

Module 3: State Laws and Investigations

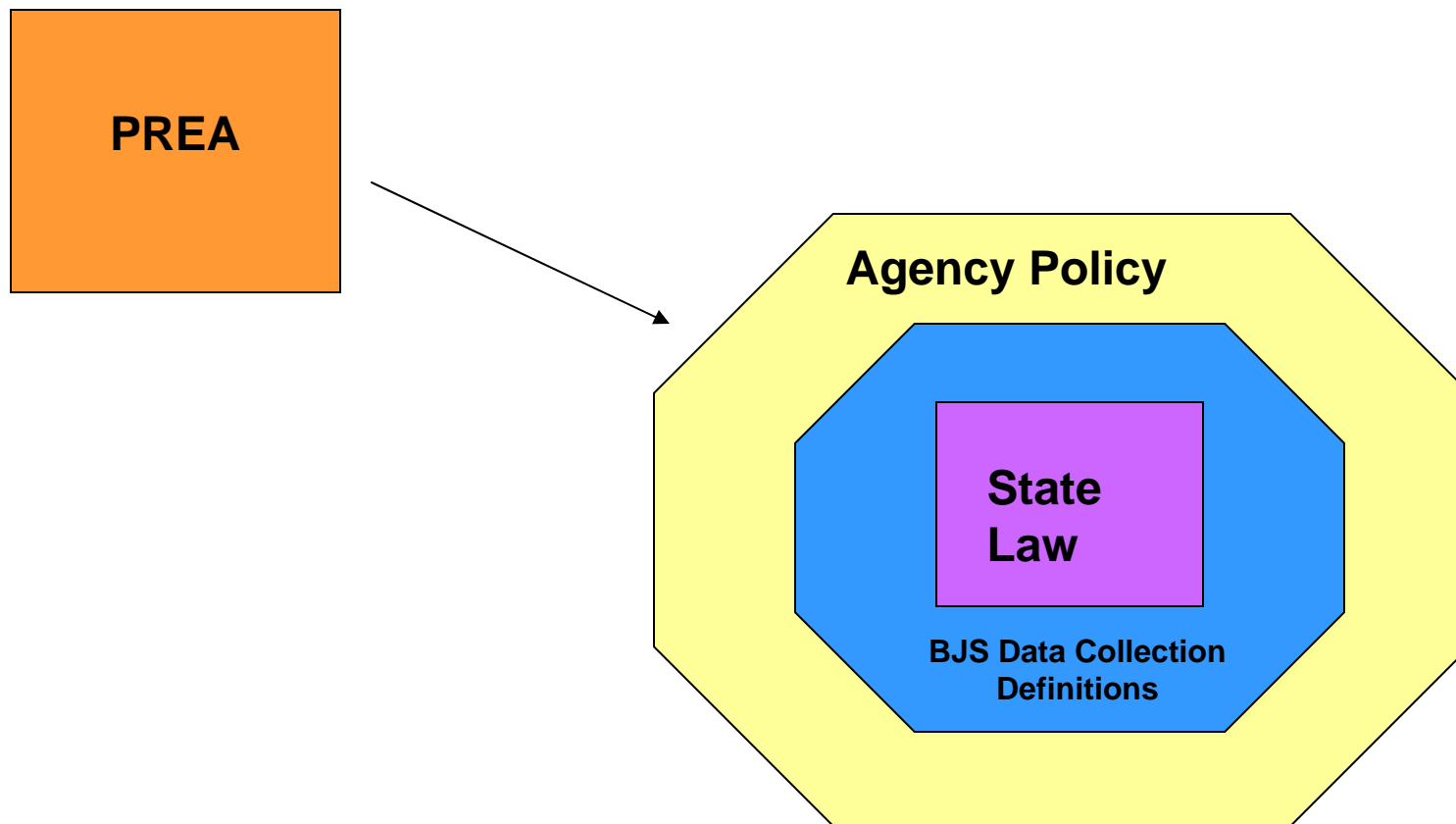
Investigating Allegations of Staff Sexual Misconduct with Offenders

Developed by the NIC/WCL Project
under NIC Cooperative Agreement
#06S20GJJ1

Objective

Review the legal tools for prosecuting staff sexual misconduct with offenders – their content, importance and relevance to investigations.

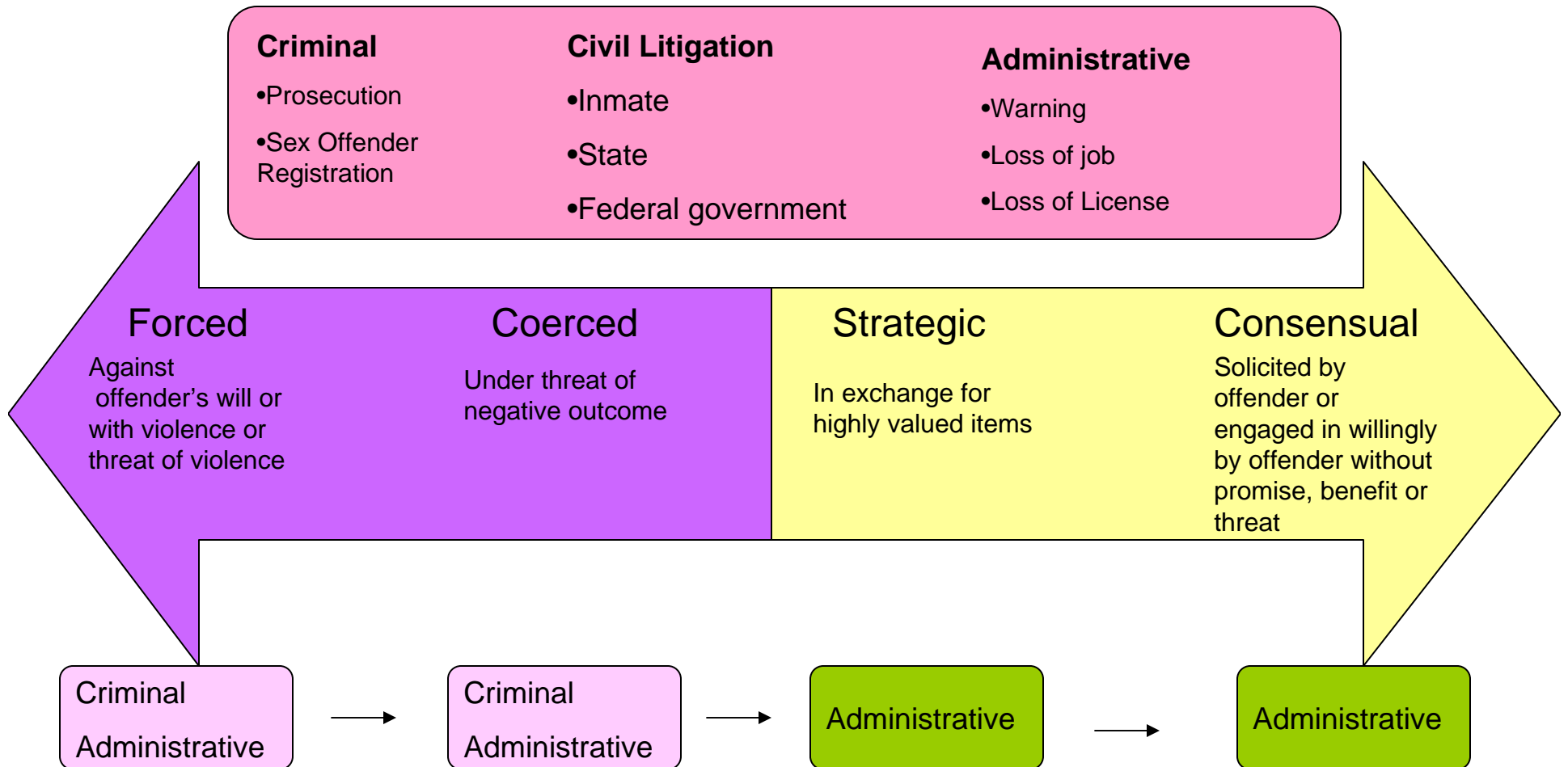
Governmental Limits on Sexual Activity in Institutional Settings



Developed by the NIC/WCL
Project under NIC Cooperative
Agreement #06S20G.1.11

Continuum of Sexual Activity Involving Adult Offenders

Staff on Inmate Sanctions



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Inmate on Inmate Sanctions

Important Questions

- What are the legal tools for punishing staff for sexual abuse of offenders?
- Are correctional staff mandatory reporters of sexual violence against adults?
- Are inmates considered vulnerable adults?
- What about juveniles in adult settings?

Legal Tools for Prosecuting Staff Sexual Misconduct?

- Staff sexual misconduct laws
- Sexual assault laws (including sodomy)
- Vulnerable Adult statutes
- Child Exploitation
- Mandatory Reporting
- HIV Statutes
- Sex Offender Registration
- Assault and battery

Staff Sexual Misconduct

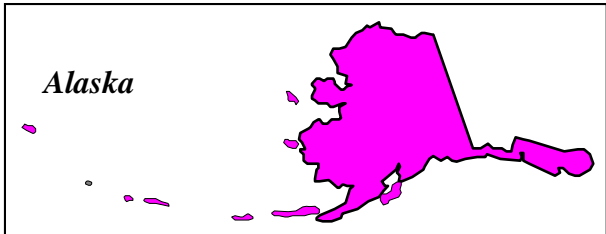
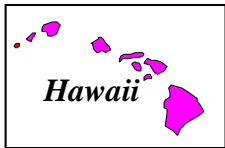
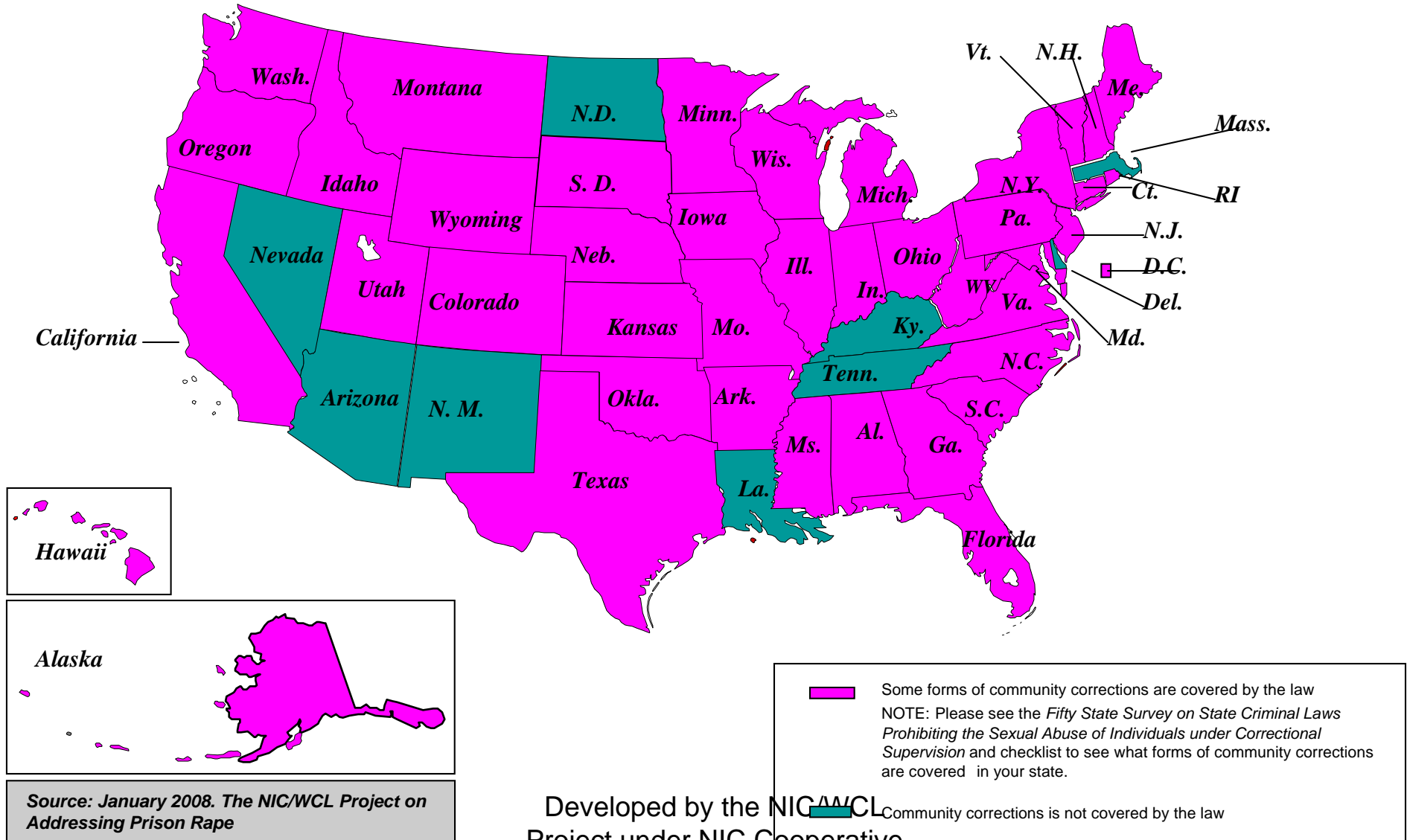
- Felony in most states
- Consent is an issue for prosecution
- Victim credibility is an issue
- Code of Silence/ Lack of corroboration
- Lack of Physical Evidence and timely reporting

Staff Sexual Misconduct Laws— Optimal Elements

- Coverage
- Conduct
- Defenses
- Reporting
- Sanctions

State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Community Corrections Supervision

National Institute of Corrections/American University, Washington College of Law – January 2008

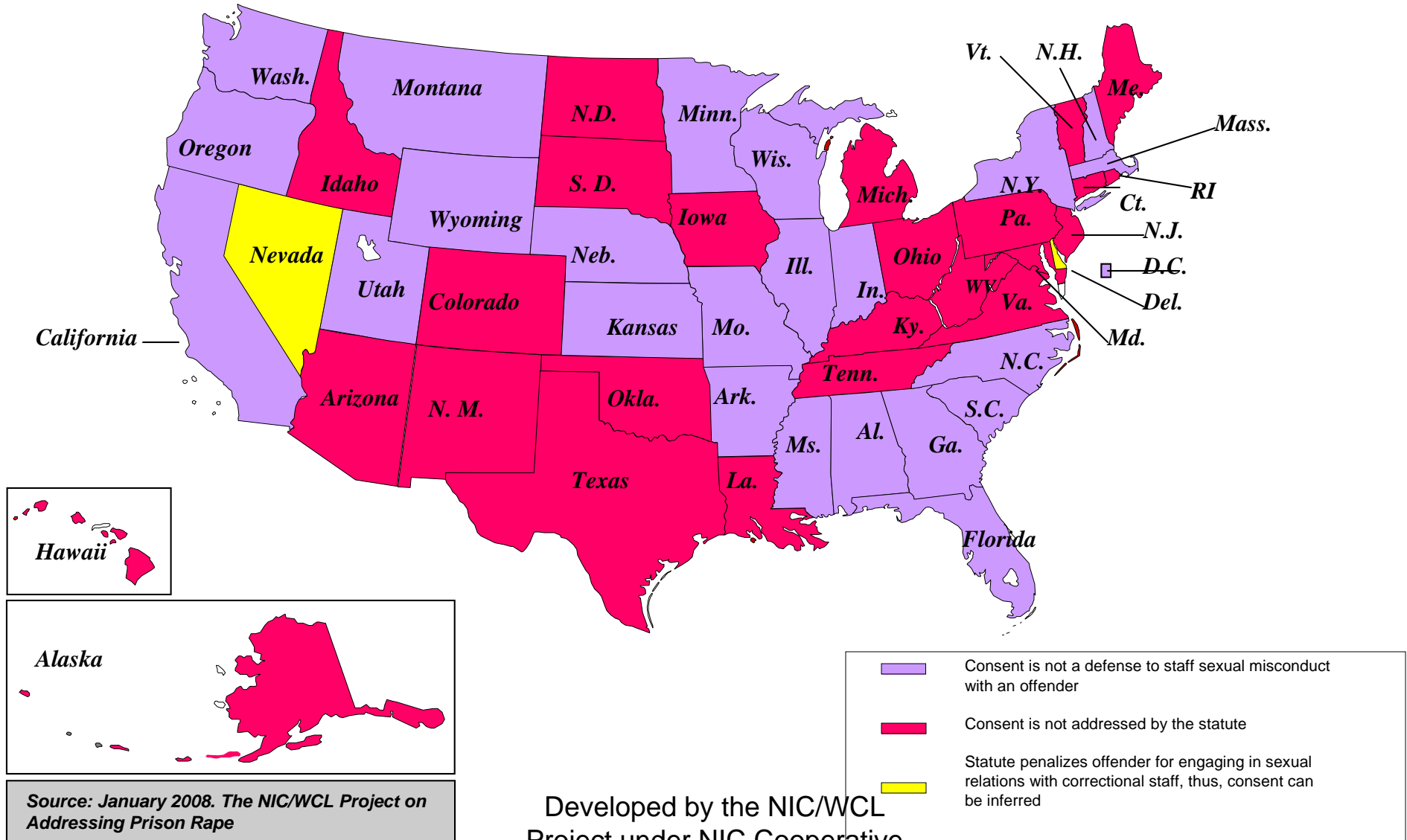


Source: January 2008. The NIC/WCL Project on Addressing Prison Rape

Developed by the NIC/WCL Project under NIC Cooperative Agreement #06S20G.1.11

State Criminal Laws Prohibiting Sexual Abuse of Individuals Under Correctional Supervision: Consent as a Defense

National Institute of Corrections/American University, Washington College of Law – January 2008



Source: January 2008. The NIC/WCL Project on Addressing Prison Rape

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Staff Sexual Misconduct Law: Arizona

- ARIZ. REV. STAT. ANN. § 13-1419 (West 2007).
 - Unlawful sexual conduct; correctional facilities; classification; definition.
 - A person commits unlawful sexual conduct by engaging in any act of a sexual nature with an offender who is in the custody of the state department of corrections, the department of juvenile corrections, a private prison facility or a city or county jail, or who contracts to provide services with the state department of corrections, the department of juvenile corrections a private prison facility or a city or county jail or with an offender who is under the supervision of either department or a city or county.

Sexual Assault

- Generally felony
- Lack of consent is element of crime
- Complainant credibility is an issue
- Lack of corroboration
- Sex offender registration usually required

Sexual Assault Law: Tennessee

- Rape
 - Tenn. Code Ann. § 39-13-503 (2005).
 - (a) Rape is unlawful sexual penetration of a victim by the defendant or of the defendant by a victim accompanied by any of the following circumstances:
 - (1) Force or coercion is used to accomplish the act;
 - (2) The sexual penetration is accomplished without the consent of the victim and the defendant knows or has reason to know at the time of the penetration that the victim did not consent;
 - (3) The defendant knows or has reason to know that the victim is mentally defective, mentally incapacitated or physically helpless; or
 - (4) The sexual penetration is accomplished by fraud.

Sodomy

- Prohibits certain sexual practices
- Many states don't define oral and anal sex as intercourse
- Many states don't define same sex/sex as intercourse – even if it involves penetration

Sodomy Law: Utah

- Sodomy
 - Utah Code Ann. §76-5-403(1) (2006).
 - A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

Vulnerable Adult Statutes

- Generally cover “special populations”
 - Mentally ill
 - Mentally retarded
 - Elderly
 - Youth
 - Those in treatment
- May have separate advocacy agency e.g. NAPA, NAMI, AARP, Senior Citizens Law Center
- May also have civil liability consequences

Vulnerable Adult Law: Idaho

- Sexual abuse and exploitation of a vulnerable adult.
 - Idaho Code Ann. § 18-1505B (2006).
 - (1) It is a felony for any person, with the intent of arousing, appealing to or gratifying the lust, passion or sexual desires of such person, a vulnerable adult or a third party, to:
 - (a) Commit any lewd or lascivious act or acts upon or with the body or any part or member thereof of a vulnerable adult including, but not limited to: genital--genital contact, oral--genital contact, anal--genital contact, oral--anal contact, manual--anal contact or manual--genital contact, whether between persons of the same or opposite sex;

Vulnerable Adult Law: Idaho

- (b) Involve a vulnerable adult in any act of bestiality or sadomasochism; or
 - (c) Cause or have sexual contact with a vulnerable adult, not amounting to lewd conduct as defined in paragraph (a) of this subsection.
-
- (4) It shall be a felony for any person to commit sexual exploitation of a vulnerable adult if, for any commercial purpose, he knowingly:
 - (a) Causes, induces or permits vulnerable adult to engage in or be used in any explicit sexual conduct; or
 - (b) Prepares, arranges for, publishes, produces, makes, sells, finances, offers, exhibits, advertises, deals in, possess or distributes sexually exploitive material, depicting a vulnerable adult engaged in, observing, or being used for explicit sexual conduct.

Vulnerable Adult Law: New York

- Mentally Ill Individuals in New York Prisons Will Get Better Care & Less Solitary Confinement Based on Settlement of Lawsuit
- http://www.brennancenter.org/content/elert/mentally_ill_individuals_in_new_york_prisons_will_get_better_care_less_solitary_confinement_based_on_settlement_of_lawsuit

Vulnerable Adult Law: Michigan

- After more than a year of monitoring Michigan youth in prison, Michigan Protection and Advocacy Service (MPAS) filed litigation against the Michigan Department of Corrections (MDOC) to challenge and remedy the department's use of isolation, denial of adequate mental health services, and denial of appropriate educational services to young inmates with mental illness and/or developmental disabilities.

- <http://www.mpas.org/Article.asp?TOPIC=1098>

Child Exploitation

- How does this apply to juveniles serving sentences as adults?

Mandatory Reporting Laws

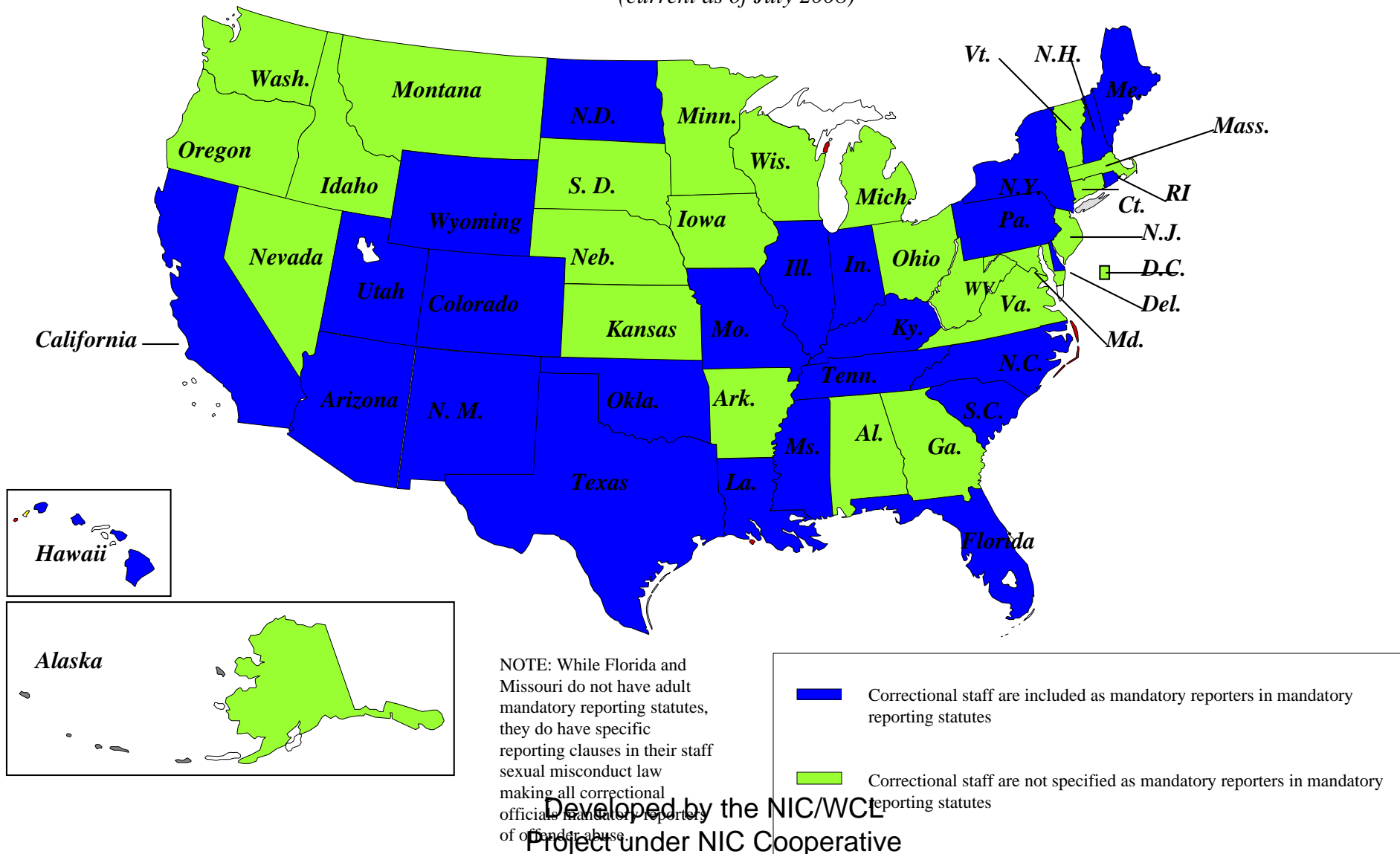
- Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.
 - What does this mean for youth housed as adults?
- 24 states do not include correctional staff in their adult mandatory reporting statutes
 - 1 state has NO adult mandatory reporting statute at all
 - South Dakota

Mandatory Reporting Laws

- 26 state mandatory reporting laws include correctional staff as mandatory reporters
 - Hawaii and Mississippi explicitly name correctional staff in their law while the other 24 states imply it by stating “any person” or “all people”
- Florida, Missouri and South Carolina also have specific duty to report clauses under their staff sexual misconduct laws in addition to their mandatory reporting laws

Correctional Staff are Named as Mandatory Reporters in State Adult Mandatory Reporting Laws

Source: The NIC/WCL Project on Addressing Prison Rape Fifty State Survey of Mandatory Reporting Statutes (current as of July 2008)



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Mandatory Reporting: Massachusetts

- Mass. Gen. Laws Ann. ch. 19A, § 15 (West 2007).
 - (a) Reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse.
- Mass. Gen. Laws Ann. ch. 19A, § 14 (West 2007).
 - Abuse, an Act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof.

Mandatory Reporting: Florida

- **Fla. Stat. Ann. § 944.35 (West 2006).**
 - (3)(d) Witnessing, or reasonable cause to suspect, that an **inmate or an offender** under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct.

- **Fla. Stat. Ann. §944.35 (West 2006).**
 - (3)(d) **Each employee** who witnesses, or has reasonable cause to suspect, that an inmate or an offender under the supervision of the department in the community has been unlawfully abused or is the subject of sexual misconduct.

Mandatory Reporting: Missouri

- Mo. Ann. Stat. § 217.410 (West 2005).
 - (1) Reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused.

- Mo. Ann. Stat. § 217.405 (West 2005).
 - (1) Any employee of the department of corrections.

- Mo. Ann. Stat. § 217.410 (West 2005).
 - (1) Immediately report offender abuse in writing to the director.
 - (5) Upon receipt of a report, the department shall initiate an investigation within twenty-four hours.

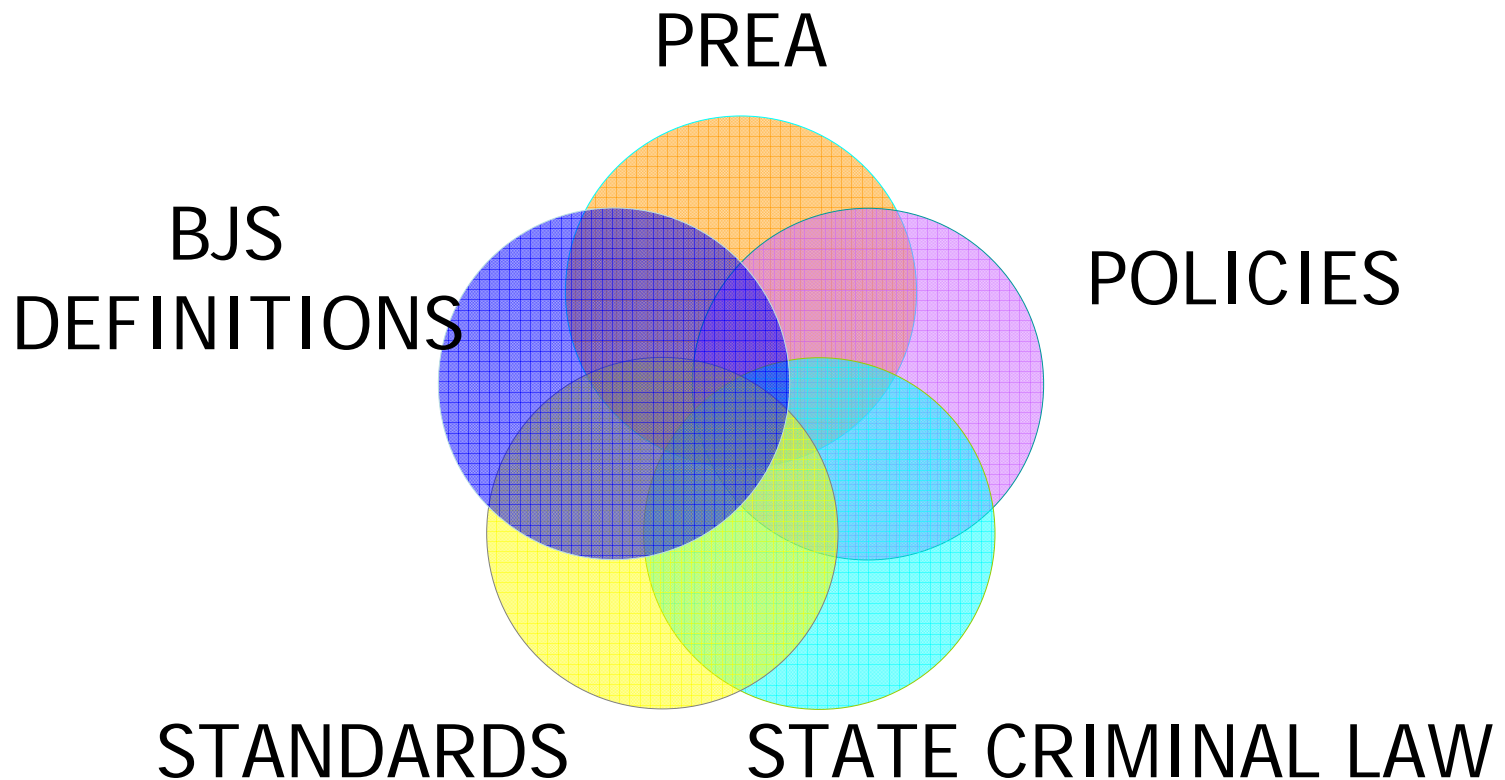
HIV Statutes

- Separate offense or enhancement for knowingly infecting someone with HIV?

Sex Offender Registration

- Not considered a penalty
- Registration available for both youth and adults
- Many other requirements come with it depending on state

Overlap Of: Law, Policy and Standards



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Interaction Between Law, Policy and Standards

- Different purposes
 - Law is what is politically available
 - Policies are what is optimal
 - Standards are what is ideal
- BJS definitions e.g.
 - Different purposes – data collection
 - Policy – what is going on in institution
 - State Law – what could be passed

Why is this Important?

- Describing prohibited conduct
- Evidence collection
- Investigation