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**Human Resources and Administrative Investigations
Notification of Curriculum Use
April 2014***

The enclosed Human Resources and Administrative Investigations curriculum was developed by the Project on Addressing Prison Rape at American University, Washington College of Law as part of contract deliverables for the National PREA Resource Center (PRC), a cooperative agreement between the National Council on Crime and Delinquency and the Bureau of Justice Assistance (BJA). The Prison Rape Elimination Act (PREA) standards served as the basis for the curriculum's content and development, with the goal of the Human Resources and Administrative Investigations curriculum to satisfy specific PREA standards requirements.

It is recommended that the Human Resources and Administrative Investigations curriculum be reviewed in its entirety before choosing which modules to use. Any alterations to the original materials require either acknowledgement during their presentation or removal of the PRC and Project on Addressing Prison Rape logos.

BJA is currently undergoing a comprehensive review of the enclosed curriculum for official approval, at which point the BJA logo may be added.

Note: Use of the enclosed curriculum, either in part or in whole, does not guarantee that an auditor will find a facility "meets standards." Rather, an auditor will take into consideration the curriculum used as part of their overall determination of compliance.

*All materials and information provided in this publication (e.g., state laws, civil case law examples, BJA statistics) are accurately represented as of October 2013.

Notice of Federal Funding and Federal Disclaimer – This project was supported by Grant No. 2010-RP-BX-K001 awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice nor those of the National Council on Crime and Delinquency (NCCD), which administers the National PREA Resource Center through a cooperative agreement with the Bureau of Justice Assistance.





**Training Curriculum:
Human Resources and Administrative Investigations**

**MODULE 3:
STATE CRIMINAL LAWS**

**The Project on Addressing Prison Rape
January 2014**

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Objective

Demonstrate an understanding of state criminal laws and be able to identify staff criminal liability.



Introduction

Notice:

- Send a message about prohibited conduct and populations that merit greater protection
- Flag staff as a risk

Prevention: Disincentive to engage in abusive behavior

Punishment: Deter future misconduct



Introduction

Brief overview of criminal laws

- Sexual assault laws
- Child exploitation
- Staff sexual misconduct laws
- Vulnerable person/other abuse laws

Sex offender registration

Mandatory reporting



Sexual Assault Law: D.C.

D.C. CODE § 22-3002 (West 2013): First degree sexual abuse

(a) A person shall be imprisoned for any term of years or for life, and in addition, may be fined in an amount not to exceed \$250,000, if that person engages in or causes another person to engage in or submit to a **sexual act** in the following manner:

- (1) By using **force** against that other person;
- (2) By **threatening or placing that other person in reasonable fear** that any person will be subjected to death, bodily injury, or kidnapping;
- (3) After rendering that other person **unconscious**; or
- (4) After **administering to that other person by force or threat of force**, or without the knowledge or permission of that other person, a drug, intoxicant, or other similar substance that substantially impairs the ability of that other person to appraise or control his or her conduct.



Sexual Assault Law: North Carolina

N.C. GEN. STAT. ANN § 14-27.2 (West 2013): First-degree Rape

(a) A person is guilty of rape in the first degree if the person engages in **vaginal intercourse**:

(1) With a victim who is a **child under the age of 13 years** and the defendant is at least **12 years old and is at least four years older than the victim**; or

(2) With another person **by force and against the will of the other person**, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.



Sodomy

Traditionally aimed at **same-sex sexual acts**

Some jurisdictions still prosecute under sodomy laws because:

- Many states do not define oral or anal sex as sexual intercourse
- Many states do not define sex between same sex actors as intercourse, even when it involves penetration



Sexual Assault Law: North Carolina

N.C. GEN. STAT. ANN § 14-27.4 (West 2013): First-degree Sexual Offense

(a) A person is guilty of a sexual offense in the first degree if the person engages in a **sexual act**:

(1) With a victim who is a **child under the age of 13 years** and the defendant is at least **12 years old and is at least four years older than the victim**; or

(2) With another person **by force and against the will of the other person**, and:

a. Employs or displays a dangerous or deadly weapon or an article which the other person reasonably believes to be a dangerous or deadly weapon; or

b. Inflicts serious personal injury upon the victim or another person; or

c. The person commits the offense aided and abetted by one or more other persons.



Child Exploitation/Statutory Rape

- Many state child exploitation statutes encompass more than direct sexual contact
- Generally cover **non-physical misconduct** as well as physical abuse:
 - photos, letter writing, online communications, voyeurism and distribution of illicit materials
 - fondling, kissing, inappropriate touching, sexual abuse
- Important to understand how this applies to **youth serving sentences as adults**



Child Exploitation Law: Arizona

- ARIZ. REV. STAT. ANN § 13-1418 (West 2013): Sexual misconduct; behavioral health professionals; classifications.
- ARIZ. REV. STAT. ANN § 13-1402 (West 2013): Indecent Exposure; exception; classification
- ARIZ. REV. STAT. ANN § 13-1406 (West 2013): Sexual Assault
- ARIZ. REV. STAT. ANN § 13-1423 (West 2013): Violent sexual assault, natural life sentence



Child Exploitation Law: Arizona

- ARIZ. REV. STAT. ANN. § 13-1403 (West 2013): Public sexual indecency; public sexual indecency to a minor; classifications
- ARIZ. REV. STAT. ANN. § 13-1405 (West 2013): Sexual conduct with a minor
- ARIZ. REV. STAT. ANN. § 13-1417 (West 2013): Continuous sexual abuse of a child
- ARIZ. REV. STAT. ANN. § 13-1404 (West 2013) Sexual abuse
- ARIZ. REV. STAT. ANN. § 13-1410 (West 2013) Molestation of a child; classification
- ARIZ. REV. STAT. ANN. § 13-3206 (West 2013): Taking a child for the purpose of prostitution



Child Exploitation Law: Arizona

- ARIZ. REV. STAT. ANN. § 13-3212 (West 2013): Child prostitution
- ARIZ. REV. STAT. ANN. § 13-3552 (West 2013): Commercial sexual exploitation of a minor
- ARIZ. REV. STAT. ANN. § 13-3553 (West 2013): Sexual exploitation of a minor
- ARIZ. REV. STAT. ANN. § 13-3554 (West 2013): Luring a minor for sexual exploitation
- ARIZ. REV. STAT. ANN. § 13-3560 (West 2013): Aggravated luring a minor for sexual exploitation
- ARIZ. REV. STAT. ANN. § 13-1307 (West 2013): Sex trafficking of a minor



Child Exploitation Law: Arizona

ARIZ. REV. STAT. ANN. § 13-1405 (West 2013): Sexual Conduct with a Minor

A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in **sexual intercourse or oral sexual contact** with any person who is **under eighteen years of age**.

B. Sexual conduct with a minor who is under fifteen years of age is a class 2 felony and is punishable pursuant to § 13-705. Sexual conduct with a minor who is at least fifteen years of age is a class 6 felony. Sexual conduct with a minor who is at least fifteen years of age is a class 2 felony if the person is or was the minor's parent, stepparent, adoptive parent, legal guardian foster parent or the minor's teacher or clergyman or priest and the convicted person is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis except as specifically authorized by § 31-233, subsection A or B until the sentence imposed has been served or commuted.



Staff Sexual Misconduct

- Felony in most states
- Consent typically not an issue
- Victim credibility is an issue
- Code of Silence/Lack of corroboration
- Lack of physical evidence and timely reporting



Federal Staff Sexual Misconduct Law

18 U.S.C.A. § 2241: Aggravated Sexual Abuse

(a)Whoever . . . in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the head of any Federal department or agency, **knowingly causes another person to engage in a sexual act**

(1) **by using force** against that other person; or

(2) **by threatening or placing that other person in fear that any person will be subjected to death, serious bodily injury, or kidnapping;**

or **attempts** to do so, shall be fined under this title, imprisoned for any term of years or life, or both.



Federal Staff Sexual Misconduct Law

18 U.S.C.A. § 2241: Aggravated Sexual Abuse

(b) Whoever . . . in a Federal prison, or in any prison, institution, or facility in which persons are held in **custody by direction of or pursuant to a contract or agreement** with the head of any Federal department or agency, knowingly-

- (1) renders another person unconscious and thereby engages in a sexual act with that other person; or
- (2) administers to another person by **force or threat of force, or without the knowledge or permission of that person**, a drug, intoxicant, or other similar substance and thereby-
 - (A) substantially impairs the ability of that other person to appraise or control conduct; and
 - (B) engages in a sexual act with that other person;

or **attempts** to do so, shall be fined under this title, imprisoned for any term of years or life, or both.



Federal Staff Sexual Misconduct Law

18 U.S.C.A. § 2243: Sexual abuse of a minor or ward.

(a) **Of a minor.** Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, **knowingly** engages in a sexual act with another person who –

(1) has attained the age of 12 years but has not attained the age of 16 years; and

(2) is at least four years younger than the person so engaging;

or **attempts** to do so, shall be fined under this title, imprisoned not more than 15 years, or both.



Federal Staff Sexual Misconduct Law

18 U.S.C.A. § 2243: Sexual abuse of a minor or ward.

(b) **Of a ward** - Whoever, in the special maritime and territorial jurisdiction of the United States or in a Federal prison, or in any prison, institution, or facility in which persons are held in custody by direction of or pursuant to a contract or agreement with the Attorney General, **knowingly** engages in a sexual act with another person who is –

(1) in **official detention**; and

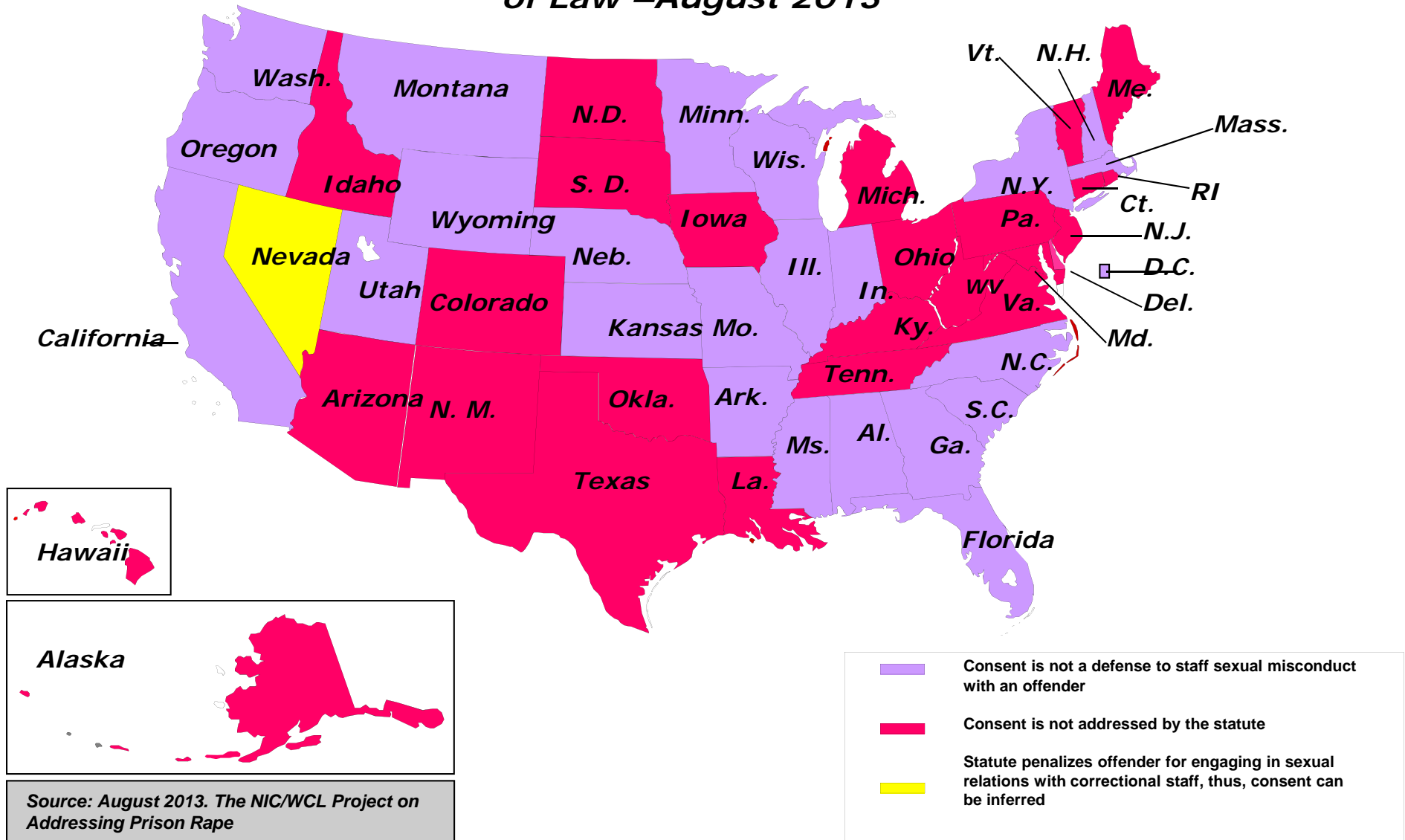
(2) **under the custodial, supervisory, or disciplinary authority of the person so engaging**

or **attempts** to do so, shall be fined under this title, imprisoned not more than 15 years, or both.



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 –August 2013



Staff Sexual Misconduct Law: Nebraska

- **NEB. REV. STAT. ANN. § 28-322.01 (West 2013): Sexual abuse of an inmate or parolee.**

A person commits the offense of sexual abuse of an inmate or parolee if such person subjects an inmate or parolee to sexual penetration or sexual contact as those terms are defined in section 28-318.

- **NEB. REV. STAT. ANN. § 28-322.02 (West 2013): Sexual abuse of an inmate or parolee in the first degree; penalty.**

Any person who subjects an inmate or parolee to sexual penetration is guilty of sexual abuse of an inmate or parolee in the first degree.

- **NEB. REV. STAT. ANN. § 28-322.03 (West 2013): Sexual abuse of an inmate or parolee in the second degree; penalty.**

Any person who subjects an inmate or parolee to sexual contact is guilty of sexual abuse of an inmate or parolee in the second degree.



Staff Sexual Misconduct Law: Massachusetts

- **MASS GEN. LAW. ANN. 268 § 21A (West 2013)**

Officer or other employee of penal or correctional institution;
sexual relations with inmate; punishment.

An officer or other person who is employed by or contracts with any penal or correctional institution in the commonwealth, and who, in the course of such employment or contract or as a result thereof, engages in sexual relations with an inmate confined therein, within or outside of such institution, or an inmate who is otherwise under the direct custodial supervision and control of such officer or other person, shall be punished by imprisonment for not more than five years in a state prison or by a fine of \$10,000 or both. **In a prosecution commenced under this section, an inmate shall be deemed incapable of consent to sexual relations with such person.**



Staff Sexual Misconduct Law: Texas

TEX. PENAL CODE. ANN. § 39.04 (Vernon 2013). Violations of the Civil Rights of Person in Custody; Improper Sexual Activity with Person in Custody.

(a) An official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally:

- (1) **denies or impedes** a person in custody in the exercise or enjoyment of any right, privilege, or immunity knowing his conduct is unlawful; or
- (2) **engages** in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, **employs, authorizes, or induces** the individual to engage in sexual conduct or a sexual performance



Vulnerable Person Abuse

ARIZ. REV. STAT. ANN. § 13-3623 (West 2013): Child or vulnerable adult abuse

A. Under circumstances likely to produce death or serious physical injury, any person who causes a **child or vulnerable adult** to suffer physical injury or, having the **care or custody of a child or vulnerable adult**, who causes or permits the person or health of the child or vulnerable adult to be injured or who causes or permits a child or vulnerable adult to be placed in a situation where the person or health of the child or vulnerable adult is endangered is guilty of an offense as follows:

1. If done intentionally or knowingly, the offense is a class 2 felony and if the victim is **under fifteen years** of age it is punishable pursuant to § 13-705.
2. If done recklessly, the offense is a class 3 felony.
3. If done with criminal negligence, the offense is a class 4 felony.



Vulnerable Person Abuse

ARIZ. REV. STAT. ANN. § 13-3623 (West 2013): Child or vulnerable adult abuse

“Child” means an individual who is under eighteen years of age.

“Vulnerable adult” means an individual who is eighteen years of age or older and who is unable to protect himself from abuse, neglect or exploitation by others because of a mental or physical impairment.



Sex Offender Registration

Not considered a penalty

Registration available for **both youth and adults**

Many other requirements come with it depending on state

- Community notification
- Restrictions on employment
- Restrictions on residency



Sex Offender Registration

- But...
 - To be registered as a sex offender, you must have been convicted for a registrable sex offense
 - If the perpetrator is not convicted, or pleads to a lesser offense, the perpetrator will not be required to register
- Registration can be **bargained away** in a plea
- Can lead to **underrepresentation** on sex offender lists



Adult Sex Offender Registration Law: Federal

The following offenses are registrable:

- **Sex trafficking committed against a minor.** 18 U.S.C. § 1591 (West 2013).
- **Coercion and enticement committed against a minor.** 18 U.S.C. § 2422(b) (West 2013).
- **Transportation with intent to engage in criminal sexual activity committed against a minor.** 18 U.S.C. § 2423(a) (West 2013).
- **Abusive sexual contact committed against a minor.** 18 U.S.C. § 2244 (West 2013).
- **Aggravated sexual abuse or sexual abuse.** 18 U.S.C. §§ 2241 and 2242 (West 2013).
- **Abusive sexual contact committed against a minor who has not attained the age of 13 years.** 18 U.S.C. § 2244 (West 2013).
- **Video voyeurism –** 18 U.S.C. § 1801 (2013).



Adult Sex Offender Registration Law: Maine

A **conviction** for one of the following offenses or for an **attempt or solicitation** of one of the following offenses if the victim was less than 18 years of age at the time of the criminal conduct:

- **Unlawful sexual contact.** ME. REV. STAT. ANN. tit. 17, § 255-A(1)(A), (B), (C), (G), (I), (J), (K), (L), (M), (N), (Q), (R), (S) or (T) (West 2013).
- **Visual sexual aggression against child.** ME. REV. STAT. ANN. tit. 17-A, § 256 (West 2013).
- **Sexual misconduct with a child under 14 years of age.** ME. REV. STAT. ANN. tit. 17-A, § 258 (West 2013).
- **Solicitation of a child by computer to commit a prohibited act.** ME. REV. STAT. ANN. tit. 17-A, § 259 (2013).
- **Sexual exploitation of minor.** ME. REV. STAT. ANN. tit. 17-A, § 282 (West 2013).
- **Dissemination of sexually explicit material.** ME. REV. STAT. ANN. tit. 17-A, § 283 (West 2013).
- **Possession of sexually explicit material.** ME. REV. STAT. ANN. tit. 17-A, § 284 (West 2013).



Adult Sex Offender Registration Law: Maine

- **Kidnapping** (unless actor is a parent of the victim). ME. REV. STAT. ANN. tit. 17-A, § 301 (West 2013).
- **Criminal restraint** (unless actor is a parent of the victim). ME. REV. STAT. ANN. tit. 17-A, § 302 (West 2013).
- **Violation of privacy**. ME. REV. STAT. ANN. tit. 17-A, § 511(1)(D) (West 2013).
- **Incest**. ME. REV. STAT. ANN. tit. 17-A, § 556 (West 2013).
- **Aggravated promotion of prostitution**. ME. REV. STAT. ANN. tit. 17-A, § 852(1)(B) (West 2013).
- **Patronizing prostitution of a minor**. ME. REV. STAT. ANN. tit. 17-A, § 855 (West 2013).
- **Sexual abuse of minors**. ME. REV. STAT. ANN. tit. 17-A, § 254 (West 2013).
- **Gross sexual assault**. ME. REV. STAT. ANN. tit. 17-A, §§ 253(1), 253(2)(A), (B), (C), (D) (E), (F), (G), (H), (I) or (J)(West 2013).

Adult Sex Offender Registration Law: California

CAL. PENAL CODE § 290

- A violation of CAL. PENAL CODE § 289.6, **Staff Sexual Misconduct** law, is one of the enumerated offenses listed under section 290 and therefore requires mandatory registration.
- **However**, a California court has recently held that the registration requirement is **unconstitutional** as applied to correctional officers and **consenting adults**. *People v. Ruffin*, 133 Cal.Rptr.3d 27, 29 (Cal.App. 5 Dist. Nov 02, 2011).



Juvenile Sex Offender Registration Law: Minnesota

MINN. STAT. §243.166: Subd 1b. Registration required. (a) A person shall register under this section if:

(1) the person was charged with or petitioned for a felony violation of or attempt to violate, or aiding, abetting, or conspiracy to commit, any of the following, and convicted of or **adjudicated delinquent for that offense or another offense arising out of the same set of circumstances**:

- (i) murder under section 609.185, paragraph (a), clause (2);
- (ii) kidnapping under section 609.25;
- (iii) criminal sexual conduct under section 609.342; 609.343; 609.344; 609.345; 609.3451, subdivision 3; or 609.3453; or
- (iv) indecent exposure under section 617.23, subdivision 3;



Juvenile Sex Offender Registration Law: Minnesota

(2) the person was charged with or petitioned for a violation of, or attempt to violate, or aiding, abetting, or conspiring to commit criminal abuse in violation of section 609.2325, subdivision 1, paragraph (b), false imprisonment in violation of section 609.255, subdivision 2; soliciting a minor to engage in prostitution in violation of section 609.322 or 609.324; soliciting a minor to engage in sexual conduct in violation of section 609.352; using a minor in a sexual performance in violation of section 617.246; or possessing pornographic work involving a minor in violation of section 617.247, and convicted of or **adjudicated delinquent for that offense or another offense arising out of the same set of circumstances;**

(4) the person was convicted of or **adjudicated delinquent for,** including pursuant to a court martial, violating a law of the United States, including the Uniform Code of Military Justice, similar to the offenses described in clause (1), (2), or (3).



Mandatory Reporting Laws

- Mandatory reporting laws require certain individuals to report cases of physical or sexual abuse committed against children and vulnerable adults.
- Two types of statutes:
 - Child Abuse
 - Vulnerable Adult Abuse



Mandatory Reporting Laws: PREA

§ 115.51: Inmate reporting

§ 115.61: Staff and Agency Reporting Duties

§ 115.87: Data Collection



Mandatory Reporting Laws

Child Abuse Reporting Statutes Generally– Reporters

- Seven states specifically include “corrections officials” as mandatory reporters
- Three states explicitly identify staff of juvenile detention centers as mandatory reporters.
- Several states include probation and parole officers within the list of those required
- A significant number of states classify “police officers,” “peace officers,” or “law enforcement officers” as mandatory reporters.



Mandatory Reporting Laws

Adult Abuse Reporting Statutes Generally– Reporters

- 8 states exclude correctional staff from their adult mandatory reporting statutes
- Only New York has NO adult mandatory reporting statute at all
- North Dakota's statute permits, but does not require, reporting



Mandatory Reporting: Minnesota

MINN. STAT. ANN. § 609.556 (West 2013): Reporting of Maltreatment of Minors.

- (a) A person who knows or has reason to believe a child is being neglected or physically or sexually abused, as defined in subdivision 2, or has been neglected or physically or sexually abused within the preceding three years, shall immediately report the information to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person is:
- (1) a professional or professional's delegate who is engaged in the practice of the healing arts, social services, hospital administration, psychological or psychiatric treatment, **child care**, education, **correctional supervision, probation and correctional services**, or law enforcement; or
- (b) Any person may voluntarily report to the local welfare agency, agency responsible for assessing or investigating the report, police department, or the county sheriff if the person knows, has reason to believe, or suspects a child is being or has been neglected or subjected to physical or sexual abuse.



Mandatory Reporting Laws

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.



Mandatory Reporting: Missouri

Abuse of offender, duty to report, penalty--confidentiality of report, immunity from liability--harassment prohibited
Mo. Ann. Stat. § 217.410 (West 2013).

- (1) Reasonable cause to believe that an offender in a correctional center operated or funded by the department has been abused.

Offender abuse, penalty--employees not to use physical force, exception. Mo. Ann. Stat. § 217.405 (West 2013).

- (1) Any employee of the department of corrections.

Abuse of offender, duty to report, penalty--confidentiality of report, immunity from liability--harassment prohibited
Mo. Ann. Stat. § 217.410 (West 2013).

- (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.



Mandatory Reporting: Florida

Authorized use of force; malicious battery and sexual misconduct prohibited; reporting required; penalties.
Fla. Stat. Ann. § 944.35 (West 2013).

(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.



Why is this Important?

- Describing prohibited conduct to reference in your policy development
- Creating a record for human resources purposes, to indicate that an employee poses a risk
- Tailoring your criminal investigations and evidence collection
- Understanding the possible conflicts between mandatory reporting and confidentiality.



Summary

- (1) Criminal Sexual Abuse Laws;
- (2) Staff Sexual Misconduct;
- (3) Sex Offender Registry; and
- (4) Mandatory Reporting.

What are the laws in your state?

Check out the Project's Fifty State Surveys:

- <http://www.wcl.american.edu/endsilence/statesurveys.cfm>

