response received</b>
Oklahoma	<b>No statistics</b>	<b>Response received</b>
Oregon	<i>No law</i>	<b>Response received</b>
Pennsylvania	<b>No statistics</b>	<b>Response received</b>
Rhode Island	<b>Response received</b>	<b>Response received</b>
South Carolina	<b>Response received</b>	<b>Response received</b>
South Dakota	<b>No statistics</b>	<b>Response received</b>
Tennessee	<i>No response</i>	<b>Response received</b>
Texas	<i>No response</i>	<b>Response received</b>
Utah	<i>No law</i>	<i>No response</i>
Vermont	<i>No law</i>	<i>No response</i>
Virginia	<i>No response</i>	<i>No response</i>
Washington	<i>No response from AG/ DOC responded</i>	<i>No response</i>
West Virginia	<b>No statistics</b>	<i>No response</i>
Wisconsin	<i>No law</i>	<b>Response received</b>
Wyoming	<i>No response</i>	<b>Response received</b>
District of Columbia	<i>Not contacted</i>	<b>Response received</b>
US Bur. of Prisons	<i>Not contacted</i>	<i>Not contacted</i>

# Scope and Methodology

This report brings together surveys and reports on different aspects of prison conditions and Department of Corrections' policies, procedures and practices. The intent is to present information, which while largely available to the public, is dispersed and often difficult to obtain for activists and others with an interest in the issues.

In the following, discussions on the scope and methodology applied to the writing of the report will be presented. Each heading corresponds to the content in the state pages. Under the general headings, overall discussions and Amnesty International's position and recommendations on the issues are presented. Hereafter, categories and data presented in the report are introduced, along with comments on the sources available to Amnesty International in the preparation of the report.

## I. Custodial Sexual Misconduct Survey

Under international law, rape of a prisoner by correctional staff is considered to be an act of torture.<sup>1</sup> Other forms of sexual abuse are clearly violations of the internationally recognized prohibition of cruel, inhuman or degrading treatment or punishment, which governments are called upon to interpret "so as to extend the widest possible protection against abuses, whether physical or mental."<sup>2</sup> Sexual abuse also violates other rights, including the right to be treated with respect for human dignity, the right to privacy, the right to liberty and security of the person, and the right to equal protection under the law, all enshrined in the International Covenant on Civil and Political Rights (ICCPR – which the US has ratified). Sexual abuse further violates rights, such as the right to the highest attainable standard of physical and mental health, which is part of the rights contained in the Universal Declaration of Human Rights (UDHR) and formally stated in the International Covenant on Economic, Social and Cultural Rights (ICESCR, which the US has signed but not ratified). Sexual abuse in custody is included within the protections of The Declaration on the Elimination of Violence against Women, which notes that women in detention are especially vulnerable to violence.<sup>3</sup>

Amnesty International's 1999 report "*Not part of my sentence*": *Violations of the Human Rights of Women in Custody*<sup>4</sup> highlighted the fact that sexual abuse at the hands of staff is one of the abuses faced by women in custody. It is a harsh reality faced by many

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<sup>1</sup> In a report to the United Nations Commission on Human Rights, then United States Special Rapporteur on Torture, Professor Kooijmans noted that "since it was clear that rape or other forms of sexual assault against women in detention were a particularly ignominious violation of the inherent dignity and the right to physical integrity of the human being, they accordingly constituted an act of torture." United Nations Committee on Human Rights, UN Doc E/CN.4/1992/SR.21, 21 February 1992, paragraph 35

<sup>2</sup> Explanatory footnote to Principle 6, "United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment"

<sup>3</sup> Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993)

<sup>4</sup> "Not part of my sentence": *Violations of the Human Rights of Women in Custody*, Amnesty International, AI Index AMR51/01/99, March 1999

women who are incarcerated in the USA, regardless of their sentence. Women are subjected to sexually offensive language; male staff touching their breasts and genitals when conducting searches; male staff watching while they are naked; and rape. A prisoner's race, language, sexual identity or other status may affect the likelihood of this abuse, and affect her ability to obtain remedies.

The focus of this report is the risk of being an incarcerated female. It is important to note that the legal regime to respond to sexual abuse should cover both male and female inmates. However this report focuses on examining legal and policy issues facing women inmates of all colors and identities. The report does contain incidents of custodial sexual misconduct where male inmates are the victims, since the custodial sexual misconduct legislation is not gender specific and should be vigorously enforced in all circumstances regardless of whether the victim is male or female.

Ms Radhika Coomaraswamy, the United Nations Special Rapporteur on violence against women, its causes and consequences, reported in 1999 that sexual misconduct (not limited to rape) by male guards against women inmates is widespread. She found a wide range of abusive sexual practices in the context of custody in the US.<sup>5</sup>

Amnesty International, the Special Rapporteur, as well as other non-governmental organizations and several correctional authorities, believe there should be attention on the whole continuum of sexual abuse. First, Amnesty International and other organizations are concerned that there are many abuses that, based on the facts, should be prosecuted as rape or (as appropriate) first-degree sexual assault. It is clear that neither the states nor the federal government have adequate investigations and prosecutions of these crimes of rape in custodial settings. Second, Amnesty International and other organizations are concerned with the wide range of coercive sexual practices between guards and prisoners that do not qualify under existing rape laws as rape, but must be investigated and punished as abuses of fundamental rights. These relations, whether apparently initiated by the inmates or not, are inherently abusive because of the gross difference in power between the parties. Engaging in such relations may be the primary way for inmates to gain access to essential aspects of dignity, such as tampons and extended child visits, or aspects of life that rise above prison survival as access to more food or cigarettes. These interactions are based on the control of such goods by the state, the guards as the direct distributors of the goods - many of which constitute rights - and the inability of inmates to negotiate in any other way. The legal responsibility for such coercive relations thus lies with the state and its agents, the guards. By definition sexual activity between guards and inmates is a violation of the guard's custodial duties. Therefore, as noted in the sections below, neither the state's or the guard's response can include arguing that the inmate "consented," as consent is irrelevant to the elements of the crime committed by the guard or staff.

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<sup>5</sup> The Special Rapporteur on violence against women, its causes and consequences visited Washington DC, New York, Connecticut, New Jersey, Georgia, California, Michigan and Minnesota from 31 May to 18 June 1998 and studied state and federal prisons in each state. "Report of the mission to the United States of America on the issue of violence against women in state and federal prisons," the Fifty-fifth session, Item 12 (a) of the provisional agenda, E/CN.4/1999/68/Add.2, January 4, 1999

## *Statutes*

When Amnesty International published ‘*Not part of my sentence*’ in 1999, 13 states had no laws specifically prohibiting sexual relations between inmates and staff of jails and prisons. Amnesty International has worked with other human rights organizations and legislators to change this situation, and today, only six states still have no such law.<sup>6</sup> Both the definition of sexual misconduct and the penalty imposed for violations vary from state to state. In some states the new law, while ostensibly intended to protect the rights of inmates, may in fact violate them. Amnesty strongly supports the introduction of effective and rights-promoting forms of legislation in the states that lack this protection, and the revising or strengthening of those existing laws that do not provide sufficient protection.

It is important to note that in all cases, existing state rape statutes are assumed to cover inmates— meaning that a case will be prosecuted as rape based on the evidence, regardless of who the victim (inmate) and alleged offender (guard) may be. In states where consent is a defense to rape, failure to prove rape by a state officer or guard then requires the prosecution of the lesser offense of custodial sexual misconduct. The fact that the victim in such cases is incarcerated should automatically trigger at a minimum a custodial sexual misconduct investigation and prosecution.

The survey in this section focuses on the custodial sexual misconduct statute alone. The section lists the states and their laws, provides a description of the protection the law offers, including the penalties for violators convicted under the law - and highlights those laws or aspects of laws that are harmful to the rights of inmates, with particular attention to women inmates. The survey for this section was conducted by compiling information on the statutes in each state by attorneys affiliated with Amnesty International.

Does the statute impose a criminal penalty on the inmate?
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Statutes must be evaluated for whether or not they penalize the inmate for sexual activity. Amnesty International believes that although states may regulate sexual activity within prisons to the extent required by security and in conformity with fundamental rights of privacy and bodily integrity as protected by international human rights standards, inmates should never be penalized for coming forward and reporting sexual abuse, which would be the practical implication of statutes that allow for penalizing inmates for sex with guards. Victims of sexual assault will be intimidated not to report the abuse to authorities, regardless of the formality of the complaint, and are threatened with prosecution if they continue with their claim. As reported in “*Not part of my sentence*,” many inmates who are subjected to abuse are reluctant to come forward because they fear their claims are difficult to prove, given the circumstances in which the abuse has taken place. Another very real fear is that they will be retaliated against by the accused guard or his colleagues. Amnesty International believes that a statute that makes retaliation for complaints of sexual misconduct by guards lawful and sanctioned is a violation of the rights to an effective remedy for violations as well as the equal protection of the law.

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<sup>6</sup>These states are: Alabama, Minnesota, Oregon, Vermont, Wisconsin, and Utah, which has a bill pending signature into law.

Does the statute cover all relevant forms of sexual abuse

Some statutes limit the forms of sexual abuse (not amounting to rape) for which correctional staff can be prosecuted to those situations when penetration is involved. Amnesty International believes that all sexual contact between inmates and correctional staff is inherently abusive and should be covered by the statute. Custodial sexual misconduct under the statute should be widely defined to include coercive sexual practices (in cases not amounting to rape), or assault and threatened sexual assault; and a wide range of sexual contacts (as between the staff and inmate, or including coerced or traded sexual activities between inmates at the behest of staff). Sexually explicit language and gestures also constitute custodial sexual misconduct, and should be dealt with using appropriate administrative disciplinary actions.

Does the law allow an officer to claim that an inmate consented to the sexual act(s) to avoid prosecution?

In some states, the custodial sexual misconduct statutes allow the correctional staff to defend themselves by stating that the sexual contact in question was consensual. As mentioned above, Amnesty International believes that sexual relations between staff and inmates are inherently abusive because of the considerable difference in power between the parties. Statutes should bar sexual contact between staff and inmates and leave no room for exceptions.

Does the statute cover all custodians and staff in contact with inmates?

Correctional officers are not the only staff in an unequal position of power who come into contact with inmates. All staff members who deal with inmates are in a position to abuse the power differential with an inmate. Amnesty International believes that it is of great importance that the statutes provide for the widest possible definition of staff – including vendors, kitchen staff, medical staff and parole officers.

Does the statute cover all places where an inmate might be abused?

It is essential that state statutes cover all places of detention. The number of jurisdictions and the many different types of settings in which incarcerated persons come into contact with correctional staff mean that the statute must explicitly cover all places of detention – from prisons to jails to persons under custodial control of the state outside of prison.<sup>7</sup> Amnesty International is concerned that the lack of such complete coverage could result in impunity for staff who are employed in facilities beyond the reach of the statute.

Is the penalty a felony?

Some states have a graduated approach, defining certain types of sexual misconduct as either a felony or a misdemeanor depending on the nature and severity of the violation.

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<sup>7</sup> Amnesty International is concerned that many incidences of coercive sex by officers against persons not yet charged or in conditions of formal detention are currently irremediable under CSM statutes as drafted. In the case of *Mejia v. Peru* [Case 10.970, Report No. 5/96, Inter-Am. C.H.R., OEA/Ser.L/V/II.91 Doc. 7 at 157 (1996)] the Inter-American court found that rape by military police in a woman's home was sufficiently "in custody" to justify the application of the torture prohibitions of the American Convention on Human Rights which the US has signed but not ratified. Likewise the views of the Human Rights Committee, which oversees the implementation of the ICCPR have made it clear that custodial violations such as torture and CID may occur outside of formal incarceration, as well as in detention for other purposes such as of asylum seekers or of mental health patients.

Other states define all such conduct as a felony, while still others treat all such conduct as a misdemeanor. This category lists the type of penalty imposed in each state, highlighting the discrepancies between jurisdictions. Amnesty International is concerned that the level of the penalty meet the nature of the harm: those cases meeting the standards of criminal first and second degree assaults (rape, other forms of torture) need a felony punishment, those that fit a degree of little or no coercion merit misdemeanor level punishments. In no case should states use the custodial sexual misconduct as a catch all prosecution to excuse them from conducting the necessary inquiry to determine the true nature of the abuse, including rape prosecutions.

### *Allegations and Incidents*

While laws and policies help create an atmosphere where such conduct is not acceptable, research indicates that the problem of custodial sexual misconduct persists even in states that have passed such legislation. Amnesty International regularly receives complaints from female prisoners across the US and has issued several “urgent actions” calling for investigation of and initiatives to halt the abuse occurring at specific locations.

This concern is corroborated by several other organizations – both governmental and non-governmental. The United States General Accounting Office published a report in 1999 entitled “Sexual Misconduct by Correctional Staff,” which admits that the problem can and does occur.<sup>8</sup> Amnesty International, the United Nations Committee Against Torture,<sup>9</sup> Human Rights Watch<sup>10</sup> and other organizations working with such issues have found that sexual custodial misconduct is widespread.

Amnesty International in no way claims to have covered all the allegations or incidents of sexual custodial misconduct nationwide in this section. Many incidents are never reported to correctional authorities because incarcerated women fear that they lack credibility in the eyes of authorities and/or they fear retaliation for coming forward. Only a small number of these cases make it into the news, fewer become indictments that are investigated further, and even fewer lead to prosecutions or terminations. In the “*Initial Report of the United States of America to the United Nations Committee Against Torture*” the United States Department of State admits that the absence of reliable national statistics precludes an accurate statistical description of the frequency with which incidents of abuse and brutality by law enforcement takes place.<sup>11</sup> While collecting information for this report, Amnesty International found this problem to be prevalent on state level, too. This section seeks to give an indication of the geographic concentration and scope of the problem, despite the difficulty posed by such an endeavor. We have

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<sup>8</sup> US General Accounting Office, “Women in Prison – Sexual Misconduct by Correctional Staff,” June 1999. The report focuses on four correctional systems: the Federal Bureau of Prisons, the California Department of Corrections, the Texas Department of Criminal Justice and the District of Columbia Department of Corrections. The first three are the nation’s largest correctional systems for female offenders.

<sup>9</sup> The Committee notes concern over the treatment of female detainees and prisoners – sexual assault by law enforcement officers and prison personnel as well as generally humiliating and degrading conditions. United Nations High Commissioner for Human Rights, “Conclusions and Recommendations of the Committee against Torture: United States of America,” 05/15/2000. CAT/C/24/6 (Concluding Observations/Comments)

<sup>10</sup> Human Rights Watch, “All Too Familiar – Sexual Abuse of Women in United States Prisons,” Human Rights Watch, New York, 1996, pg 18

<sup>11</sup> US Department of State, “Initial Report of the USA to the UN Committee Against Torture,” Part I, page 16

based our information on several different sources, including State Attorney General's Offices, news sources, other organizations, and court cases that have addressed the issues. These may use different benchmarks, making direct comparisons between states and sources difficult, as will be discussed in the following, under each heading. The inclusion of a case does not imply that Amnesty International has found it to have particular merit, but merely reflects cases that have been reported in one source or another.

Allegations and incidents are reported from both state and local jurisdictions. Custodial sexual misconduct legislation should cover all custodial settings, as discussed above, which is why all incidents, regardless of where they have taken place, are of interest in this report. The report's survey on policies and practices is limited to the level of state Department of Corrections as a practical matter, as the US has a fragmented and localized custodial system where the state and local jails and police department – and anywhere a parolee may reside – making a full coverage a huge undertaking. Amnesty International plans on further surveys on local levels.

#### Indictments/Convictions (answer to AI letter requesting the information)

In June 2000, Amnesty International contacted Attorney Generals in states that have laws forbidding sexual interaction between custodial staff and inmates, inquiring about the number of prosecutions and subsequent convictions under the statutes in question. The result of this survey is presented under this category. The survey does not reflect the number of prosecutions under rape statutes. As mentioned above, rape and torture prosecutions should go forward in cases in which the evidence calls for such measures – but in this category we focus on custodial sexual misconduct statutes.

#### Incidents reported in select media since 10/98

To gain an indication of the scope of the problem, Amnesty International conducted a news search via the internet on allegations, prosecutions, disciplinary actions and convictions on sexual custodial misconduct. These numbers may underestimate the scope of the problem, since all such cases will be not be reported in the news, particularly for allegations that are not substantiated. We searched for incidents that took place between October 1998, when Amnesty International launched its US campaign, "Rights for All, and January 2001.

#### Other reported incidents

Under this heading, Amnesty International included information about cases and allegations mentioned in official reports by government agencies, United Nations' investigators, and other non-governmental organizations as well as incidents that have surfaced in court cases. This information also gives an indication of the size of the problem, albeit often focusing on specific states rather than nationally. Amnesty International has relied entirely upon the secondary source material presented here without further investigation of the cases.

## *Policies, practices and procedures of guarding specific to women inmates*

As Amnesty International pointed out in its 2000 report to the Committee Against Torture, allegations of sexual abuse of women prisoners in the United States nearly always involve male staff who are allowed unsupervised access to female jail and prison inmates in many jurisdictions.<sup>12</sup>

Employing men to guard women is inconsistent with international standards. Rule 53 of the Standard Minimum Rules for the Treatment of Prisoners provides that no male member of staff shall enter part of the institution set aside for women unless accompanied by a woman officer and that “women prisoners shall be attended and supervised only by women officers.” The rules provide that male staff such as doctors and teachers may provide professional services in female facilities but should always be accompanied by female officers.<sup>13</sup> Likewise, the Special Rapporteur on violence against women, its causes and consequences, expressed concern over the practice of allowing male officers to guard women.

Amnesty International has called on United States authorities to ensure that female prisoners are directly supervised only by female staff as required under international standards. Amnesty International believes that certain practices, which are allowed in the United States, are inherently cruel and degrading or are open to abuse, such as allowing male staff to conduct pat down searches of clothed women for contraband, and allowing male staff to patrol areas where women may be viewed in their cells while dressing or washing or when taking showers.<sup>14</sup>

Despite the concerns and complaints from Amnesty International, the United Nations (both the Special Rapporteur on violence against women, its causes and consequences<sup>15</sup> and the United Nations Human Rights Committee<sup>16</sup>), and the diligent work of a large number of domestic non-governmental organizations working for the rights of women in prison, the presence of male officers in female prisons is still condoned and widespread. Men form a very large proportion of the staff in prisons and jails in which women are incarcerated. A 1997 survey of prisons in 40 states found that, on average 41, percent of the correctional officers working with female inmates are men.<sup>17</sup>

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<sup>12</sup> Amnesty International, “United States of America. A Briefing for the UN Committee Against Torture,” May 2000

<sup>13</sup> Rules 53 (2) and 53 (3), Standard Minimum Rules for the Treatment of Prisoners

<sup>14</sup> Amnesty International, “United States of America. A Briefing for the UN Committee Against Torture,” May 2000, Page 18

<sup>15</sup> The UN Special Rapporteur on Violence Against Women, its causes and consequences, Ms. Radhika Coomaraswamy, recommended that certain posts in women’s prisons – such as those responsible for guarding housing units and body searches should be restricted to female staff, 1999 report on women in prison in the USA. “Report of the mission to the United States of America on the issue of violence against women in state and federal prisons,” the Fifty-fifth session, Item 12 (a) of the provisional agenda, E/CN.4/1999/68/Add.2, January 4, 1999

<sup>16</sup> Official Records of the General Assembly, Fiftieth Session, Supplement No. 40 (A/50/40), vol.I, paras 285, 299

<sup>17</sup> Corrections Compendium, “Female Offenders: As Their Numbers Grow, So Does The Need for Gender-Specific Programming,” March 1998. The following states did not provide data on the male-female composition of their prison staff: Alaska, Arizona, Georgia, Illinois, Iowa, Maryland, Michigan, New York, North Dakota, South Dakota; the Federal Bureau of Prisons also did not respond. Another survey of prisons as at 31 December 1997 reported that in state-operated facilities, female staff filled on average 55% of custody positions, ranging from 18-97%. In none of the institutions is there a custody staff made up entirely of women: US Department of Justice National Institute of

The United States authorities have argued that anti-discriminatory employment laws in the US mean that they cannot refuse to employ male guards in women's prisons (or female guards in male prisons). The Supreme Court has denied the claim that women prisoners should be supervised only by women officers, under Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity statute.

However, international standards provide that measures designed solely to protect the rights and special status of women are not considered discriminatory.<sup>18</sup> Indeed, some jurisdictions in the United States have placed certain restrictions on male duties in women's prisons (often in response to abuse reports) and United States courts have upheld such restrictions as lawful. For example, in January 2000, the county executive authorities in Westchester County, NY, announced that male correctional officers had been banned from the living quarters at the Westchester County Jail after four guards were charged with sex crimes, including rape, sodomy, sexual abuse and other misconduct.<sup>19</sup>

Given that the use of male guards in women's correctional facilities is prevalent, the policies regulating their conduct and procedures to protect the female inmates and their right to complain about abuse are essential. This section presents relevant policies, procedures and practices. Amnesty International is aware that removal of male guards will not ensure that inmates are not abused, sexually or otherwise. Women guards may also abuse their power to intimidate women inmates using intrusive pat down searches, and other sexually-based power violations. Similarly, ending sexual abuse will not stop other potential forms of torture or cruel, inhumane and degrading treatment that prisoners often face.

The information under this heading is largely based upon reports and surveys from the National Institution of Corrections, published in 1996, 1999 and 2000.<sup>20</sup> We have supplemented the information with updates as they have been available to us: for example, we cited recent out-of-court settlements that have led to changes in policies and procedures; included additional information in other reports by NGO's, the United Nations, etc; and finally sent the relevant pages to individual Department of Corrections, asking for comments and updates.

The categories are the following:

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Corrections Information Center, "Current Issues in the Operation of Women's Prisons," National Institute of Corrections, Colorado, September 1998

<sup>18</sup> Principle 5(2), Body of Principles for the Protection of All Persons Under Any Form of Detention"

<sup>19</sup> Amnesty International, "United States of America. A Briefing for the UN Committee Against Torture," May 2000, Page 18

<sup>20</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence," National Institute of Corrections, Colorado, May 2000; National Institute of Corrections, Prisons Division and Information Center, "Cross-sex Pat Search Practices: Findings From NIC Telephone Research," Colorado, January 1999; US Department of Justice National Institute of Corrections Information Center, "Current Issues in the Operation of Women's Prisons," National Institute of Corrections, Colorado, September 1998; US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996

Is the current Department of Corrections policy on custodial sexual misconduct language explicit as to the acts prohibited?

Amnesty International holds that sexual abuse of inmates by staff should be expressly prohibited.

The National Institute of Corrections suggests that to ensure a clear stance on staff sexual misconduct, Departments of Corrections should have policies that clearly define, prohibit and specify penalties for the full range of sexual misconduct involving staff and inmates. Defining a no-tolerance stance towards staff sexual misconduct in a department's own administrative policies is an important signal and administrative tool.<sup>21</sup>

The introduction of such comprehensive and specific policies is relatively recent in many state Department of Corrections. Explicit language is important, as the Special Rapporteur on violence against women, its causes and consequences noted in her report on women in prison in the United States. If this is not the case, euphemisms may cloud the actual intent of the policy and may ultimately prevent adequate disciplinary action from being taken.<sup>22</sup> In some states, the policies either still do not exist or are indirect or too generalized.

This category notes whether a policy explicitly forbidding custodial sexual misconduct exists in each Department of Corrections. When we have more information on the type of policy currently regulating the area, we include this information.

Allows cross-gender pat-down search in practice

Pat-down searches or pat frisks mean the searching of women who are dressed. Thorough pat searches require some contact with the genital area. In the state of Washington, a court decided that such searches of women by men amounted to cruel and unusual punishment, in violation of the US Constitution.<sup>23</sup> The United Nations Human Rights Committee has stated that to ensure the protection of the dignity of a person who is being searched by a state official, a body search should be conducted only by someone of the same sex.<sup>24</sup>

Amnesty International is concerned that such an intrusive procedure may be traumatizing for women in custody, in particular for the many women who have been subjected to prior sexual abuse. Amnesty International recommends that such searches be performed only by guards of the same sex. As mentioned above, this in and of itself does not

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<sup>21</sup> US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Agency Response, and Prevention," National Institute of Corrections, Colorado, November 1996, and US Department of Justice National Institute of Corrections Information Center, "Sexual Misconduct in Prisons: Law, Remedies, and Incidence," National Institute of Corrections, Colorado, May 2000

<sup>22</sup> Special Rapporteur on violence against women, its causes and consequences Ms. Radhika Coomaraswamy, "Report of the mission to the United States of America on the issue of violence against women in state and federal prisons," Commission on Human Rights, 55<sup>th</sup> Session, E/CN.4/1999/68/Add.2, January 4 1999, part IV, page 10 and part V page 16-17

<sup>23</sup> *Jordan v Gardner*, 986 F.2d (9<sup>th</sup> Cir., 1993)

<sup>24</sup> General Comment 16 to Article 17 of the ICCPR, "Compilation of General Comment and General Recommendations Adopted by Human Rights Treaty Bodies," UN Document HRI/GEN/Rev.3, 15 August 1997

guarantee that a guard will not abuse his or her position of power. All guards, male and female, regardless of the sex of the inmate they are searching, should be monitored and their behavior subject to review.

This section notes the findings of a National Institute of Corrections survey, which asks each Department of Corrections when pat-down searches are performed in practice. It does not include further information on pat-down procedures, since Amnesty International has not found that such information is available.

#### Restrictions on the duties of male guards

This section presents information on whether there are policies to protect female inmates by restricting male guards to certain duties and areas of the prisons.

Amnesty International recommended in *“Not part of my sentence”* that male staff who provide professional services in female facilities should always be accompanied by female officers. Amnesty International is concerned that allowing male guards to have certain duties, such as working night shifts unaccompanied by female officers, may lead to situations that lend themselves to abuse and misconduct.

#### Staff training on sexual misconduct

Amnesty International noted in *“Not part of my sentence”* that all staff - male and female - should be informed that sexual abuse is prohibited, that inmates have a right to complain if they are abused, and that staff have a duty to report knowledge of an inmate who has been abused.

The National Institute of Corrections also suggests that the elements of a comprehensive approach to preventing staff sexual misconduct include a staff training program that presents clear information on applicable laws, agency policies, and penalties for violating both the policy and applicable state laws.<sup>25</sup>

Amnesty International believes that other key modalities of whether training is effective include: level of senior staff participation; inclusion of training goals in performance reviews; sensitivity training on issues relating to women who have suffered sexual abuse; and training on identifying and acting upon situations of suspected abuse. Amnesty International has not found such detailed information to be readily available in surveys or reports.

This section presents the results of a National Institute of Corrections survey from 1996. This includes whether such training was in place before 1996, some details on the kind of training offered and to whom, and an update from a new report in 2000, which notes whether staff training has been developed since 1996. In some cases the survey presents

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<sup>25</sup> US Department of Justice National Institute of Corrections Information Center, “Sexual Misconduct in Prisons: Law, Agency Response, and Prevention,” National Institute of Corrections, Colorado, November 1996. and US Department of Justice National Institute of Corrections Information Center, “Sexual Misconduct in Prisons: Law, Remedies, and Incidence,” National Institute of Corrections, Colorado, May 2000

further details, which we have noted. A few states also have such information publicly available on line – in these cases we have included the information available to us.

#### Special procedures for investigating allegations of sexual misconduct

Amnesty International appeals to all Departments of Corrections to ensure that allegations of sexual abuse are treated with appropriate sensitivity and thoroughness. Such complaints are often very difficult to make, both for personal reasons, as is the case with sexual assault victims outside of prisons, but also for the reasons outlined above: fear of retaliation, fear of segregation, and difficulty of proving an allegation.

Amnesty International welcomes the initiatives of some states that are aimed at handling complaints about sexual abuse. Amnesty International supports the development of independent review mechanisms and ways for inmates to report abuse, which allow for anonymity and protection from retaliation.

This section lists Departments of Corrections that have introduced specific procedures for handling and investigating allegations of staff sexual misconduct before 1996 and those that have since updated their procedures. We have included further details on the procedures when possible, and note how inmates can report on sexual abuse in each state.

#### Informing inmates of agency policies on sexual misconduct

Amnesty International recommended in “*Not part of my sentence*” that all inmates should be informed that sexual abuse is prohibited and that they have a right to complain if they are abused.

The National Institute of Corrections suggests that the elements of a comprehensive approach to preventing staff sexual misconduct include the means for providing inmates with basic information about sexual misconduct, applicable laws, agency policies and penalties.<sup>26</sup>

This report presents information on procedures for informing inmates about agency policies on sexual misconduct, and whether they have been updated since 1996, as many of the earlier procedures lacked proper dissemination of the information to inmates.

### *Proposed Legislation 2000-01*

The final section is a survey of proposed bills in the states, the District of Columbia, and on the national level. We have included information on bill sponsors, status of the bill and a short description of the legislation.

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<sup>26</sup> US Department of Justice National Institute of Corrections Information Center, “Sexual Misconduct in Prisons: Law, Agency Response, and Prevention,” National Institute of Corrections, Colorado, November 1996, and US Department of Justice National Institute of Corrections Information Center, “Sexual Misconduct in Prisons: Law, Remedies, and Incidence,” National Institute of Corrections, Colorado, May 2000

## II. Parenting and Pregnancy in Custody

In 1990 the Eighth United Nations Congress recommended that the imprisonment of pregnant women or mothers with infants or small children should be restricted and a special effort made to avoid the extended use of imprisonment as a sanction for these categories.<sup>27</sup>

Nonetheless, as the number of women in prison has risen over the last decade, so has the number of women who are pregnant or have small children. More than 80 percent of incarcerated women have at least one child.<sup>28</sup> A high percentage of these children are under 18. In *“Not part of my sentence,”* Amnesty International reported that more than 80,000 women in prisons and jails are parents, and approximately 200,000 children under 18 have a mother who is incarcerated.<sup>29</sup> In 1997-1998 alone, more than 2200 pregnant women were imprisoned, and more than 1,300 babies were born in prisons.<sup>30</sup>

### *Shackling of pregnant women*

Amnesty International reported in *“Not part of my sentence”* that jails and prisons around the US commonly use restraints on incarcerated women when the women are being transported to and kept in hospital. This is in direct violation of international standards, such as the United Nations Standard Minimum Rules for the Treatment of Prisoners:

“Chains or irons shall not be used as restraints. Other instruments of restraints shall not be used except in the following circumstances:

- (a) as a precaution against escape during a transfer;
- (b) on medical grounds by direction of the medical officer;
- (c) by order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property.

(Instruments of restraint) must not be applied for any longer time than is strictly necessary.”<sup>31</sup>

Reports reviewed by Amnesty International in connection with researching *“Not part of my sentence”* indicated that jails and prisons use restraints on women as a matter of course, regardless of whether a woman has a history of violence (which only a minority have), and regardless of whether she has ever absconded or attempted to escape (which few women have).<sup>32</sup> In May 2000, Amnesty International reported to the United Nations

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<sup>27</sup> Report of the 8<sup>th</sup> UN Congress on the prevention of Crime and Treatment of Offenders, UN Doc, A/Conf.144/28, rev 1(91.IV.2), Res 1(a), 5(c), 1990

<sup>28</sup> Human Rights Watch, *All Too Familiar – Sexual Abuse of Women in United States Prisons*, Human Rights Watch, New York, 1996, pg 18

<sup>29</sup> There is no national data. This estimate is based on various surveys of the number of women who have children aged under 18 and how many children they have. Gabriel K, Johnston D, eds, *Children of Incarcerated Parents*, New York: Lexington Books, 1995

<sup>30</sup> *Inmate Health Care, Part II, “Corrections Compendium”* 1998; 23(1) The number is based on information provided by 35 state correctional systems and the Federal Bureau of Prisons. Remaining states did not respond or did not have information on pregnancies and birth.

<sup>31</sup> Rule 33, United Nations Standard Minimum Rules for the Treatment of Prisoners

<sup>32</sup> Amnesty International, *“Not part of my sentence” : Violations of the Human Rights of Women in Custody,* AI Index: AMR 51/01/99, Amnesty International, March 1999

Committee Against Torture that it remains common for restraints to be used on pregnant women prisoners when they are transported to and kept at the hospital, regardless of their security status.<sup>33</sup>

Amnesty International is concerned that the shackling of women who are about to give birth endangers the women and their children, as described by physician Dr. Patricia Garcia:

“Women in labor need to be mobile so that they can assume various positions as needed and so they can quickly be moved to an operating room. Having the woman in shackles compromises the ability to manipulate her legs into the proper position for necessary treatment. The mother and baby’s health could be compromised if there were complications during delivery, such as hemorrhage or decrease in fetal heart tones. If there were a need for a C-section (caesarian delivery), the mother needs to be moved to an operating room immediately and a delay of even five minutes could result in permanent brain damage for the baby. The use of restraints creates a hazardous situation for the mother and the baby, compromises the mother’s ability post-partum to care for her baby, and keeps her from being able to breast feed.”<sup>34</sup>

This section will present the findings of a survey conducted over the period between March 2000 and March 2001. Amnesty International has conducted a search for legislative statutes covering the shackling and restraints on pregnant women, and has collected information on policies and practices for shackling pregnant inmates during transportation, while giving birth and after delivery from State Department of Corrections. The categories are the following:

### *Pregnancy: Statutes and Administrative procedures*

#### Legislation banning shackling in the third trimester or during labor

Only one state (Illinois) has an actual law in place that addresses shackling and restraints applied on pregnant women. In this session there is a bill before the New York State Senate and House of Representatives, which would ensure the protection of pregnant women in custody against such dangerous and abusive practices. Amnesty International considers such legislation a powerful and visible signal to correctional facilities, and urges legislative bodies across the nation to introduce such measures.

#### Administrative rules concerning pregnancy and prenatal care

In the absence of legislation to protect the rights of pregnant women, administrative procedures from state legislatures to guide the Department of Corrections in their treatment of this part of the prison population may be of great importance.

<sup>33</sup> Amnesty International, “United States of America. A Briefing for the UN Committee Against Torture,” May 2000, Page 18

<sup>34</sup> Dr Garcia is an obstetrician and gynecologist at North Western University’s Prentice Women’s Hospital; her statement was provided to Amnesty International by Chicago Legal Aid to Incarcerated Mothers, December 1998, and was printed in “Not Part of My Sentence: Violations of the Human Rights of Women in Custody,” AI Index: AMR

Amnesty International has conducted an on-line search using Lexis and state internet-based search engines on administrative codes and regulations. We have included information on what the states consider to be minimum requirements for treating pregnant inmates when we have been able to ascertain this information.

Amnesty International believes that a state's express considerations of what would constitute humane and proper treatment of pregnant inmates is essential to ensure their well being in prisons and jails.

### *Pregnancy: Policies, Procedures and Practices*

Amnesty International believes that Departments of Corrections must develop specific pregnant inmate policies, which are sensitive to their unique health issues, and will help ensure that pregnant women are not routinely restrained in the same manner as other prisoners, which may pose undue health risks for the mother and fetus or infant. Amnesty International recommends that jails and prisons adopt policies on the use of restraints which prohibit their use on pregnant women when they are being transported and when they are in the hospital awaiting delivery. Policies should also prohibit their use on women who have just given birth.

Amnesty International has contacted all Departments of Corrections over a period of time since June 2000 and has requested information on policies and procedures regarding this issue. The information presented in this section consists of written policies, letters or memos detailing procedures or, when no written communication was available, phone conversations with officials from the Department of Corrections of the individual women's prisons. We have furthermore conducted an extensive search for the codes and policies from the states when we were unable to obtain a response. We have also included information from news sources and other reports on the subject.

Use of restraints in third trimester
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Restraints during transport
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Restraints during labor
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As mentioned above, Amnesty International considers the routine use of restraints on pregnant women, and particularly on women in labor, a cruel, inhuman and degrading practice that seldom has any justification in terms of security concerns. This report lists the policies concerning these issues in each state, and notes whether no policy regulates the restraining of pregnant women, thereby leaving the question up to the individual correctional officers.

Presence of guard during labor
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Amnesty International believes that there is no sound reason for authorities to routinely shackle women in labor or who have just given birth, particularly as most are already under armed guard. The use of restraints in such circumstances is cruel and degrading treatment that violates international standards, which state that restraints should be imposed only when "strictly necessary." This section notes whether guards are present, and whether there are any policies as to what gender they are.

## Pregnancy – Reported Incidents of Shackling

In instances where Amnesty International has received reports on shackling of inmates, that were not reported in “*Not part of my sentence*,” they are included under this heading. It is important to note that the scarcity of reported cases of such abuse may reflect the mindset of the women who are being shackled while giving birth rather than the incidence of such cases. Women in custody are used to being routinely shackled and degraded and often do not make complaints about practices, which they see as inherent factors of incarceration.

## *Parenting in Custody*

Projects that facilitate the maintenance of ties between parents who are incarcerated and their families are consistent with the international standards that Amnesty International urges US federal and state governments, and their authorities, to respect.<sup>35</sup> This report focuses on women, but Amnesty International also believes that family reunification programs should be available for men who are parents.

Studies have highlighted the importance of maintaining contact between parents and their offspring while parents are incarcerated. In 1993, the US House of Representatives published findings of research on the harm of separation and the benefits of maintaining family ties. The findings indicated that the separation of children from their primary caretaker-parents may cause harm to the children’s psychological well-being and hinder their growth and development. For parents, maintaining strong family ties during imprisonment decreases recidivism and provides a powerful incentive to participate in and successfully benefit from rehabilitative programs.<sup>36</sup>

The information on special visitation rights and parenting programs for women is mainly taken from a survey by the National Institution of Corrections in 1998, which details the special programs and policies the different departments of corrections had in place for women. The information on residency programs is taken from a 1998 General Accounting Office report. The section has been supplemented by reports and news sources when available to Amnesty International, as well as information from state Department of Corrections.

## Parenting programs specific for women

The National Institute of Corrections notes that the high proportion of women in state prisons who are parents, has made the need for parenting programs in women’s prisons a particular concern.<sup>37</sup> This report lists the states that have introduced such parenting programs for women.

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<sup>35</sup> In particular (a) the rehabilitation of offenders is an essential aim of the penitentiary system – Article 10, International Covenant on Civil and Political Rights; and (b) promotion of the best interests of the child – a general principle of the Convention on the Rights of the Child

<sup>36</sup> Title XLI – Family Unity Demonstration Project, forming part of the Violent Crime Control and Law Enforcement Act of 1993

<sup>37</sup> US Department of Justice National Institute of Corrections Information Center, “Current Issues in the Operation of Women’s Prisons,” National Institute of Corrections, Colorado, September 1998

#### Special visitation rights for women

To compound the problem of separation, most women's prisons are located far from where their children reside, making it difficult to maintain contact. There are fewer women's prisons and, consequently, chances of a placement close to their children are slim. Often the state women's prisons are overcrowded and women are transferred to other states. For some, this loss of contact may mean termination of their parental rights. The impact of incarceration on families as a whole and on the individual family members, particularly parents who are the primary caregivers of their children is at the very least disruptive, and commonly traumatic.<sup>38</sup>

#### State Mother and Child Residency Program

In most states, babies are taken from their imprisoned mothers almost immediately after birth or at the time the mother is discharged from the hospital.<sup>39</sup> US House of Representatives findings indicated that many infants who are born shortly before or while their mothers are incarcerated are quickly separated from their mothers, preventing the parent-child bonding that is crucial to developing a sense of security and trust in children.<sup>40</sup>

This report notes whether any time at all is allowed between the mother and the newborn infant, if such information has been available to Amnesty International.

In this report, we list the states that have a program for keeping mothers and children together. We also note policies allowing the mother to keep custody of the infant, and whether there are any other policies that regulate this area.

#### Federal MINT (Mothers and Infants Together) program

There is a Federal Bureau of Prisons program, Mothers and Infants Together. Mothers and Infants Together allows low security-risk pregnant women to be placed in the community-based program two months before expected delivery. The mother can remain there for three months with the baby after delivery. They receive prenatal and postnatal instruction and other training related to chemical dependencies, physical and sexual abuse, budgeting, and employment. The federal facilities with such programs are listed in the pages on the Federal Bureau of Prisons.

### **III. Data: Sources and Reliability**

The information presented in the report is composed of several different sources. Some of the information is original Amnesty International research and primary source material. Much of the information presented in this report is taken from surveys and reports conducted by others. Amnesty International has not had the opportunity or resources to verify the information given through on-site inspections. Amnesty International has

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<sup>38</sup> Gabriel K, Johnston D, eds, *Children of Incarcerated Parents*, New York: Lexington Books, 1995

<sup>39</sup> "Inmate Health Care, Part II", *Corrections Compendium*, Volume 23, Number 11, 1998, 11

<sup>40</sup> Title XLI – Family Unity Demonstration Project, forming part of the Violent Crime Control and Law Enforcement Act of 1993

factored several sources into the same category when possible: reports from government agencies, media sources, non-governmental organizations, the United Nations, on-line statutes and codes, and by contacting Attorney General's Offices and Department of Corrections. Additionally all Department of Corrections were sent the pages relating to their state and had the opportunity to correct the information included.

It is important to note that the numbers we present in this report may underestimate the scope of the problem. As reported in *"Not part of my sentence,"* prisoners, lawyers and other sources have told Amnesty International that prisoners are often reluctant to complain for a variety of reasons, including:

1. The difficulty of proving an allegation, particularly when the only evidence is the prisoner's account;
2. The possibility that making a complaint may place a prisoner in protective segregation while the complaint is investigated; which many have said they find punitive;
3. Fear of retaliation.

Furthermore, only a small percentage of the reported incidents lead to disciplinary action, while even fewer lead to criminal prosecution and even fewer to actual convictions.

According to research conducted by the General Accounting Office in 1999 in four jurisdictions<sup>41</sup> only about 18 percent of all allegations of staff sexual misconduct resulted in staff resignation or terminations. The number of staff facing criminal prosecution was significantly lower and actual convictions were lower still. Lack of evidence was cited as the primary reason why more allegations were not followed up with indictments. Officials explained to the GAO that medical or other physical evidence was frequently not available and, thus, investigators were often faced with situations of one person's word against another's. Officials also told the GAO that many allegations were false and were made to harass the staff – but did not provide any evidence to prove this.<sup>42</sup>

GAO also notes that none of the four jurisdictions they examined had readily available, comprehensive data or reports on the number, nature or outcomes of staff-on-inmate sexual misconduct allegations. The report concludes, "Because many female inmates may be reluctant or unwilling to report staff sexual misconduct and jurisdictions lack systematic data collection and analysis of reported allegations, the overall extent of staff-on-inmate sexual misconduct in female prisons is largely unknown."

As the GAO notes, the absence of such systemic data or reports makes it difficult for lawmakers, corrections management and others to effectively address staff sexual misconduct issues in federal prisons. Introducing centralized monitoring of allegations, types of violations, criminal prosecution, convictions or other disciplinary measures taken

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<sup>41</sup> US General Accounting Office, "Women in Prison – Sexual Misconduct by Correctional Staff," June 1999

<sup>42</sup> US General Accounting Office, "Women in Prison – Sexual Misconduct by Correctional Staff," June 1999

would benefit both inmates and correctional departments by facilitating realistic assessment of the situation and the adoption of relevant remedies if needed – instead of having to base such important decisions on estimations and guesswork.

Finally, one of the problems with working in this field is highlighted by this report: there is a dearth of information on the specifics of conditions, policies and procedures. As is evident throughout the report, obtaining current and detailed information is not a simple task.<sup>43</sup> This problem is magnified when seeking information about the correctional facilities in counties and cities. This report is restricted to state and federal levels - to a large extent because there is virtually no information available on local and county levels. Amnesty International sees this report as a first step in a series with the intent of presenting information in an underreported area. Amnesty International will continue to collect information about several of the issues touched upon in this report, and plans to widen the focus to local levels. The report is available on line at <http://www.amnestyusa.org> and will be updated and corrected as necessary.

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<sup>43</sup> National agencies, like the National Institute of Corrections, collect information on a series of important issues. However, the surveys often have gaps, with information lacking on some states, and they seldom give details, which would be useful when analyzing the situation in a particular department of corrections. Their reports present an excellent overview, but also often pose as many questions as they answer.